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Glen's LAW OF Public Health

AND
Local Government.

FOURTEENTH EDITION

BY

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VOLUME I.

PRELIMINARY.

TABLE OF STATUTES.

TABLE OF CASES.

ADDENDA ET CORRIGENDA

(containing Public Health Act, 1925).

PART I.

PUBLIC HEALTH ACTS, 1875, 1890, 1907.

PART II.

DISEASES, FOOD, AND HOUSING.

LONDON :

SWEET & MAXWELL, LIMITED,

2 & 3 CHANCERY LANE, W.C.2

1925.

(Printed in England).

6800720

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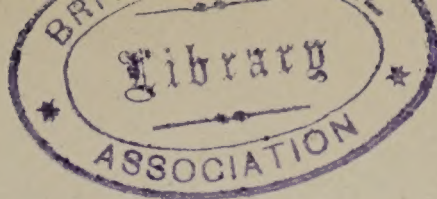
PREFACE.

THE forerunner of the series of works on "Public Health," of which the present edition is the fourteenth, was a paper-covered book of 72 pages which was published in 1848 and dealt with the Nuisances Removal Act of that year. In less than three weeks the edition was sold out, and a second was published in the same year and contained 100 pages. The third edition was published in 1849, and contained 106 pages. At the same time a separate book, of 30 pages, was published on the amending Act of 1849. The fourth, of 160 pages, was published in 1853. Soon after the passing of the Public Health and Local Government Acts of 1858, all the then Public Health and Local Government Acts were collected into one work, of 462 pages, which was published in that year and is referred to in Prefaces to later editions as the "First Edition," though it might well have been called the "Fifth." The Preface to that edition will be found on page vii., *post*. All these early works were written by my grandfather, the late William Cunningham Glen, of the Middle Temple, who subsequently became Principal of the Legal Department of the Local Government Board. He edited alone the next six editions. My father, the late Alexander Glen, K.C., Bencher of the Middle Temple, joined him in editing the eighth, ninth, and tenth editions, and was joint editor with the late Austin Fleeming Jenkin, of the Inner Temple, of the eleventh, twelfth, and thirteenth editions, in the last of which I took part. The present edition contains nearly 3,000 pages.

The thirteen edition was published in 1906. Between then and March, 1913, when the death of my father deprived the work of his supervision, he and I were working together preparing the matter for a new edition; and the materials which we collected during those seven years have been inserted in this edition as he had indicated, except where subsequent changes have necessitated alterations. Later in the same year I was joined in my task of bringing out the present edition by my friend, George William Bailey, of the Inner Temple, and have found his technical and practical knowledge, gained during twenty years of municipal service, of the utmost value in dealing with the various problems that have arisen during the compilation of the work for the Press. I am indebted to my friend, Norman P. Greig, B.A., of the Inner Temple, for valuable assistance in reading the proofs, checking references, and other laborious operations during the later stages of the work; and to my clerk, J. Englehart Weare, for preparing the Table of Statutes and Table of Cases.

Part I. of the preceding edition, which was an exhaustive summary, partly historical, of the whole of the Public Health and Local Government legislation then in force, was subsequently published separately in book form by Messrs. Knight & Co. as "The District Councillor's Guide," and is therefore omitted. This omission and the substantial shortening of the "Table of Contents" have left a space in Volume I. the filling of which had been a problem which has not been easy to solve. The space available was much too small to hold the matter which might well have been inserted there, and a fresh method of arranging the work has therefore been adopted.

Of later years the statutes relating to the various duties and undertakings of public health authorities have become so numerous that the system hitherto followed of printing the principal Act of 1875 first and then all the other Acts in strict chronological order without regard to their importance or subject seemed to be inconvenient, and it has accordingly been decided to depart from this system, and to place all the statutes which naturally fall into well-defined groups into those groups, and the remainder as before in their order of date. The short Public Health Acts have been quoted in full in appropriate places in the Notes to the principal Act. For instance, the Public Health (Ports) Act, 1896, occupied a whole page in the previous edition, and now, though quoted in full, occupies three lines in the Note to section 287 of the Public Health Act, 1875. Many short amending Acts have been dealt with in the same way, and also many Departmental Orders and Memoranda, thus saving considerable space for the enormous amount of new matter for which room has had to be found in the book. This transference of Acts to Notes has also, it is hoped, added very materially to the convenience of reading the principal and amending statutes. Thus, the Public Health (Buildings in Streets) Act, 1888, repealed and re-enacted in a slightly different form section 156 of the Public Health Act, 1875, and the Act of 1888 and the Notes upon it have accordingly been inserted in the Note to that section, where it will be close to other sections of that Act containing kindred provisions. The Private Street Works Act, 1892, which provides an alternative method of making up streets to that enacted in section 150 of the Act of 1875, has, with its Notes, been transferred bodily to the Note to that section. This new arrangement has also eliminated very many cross references from one part of the work to another, and will obviate constant turning backwards and forwards. Considerable space has also been saved by discarding the tabular form of repealing Schedules, and inserting the list of repealed enactments, unabridged, in the Notes to the sections which enact such Schedules. In fact, the idea all through has been to endeavour to make the work, in spite of its inevitable bulk, one in which the reader will be able to find,



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with the greatest possible readiness, any point on which he may be seeking information.

The classification into groups is as follows:—

Part I. contains, under the heading “the Principal Public Health Acts,” the Public Health Acts of 1875 (in Division I.), 1890 (in Division II.), and 1907 (in Division III.).

Part II. contains three groups of Acts which are really “Public Health” Acts, though most of them do not contain those two words in their short titles, namely, in Division I., “Diseases” (7 Acts); in Division II., “Food and Drugs” (8 Acts); and in Division III., “Housing and Town Planning” (11 Acts).

Part III. contains six groups, under the heading “Acts relating to Public Health and Local Government Undertakings,” namely, in Division I., “Gas and Water” (9 Acts); in Division II., “Electricity” (4 Acts); in Division III., “Tramways and Light Railways” (3 Acts); in Division IV., “Baths and Washhouses, Public Libraries, and Museums and Gymnasiums” (8 Acts); in Division V., “Markets and Fairs” (2 Acts); and in Division VI., “Commons and Open Spaces, Small Holdings, Small Holding Colonies, Allotments, Ancient Monuments, and Places of Historic Interest or Natural Beauty” (11 Acts).

Part IV. contains miscellaneous Acts affecting Public Health Authorities, and is divided into two Divisions, the first containing the “Clauses Acts” other than the Gas and Water, Electric Lighting, and Markets and Fairs Clauses Acts (which are set out in their appropriate groups in Part III.), and the second containing Acts of general application in chronological order.

Part V. contains miscellaneous Statutory Orders, Regulations, etc., which affect Public Health Authorities, and is also divided into groups according to subjects.

Part VI. contains the Table of Statutes, Table of Cases, and an Index to the whole work.

Owing to the great weight of a work of this size, if bound in two volumes, this edition has been bound in five, namely:—

I., containing Part I., Div. I.

II., containing Part I., Divs. II. and III., and Part II.

III., containing Part III. and Part IV., Div. I.

IV., containing Part IV., Div. II.

V., containing Parts V. and VI.

Those who prefer the two volume arrangement can, however, obtain the work bound up thus:—Vol. I., containing Parts I. and II. and (at the beginning) the Tables of Statutes and Cases and (at the end) the Index to the whole work; and Vol. II., containing Parts III., IV., and V., and (at the end) another copy of the Index to the whole work.

Owing to the time the work has taken in passing through the press, it has been decided to publish separately, when ready, the five books containing the Parts and Divisions above mentioned. The two volume issue will, therefore, not be ready until the whole work has been completed.

Public Health Authorities are so frequently having to refer to the Railways Clauses Acts, 1845 and 1863, the Tramways Act, 1870, the Water Companies (Regulation of Powers) Act, 1887, the Light Railways Act, 1896, and the Electric Lighting Clauses Act, 1899, that these Acts, with the Acts amending them, have been added to the statutes set out in Volume II., though they were not set out in previous editions.

The passing of the Acts setting up the Ministries of Health, Transport, and Agriculture and Fisheries has necessitated the alteration of nearly every page. The name of the new Department has been inserted in the text of Acts in square brackets, instead of the old Department, unless the change took place after the matter had gone to press. All three Acts have been set out in full, and it has not been considered necessary to give the authority for each of these alterations; but it must be remembered that many of the transfers are only temporary (see, for instance, section 3 (3) of the Ministry of Health Act, 1919), and that in some cases Departments can exchange duties (see, *e.g.*, section 34 of the Housing, Town Planning, &c. Act, 1919), and it may be that by the time that the work has left the printer's hands other Departments than those mentioned will be in charge of the matters referred to in many places in the work.

Apart from the changes above referred to, the present edition is in the same form as the thirteenth, and will, it is hoped, be found to contain everything that can be needed by members and officers of Public Health Authorities, by those who come into contact or conflict with such authorities, and by those who have to pronounce decisions or advise upon subjects coming within the wide range of the modern powers, duties, and responsibilities of these authorities, and I trust that the favour with which the first thirteen editions were received may be meted out to this, the fourteenth.

RANDOLPH A. GLEN.

NEW COURT, TEMPLE.

August, 1923.

PREFACE

TO THE FIRST EDITION.

ON the opening of Parliament, on the 23rd November, 1847, Her Majesty's Commissioners, in the Speech which they delivered to the Lords and Commons then assembled, announced that Her Majesty had thought fit to appoint a Commission to report on the best means of improving the health of the Metropolis; and, in Her Majesty's name, recommended to the earnest attention of both Houses the measures which it was intended to lay before them relating to the public health. The sanitary condition of the people is a subject which all must look upon as of the first importance to the well-being of the nation; for it is certain that there can be no more efficacious means of stopping the progress of epidemic, endemic, and contagious diseases than by attending to the drainage and sanitary condition of towns. Her Majesty's declaration in favour of sanitary reform resulted in the passing, on the 31st August following, of the Public Health Act, 1848, and the establishment of the General Board of Health. The powers of that Board, however, after having been temporarily renewed, expired by effluxion of time.

Her Majesty's Commissioners, in their Speech to the Lords and Commons on the prorogation of Parliament on Monday, the 2nd August, 1858, ten years afterwards, said that the sanitary condition of the Metropolis must always be a subject of deep interest to Her Majesty, and that Her Majesty had readily sanctioned the Act for the purification of that noble river, the present state of which is little creditable to a great country, and seriously prejudicial to the health and comfort of the inhabitants of the Metropolis; that Her Majesty had also willingly assented to an Act whereby greater facilities are given for the acquisition by towns and districts of such powers as may be requisite for promoting works of local improvement, and thus extending more widely the advantages of municipal self-government.

The Public Health and Local Government Acts form the subject of this work. It has not been attempted to write an historical disquisition upon

the progress of sanitary reform, or to trace the alterations which were made in the several Bills after they were introduced to Parliament, until they became law. That, at which the work aims, is to furnish to those engaged in the administration of the Law, and in the advancement of sanitary reform, a practically useful treatise or exposition of the Laws relating to Public Health and Local Self-Government, as they exist on the Statute Book, and as they are expounded by the Courts of Law.

The work is divided into three Parts: the First Part treats of the formation of the districts of the Local Boards, the constitution of those Boards, their election and general powers; the Second Part, of their powers as to sanitary matters and local self-government; and the Third Part, of their powers as to rating, raising money on mortgage of the rates, purchase of lands, audit of accounts, contracts, arbitration, legal proceedings, bye-laws and other miscellaneous subjects. The work concludes with the Public Health Act, 1848, the Local Government Act, 1858, and the other Acts incorporated with those Acts.

The favourable manner in which the author's other publications on the subject of the Poor-Laws and Sanitary Laws have been received induces him to anticipate an equally favourably reception of his present work.

[WILLIAM CUNNINGHAM GLEN.]

GWYDYR HOUSE,

WHITEHALL.

October, 1858.

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Note.

In the TWO VOLUME issue, the complete Index to the WHOLE WORK is bound at the end of EACH of the volumes, and the Tables of Statutes and Cases, and the Addenda et Corrigenda (which bring the whole work up to date to the 31st December, 1924) are bound at the beginning of the FIRST volume. **The two issues.**

In the FIVE VOLUME issue, Part VI. contains the Table of Statutes, the Table of Cases, Addenda et Corrigenda to the whole work, and the Index to the whole work. For the arrangement of the five volumes, see page v. of the Preface.

In both issues, full Tables of Contents are given, in the FIVE VOLUME issue at the beginning of each of the five volumes, and in the TWO VOLUME issue as mentioned in the following Table :—

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TABLE OF STATUTES.

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Help.

An entirely new form has been devised for this Table of Statutes, the object aimed at being to enable readers to find, at a glance, the statute wanted.

The pages on which statutes are SET OUT AT LENGTH, and the pages on which sections of other statutes are QUOTED IN FULL, have, in the present Table, been placed before the pages on which those statutes and sections are merely CITED (see, *e.g.*, 1845—8 & 9 Vict. c. 18 (Lands Cl.)...1565-1600, 1475, 1968; and 1848—11 & 12 Vict. c. 43 (S. J.), s. 11...650, 651, 184, 552, 644, 652, 667, 808, 1011, 1235, 1598, 1659, 1787).

The pages on which particular statutes set out at length will be found, can also be ascertained from the full TABLES OF CONTENTS which are given as stated *ante*, p. ix. For the arrangement of the Parts and Volumes into which the present Edition has been divided, see the same page.

In the brackets at the tops of the odd pages of this Table will be found the first statute on the preceding even page and the last statute on the odd page.

In the TWO VOLUME issue, pages 1 to 1200 are in Volume I., and pages 1201 to 2570 are in Volume II. In the FIVE VOLUME issue, pages 1 to 844 are in the First Volume, pages 845 to 1200 are in the Second, pages 1201 to 1679 in the Third, pages 1680 to 2382 in the Fourth, and pages 2383 to 2570 in the Fifth. In BOTH ISSUES, the pages in each Volume will be found on the BACK of the OUTSIDE COVER.

References in this Table to the ADDENDA ET CORRIGENDA (which, in the Two Volume issue, are printed after the TABLE OF CASES in the preliminary matter at the commencement of Volume I., and, in the Five Volume issue, immediately before the INDEX), are given thus:—"cciii for p. 534," which means that this entry will be found on page cciii of the Addenda et Corrigenda, and that the page to be added to or corrected is page 534 (see statute of 1579, *infra*).

For additional statutes cited in Addenda et Corrigenda, and not included in this Table, see Note *post*, p. cxcv.

The abbreviated references (to the repealed Sanitary Acts) which appear under the marginal notes to the sections of the Public Health Act, 1875, are explained in the Note to sect. 5 of that Act (Vol. I., Part I., Div. I., p. 42). See also the Note to sect. 343 of the same Act (*ibid.*, p. 806).

In the preparation of the present Part, I have had and desire to acknowledge the valuable help of Miss E. B. Ashford, of the Middle Temple [R. A. G., Ed.].

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NOTE.

Form of Table.] An entirely new form has been devised for this Table of Cases, the object aimed at being to enable readers to find, at a glance, the case for which they are searching.

Pagination.] For the respective paginations of the two volume issue and the five volume issue, see the Note at the commencement of the Table of Statutes, *ante*, p. x. In both issues the pages in each volume will be found on the BACK of the OUTSIDE COVER.

Names of cases.] Where the same case appears on several pages, the pages on which the case is fully noted are, in this Table, placed before the pages on which the case is merely mentioned or cited (see, *e.g.*, *Attorney General v. Bidder*); and where the same case is noted in respect of several distinct points, the points are indicated after the title of the case (see, *e.g.*, *Austerberry v. Oldham Corporation*).

Where cases dealing with different subject matters have the same title, the subject matter of each is indicated after the title (see, *e.g.*, *Attorney General v. Scott*); or, in some instances, the dates are given (see, *e.g.*, *Attorney General v. Birmingham Corporation*).

Where the title of a case contains the names of three or more parties, the case is entered in this Table under the names of all the parties mentioned in the title. Thus, *Attorney General at the relation of Truro R. D. C. v. Hemmingway* is entered under *Attorney General*, *Hemmingway*, and *Truro*; and *Rex on the prosecution of Stepney B. C. v. Carson Roberts* is entered under *Rex*, *Carson*, and *Stepney*, and, in this case, as the respondent's name is a double one, also under *Roberts*.

Where the reports differ in the spelling of the title of a case, and the difference is likely to cause trouble in finding the case, each of the various spellings is given in this Table (*e.g.*, *Ackers* or *Akers*, *Ackroyd* or *Akroyd*, etc.); and where the reports differ as to the names which form the title of a case, the case is indexed under all the names by which the case is described (*e.g.*, *Alexander, Sheffield Corporation v.* and *Anderson, Sheffield Corporation v.*).

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For Cases in Addenda et Corrigenda not in the foregoing Table, see initial Note on the next page.

PART VI.—(Continued).

ADDENDA ET CORRIGENDA.

Note.

Date of going to Press.] The additions and corrections in the following pages bring the whole work up to date to December, 1924. Their large number is due to the fact that the work has taken three years going through the Press. The Public Health Act, 1925, has been set out in full and annotated (see *post*, p. ccxxxviii), and fully indexed. The sections of the Housing Act, 1925, and the Town Planning Act, 1925, both consolidating statutes, corresponding to the repealed enactments, have been inserted in the Index after the pages referring to those enactments.

Insertion on pages affected.] The best method of incorporating the Addenda in the text is to put the pages of the Addenda in the margin of the text at the places always indicated in the Addenda themselves by references to footnotes, marginal notes, etc.

References to Addenda.] All entries have been dealt with in the Index, and also in the Table of Statutes or Table of Cases as required. They are referred to thus: The Salmon and Freshwater Fisheries Act, 1923, has been referred to in the Table of Statutes as on "cxcvi for p. 67," which means that this Act is mentioned on page cxcvi of the Addenda, and that the page affected is page 67. *Pulling v. Lidbetter, Ltd.*, has been referred to in the Table of Cases as on "cxcv for p. 7."

Additional cases.] References to the following cases were added after the Table of Cases went to Press:—*A.G. v. Harper*, cxcix for p. 255; *A.G. v. Denby*, cci for p. 370; *A.G. v. Laird*, cci for p. 368; *Bolingbroke v. Swindon*, ccx for p. 1230; *Bridges v. Griffin*, ccviii for p. 967; *East Riding C. C. v. Selby Bridge*, ccxxx for p. 2342; *Howard-Flanders v. Maldon Cpn.*, cc for p. 326; *Ilford U. D. C. v. Beal*, cxcvi for p. 54; *Jones v. Geen*, ccix for p. 1075; *Keeling v. Wirral R. D. C.*, ccvii for p. 895; *Metrop. Water Bd. v. Kingston U. A. C.*, cxcvii for p. 136; *Moser v. Ambleside U. D. C.*, cc for p. 287; *Northern Theatres Co. v. Shillito*, ccx for p. 1240; *In re Railway Act, 1921*, ccxxix for p. 2316; *Reddaway v. Lancs. C. C.*, ccxiv for p. 1499; *Rex v. Bath Compensation Authority*, ccv for p. 693; *Rex v. M. of H. (ex p. Aldridge)*, cc for p. 347; *Roberts v. Hopwood*, cciv for p. 642; *Rodwell v. Wade*, ccvii for p. 895; *Sack v. Jones*, cxcix for p. 211; *Seng v. Soo*, ccx for p. 1230; *Short v. Poole Cpn.*, ccii for p. 527; *Simpson v. Tate*, ccii for p. 523; *Simpson v. Webber*, ccvii for p. 900; *Tyldesley U. D. C. v. Leigh R. D. C.*, cxcvii for p. 98; *Winsford Entertainments, Ltd. v. Winsford U. D. C.*, ccxiii for p. 1429.

Additional statutes.] The following statutes were dealt with after the Table of Statutes went to Press:—1923, 13 & 14 Geo. V. c. 20 (Mines), ccxix for p. 1706; 1925, 15 Geo. V. c. 10 (Ag. Rates), ccxxxi for p. 2425; 15 Geo. V. c. 14 (Housing), ccix for p. 1044; 15 Geo. V. c. 16, ccix for p. 1045; 15 Geo. V. c. 20, ccxxx for p. 2359; 15 & 16 Geo. V. c. 71 (P. H.), ccxxxviii-cclxii; 15 & 16 Geo. V. c. 32 (Rent Restrictions), ccix for p. 1173; 15 & 16 Geo. V. c. 52 (Advertisements), ccxxvii for p. 2203.

PART I.

Page 2.

Public Health Acts.] To Note to sect. 1, add: By sect. 1 (2) of the Public Health Act, 1925 (set out in full with Notes, *post*, pp. ccxxxviii *et seq.*), the collective title is now "The Public Health Acts, 1875 to 1925."

Page 7.

Headings and titles.] To footnote (2), add: And *per* Sankey, J., in *Pulling v. Lidbetter, Ltd.* (1923), 22 L. G. R. at p. 100. Affirmed in C. A., see Addendum to p. 958.

Page 12.

Accretions.] To footnote (15), add: Applied in *Brighton & Hove Gas Co. v. Hove Bungalows* (L. R. 1924, 1 Ch. 372; 93 L. J. Ch. 197; 130 L. T. 248; 88 J. P. 61; 21 L. G. R. 758).

Page 13.

Gilbert's unions.] In footnote (4), for 31 & 32 Vict. c. 110, read 31 & 32 Vict. c. 122.

Page 15.

Derelict property.] Where the assignee of the remainder of a lease less ten days had verbally arranged with the lessor and the freeholder that he should pay no more ground rent, and that the occupier should pay no more rent, as the premises were ruinous and not capable of earning a rackrent, he was nevertheless held to be the statutory "owner" (*Shoreditch B.C. v. Cooper* (1923, Old Street P.C.), 87 J. P. Jo. 751).

Page 16.

Thames conservators.] In footnote (15), for L. R. 1891 read L. R. 1894.

Page 18.

Cemetery land.] In footnote (9), for 669 read 699.

Page 22.

Rackrent.] In footnote (10), for 33 & 34 Vict. c. 67, read 32 & 33 Vict. c. 67.

Page 54.

Blocking by landowner.] To footnote (7), add: But see *Ilford U. D. C. v. Beal* (L. R. 1925, 1 K. B. 671; 94 L. J. K. B. 402; 89 J. P. 77; 23 L. G. R. 260).

Page 59.

Easements and estoppel.] A claim to an easement to pass along the banks of a stream in order to repair them and remove weeds failed on the ground of estoppel by record, a similar claim having been made previously and dismissed (*Long v. Gowlett*, L. R. 1923, 2 Ch. 177; 92 L. J. Ch. 530; 130 L. T. 83; 22 L. G. R. 214). In the same case it was also held that, where land in common ownership is sold contemporaneously in lots to two purchasers, a right for one purchaser to go on the land of the other to clear a mill stream and repair its banks (there being no visible path or other sign of such user) will not pass by virtue of the words implied in the conveyance to him under the Conveyancing Act, 1881 (44 & 45 Vict. c. 41, s. 6 (2)), unless there has been before the severance of ownership a *de facto* enjoyment of the right, however precarious, by the occupier of that part of the land altogether apart from the ownership or occupation of the other part.

Page 65.

Damage to sanitary work.] In footnote (19), for *post*, Vol. II., p. 1213, read: L. R. 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231.

Page 66.

Filthy water.] To footnote (4), add: As to precautions against pollution by tarred road washings, see Ministry of Transport Circular, 18th April, 1922 (set out in "*Loc. Gov.*, 1922," pp. 442-450).

Page 67.

Salmon Fisheries Acts.] For last clause of second paragraph on this page, read: The Salmon and Freshwater Fisheries Act, 1923, received the Royal Assent on the 18th July, 1923 (13 & 14 Geo. V. c. 16). Its pollution provisions are quoted in the Note to the Fisheries Pollution Memorandum, 1923, set out in Vol. II., Part V., p. 2524.

To footnote (9), add: See also, as to fish poisoning by tar and ammonia from gasworks, and the measure of damages therefor, *Marquis of Granby v. Bakewell* U. D. C. (1923, 87 J. P. 105; 21 L. G. R. 329).

Thames Conservancy Acts.] To footnote (14), add: See now the Port of London Consolidation Act, 1920, which is dealt with as indicated in the Table of Statutes.

Page 73.

Abandonment of easement.] To Note to sect. 17, add: For a case in which the Court of Appeal, by a majority, held that a right of way could be abandoned by non-user, see *Swan v. Sinclair* (L. R. 1925 A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 22 L. G. R. 705), distinguishing *Ward v. Ward* (1852, 7 Ex. 838).

Lost grant.] To footnote (12), add: In *Hodgson v. McCreagh* (1923, C. A., 93 L. J. Ch. 339; 131 L. T. 340; W. N. 269; 40 T. L. R. 10; 68 Sol. J. & W. R. 58), a lost grant of sporting rights in a manor was not presumed.

Page 74.

Injunction or damages.] To footnote (2), add: In *Leeds Co-op. Soc. v. Slack* (L. R. 1924 A. C. 851) it was held by a majority of the House of Lords, reversing the Court of Appeal, that damages could be awarded in lieu of an injunction though no obstruction to ancient lights had yet taken place, it having been established that this would be the case when the new building in question was completed. Also reported in 93 L. J. Ch. 436; 131 L. T. 710. The case was remitted to the Court of Appeal, and damages were awarded (L. R. 1924, 2 Ch. 475; 94 L. J. Ch. 46).

Page 80.

Non-feasance.] To Note to sect. 19, add: *Hawthorn Cpn. v. Kannuluik* was discussed in *Hesketh v. Birmingham Cpn.* (C. A., L. R. 1924, 1 K. B. 260; 93 L. J. K. B. 461; 130 L. T. 476; 88 J. P. 77; 22 L. G. R. 281), in which it was held that a local authority's neglect to enlarge a sewer, so as to prevent flooding from a stream into which the sewer discharged surplus storm water, was mere non-feasance.

Page 86.

Connections.] To Note to sect. 21, add: In places where sect. 38 of the Public Health Act, 1925 (*post*, p. cxxlviii), is in force, sect. 18 of the Act of 1890 no longer applies.

Page 88.

Discharge into sewer.] To footnote (6), add: See also *Wallace v. McCartan*, 1917 Ir. K. B. 377, where it was held that the defendant had exercised his statutory right to connect to a

sewer unreasonably and negligently, and that he must be restrained from polluting the plaintiff's stream.

Page 92.

Undrained houses.] To Note to sect. 25 add: The powers of justices under the present section are extended by sect. 36 of the Public Health Act, 1925 (*post*, p. ccxlvii).

Page 96.

Redemption of tithe rentcharge.] To Note to sect. 27, add: As to the revaluation of land for rating purposes after redemption of the tithe rentcharge, see *Twitchin v. Alton U. A. C.* (1924, K. B. D., 22 L. G. R. 482).

To footnote (10), add: As to costs in these cases, see *In re Wartling Tithes* (C. A., L. R. 1924, 2 Ch. 123; 131 L. T. 185; 88 J. P. 133; 22 L. G. R. 349). As to fees in respect of transactions under the Tithe Acts, 1836 to 1918, see M. of Ag. Order (S. R. O. 1922, No. 1083), set out in "Loc. Gov. 1922," pp. 10-13; and, as to fees payable to M. of Ag. by applicants for orders of apportionment of redemption annuities under Tithe Annuities Apportionment Act, 1921 (11 & 12 Geo. V. c. 20), M. of Ag. Order (S. R. O. 1922, No. 410), set out in "Loc. Gov. 1922," pp. 13, 14. As to the Ecclesiastical Tithe Rentcharge (Rates) Act, 1922, see the Note to P. H. Act, 1875, s. 211, Vol. I., Part I., p. 582.

Page 98.

Agreements.] To Note to sect. 28, add: *Tyldesley U. D. C. v. Leigh R. D. C.* (1925, Ch. D., 23 L. G. R. 243) dealt with breach of an agreement as to surface water.

Page 103.

Land drainage.] To footnote (17), add: For an instance of such an order, see the Kirkstead Drainage Order, 1923 (S. R. O. No. 586, dated April 30).

Page 104.

Maintenance of sea walls.] To footnote (37), add: See also, as to liability of landlord to tenant, *Murphy v. Hurley* (H. L., I.), L. R. 1922, 1 A. C. 369; 91 L. J. P. C. 116; 127 L. T. 49.

Page 106.

Works without the district.] To Note to sect. 32, add: As to the length of notice under the present section and sect. 33, see sect. 78 of the Public Health Act, 1925 (*post*, p. cclx). The same section alters the words "on the spot" in sect. 34 to "in the locality."

Page 108.

Other enactments.] To Note to sect. 36, add: See also sect. 42 of the Public Health Act, 1925 (*post*, p. ccxlix).

Page 110.

General rule.] To footnote (20), add: *Carlton Main Colliery Co. v. Hemsworth R. D. C.* (C. A.) is now also reported in L. R. 1922, 2 Ch. 609; 91 L. J. Ch. 664; 127 L. T. 791; 86 J. P. 177.

Page 118.

Undertaking by district council.] To Note to sect. 42, add: The undertaking may be rescinded by the council (*Whitbread & Co. v. Staines R. D. C.*, L. R. 1925, 1 Ch. 89; 94 L. J. Ch. 127; 132 L. T. 302; 23 L. G. R. 1), applying *dictum* of Avory, J., in *Leck's Case*, noted on p. 121 (27).

Page 119.

Refuse tips.] A nuisance from a burning refuse tip was abated by the owner of the adjoining land, each owner paying one half the cost without prejudice to the legal position. An action by the owners of the land on which the refuse was tipped to recover the money succeeded on the ground (*per* Bankes, L.J.) that the tipping had taken place without their knowledge, that they were not responsible for the tip catching fire or for continuing the nuisance, and that the other owner had received payment for a wayleave to the plaintiffs' land (*Edwards, Ltd. v. Birmingham Navigation Co.*, L. R. 1924, 1 K. B. 341; 93 L. J. K. B. 261; 130 L. T. 522). Scrutton, L.J., dissented. Astbury, J., considered that the plaintiffs were also right because of the Fires Prevention (Metropolis) Act, 1774 (14 Geo. III. c. 78), s. 86. *A.G. v. Tod Heatley* was distinguished because the nuisance there was "public."

To footnote (11), add: On the 26th July, 1922, the Minister of Health issued a Circular suggesting certain precautions for preventing such nuisances (set out in "Loc. Gov. 1922," pp. 440-442).

Page 132.

Water shortage.] To Note to sect. 51, add: As to conserving supplies of water, see M. H. Circulars and Memorandum, March and June, 1922 (set out in "Loc. Gov. 1922," pp. 495-499. Circulars only in 21 L. G. R. (Orders) 58, 134).

Page 136.

Basis of valuation.] To Note to sect. 51, add: Revenue derived from precepts is not to be included in arriving at rateable value (*Metropolitan Water Board v. St. Marylebone B. A. C.*, L. R. 1923, 1 K. B. 86; 92 L. J. K. B. 161; 128 L. T. 338; 86 J. P. 225; 20 L. G. R. 832). In

Metropolitan Water Board v. Kingston U. A. C. (1925, C. A., 89 J. P. 125; 23 L. G. R. 457), the basis was held to be profits and not the contractor's test.

Page 139.

Monopoly of supply.] To Note on *West Surrey Water Co. v. Chertsey Union*, add: This case was distinguished by the Court of Appeal (overruling Eve, J.). An injunction was granted restraining a local authority from supplying electricity to themselves for public lighting and electric traction on the ground that "supply" in sect. 23 of the Electric Lighting Act, 1909 (9 Edw. VII. c. 34), s. 23, was not confined to supplying others (*Southport Cpn. v. Attorney General, ex rel. Birkdale Electric Supply Co.*, C. A., affirmed in H. L., L. R. 1924 A. C. 909; 93 L. J. Ch. 369; 131 L. T. 417; 88 J. P. 181; 22 L. G. R. 429).

Page 140.

Works outside district.] To Note to sect. 53, add: As to the length of notices under the present section, see sect. 78 of the Public Health Act, 1925 (*post*, p. cclx). The same section alters the words "on the spot" in the present section to "in the locality."

Page 141.

Access to pipes.] To Note to sect. 54, add: An easement for a water pipe under a viaduct was granted by a railway company subject to the company being allowed to alter their works without being liable for non-wilful damage to the pipe. It was held that they could not substitute a solid embankment for the viaduct in such a manner as to obstruct access to the pipe (*Metropolitan Water Bd. v. London & N. E. Ry. Co.*, 1924, Ch. D., 131 L. T. 123; 88 J. P. 101; 22 L. G. R. 383).

Page 144.

Money paid under mistake.] To footnote (25), add: A mistake as to the proper amount of a gratuity was held not to be a mistake of fact, and it was also held that the plaintiffs' conduct after the payment would have estopped them from setting up the mistake if it had been one of fact (*Holt v. Markham*, C. A., L. R. 1923, 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 718).

Page 152.

Res ipsa loquitur.] To footnote (14), add: Further as to this doctrine, see *Ballard v. North British Ry. Co.*, 1923, S. C. (H. L.) 43. See also *per* Fletcher Moulton, L.J., in *Wing v. London General Omnibus Co.* (L. R. 1909, 2 K. B. at p. 663).

Page 174.

Public Health Act.] To Note to sect. 91, add: See also sect. 54 of the Public Health Act, 1925 (*post*, p. cclii), as to choked watercourses.

Gipsies.] To Note to sect. 91, add: See also sect. 43 of the Public Health Act, 1925 (*post*, p. ccxlix).

Page 178.

Nuisance.] To footnote (45), add: Distinguished in *Sack v. Jones*, L. R. 1925, 1 Ch. 235.

Page 179.

Defective kitchen range.] To footnote (52), add: *Warman v. Tibbatts* is now also reported in 128 L. T. 477; 87 J. P. 53; 21 L. G. R. 134.

Page 184.

Black smoke.] To Note to sect. 91, add: The Smoke Abatement Bill, 1922, has been amended by the Public Health (Smoke Abatement) Bill, 1924, which was considered in Committee of the House of Lords on the 1st August, 1924, and is to be re-introduced, as a government measure, in 1926.

As to "smoke abatement" in connection with housing schemes, see the Memorandum of the Minister of Health of December, 1920 (18 L. G. R. (Orders) 484).

Page 189.

Nuisance.] To footnote (14), add: *Hoare & Co. v. McAlpine* is now also reported in L. R. 1923, 1 Ch. 167; 92 L. J. Ch. 81; 128 L. T. 526.

Page 192.

Form of notice.] To footnote (9), add: and *Shoreditch B. C. v. Cooper* (1923, Old Street P. C., 87 J. P. Jo. 751), where a fourteen days' nuisance abatement notice under P. H. (London) Act, 1891 (54 & 55 Vict. c. 76), s. 4 (1), was held to be unreasonable.

Page 197.

Discretion of justices.] In the Note to sect. 95, for the Sunday Observance Act, 1822, read: the Sunday observance provisions of the London Bread Act of 1822.

Page 206.

Private nuisance.] To Note to sect. 107, add: As to the distinction between "public" and "private" nuisances, see the *Birmingham Canal Case* cited in Addendum to p. 119.

Page 207.

Landlord and tenant.] To footnote (14), add: And *Cockburn v. Smith* (C. A.), L. R. 1924, 2 K. B. 119; 93 L. J. K. B. 764; 131 L. T. 334.

Page 208.

Public nuisance.] To footnote (20), add : Distinguished in the *Birmingham Case*, cited in Addendum to p. 119.

Page 209.

Attorney General.] To footnote (33), add : and *Hurley v. Stepney B. C.*, Vol. I., Part I., p. 816 (2a). For additional reports, see Addendum to p. 816.

Page 210.

Attorney General.] To footnote (43), add : See also the *Westminster Case*, cited in Addendum to p. 1406.

Page 211.

Temporary nuisance.] To footnote (51), before " see also," add : Distinguished in *Sack v. Jones*, L. R. 1925, 1 Ch. 235.

Page 215.

Application of enactment.] To Note to sect. 112, add : See also sect. 44 of the Public Health Act, 1925 (*post*, p. ccxlix).

Page 223.

Meat inspection.] At end of third paragraph of Note to sect. 116, add : On the 16th March, 1922, the Minister of Health issued a Memorandum and Circular on meat inspection (set out in 20 L. G. R. (Orders) 45-46). See also the Public Health (Meat) Regulations, 1924, set out in Addendum to p. 2548.

Page 225.

Bread.] In footnote (29), for *Kennedy* read *Kenealy*.

Page 229.

Contractor.] In footnote (22), for *Andrews v. Lucker* read *Andrews v. Luckin*.

Sale under conditions.] To footnote (31), add : *Reg. v. Dennis* was followed in *Uden v. Dunne*, 1923 Ir. K. B. 72, cited in Vol. I., Part II., Div. II., p. 963.

Page 231.

Authority to prosecute.] To footnote (41), add : *Giebler v. Manning* was applied in *Lake's Case*, Vol. I., Part I., Div. I., p. 663 (22).

Page 233.

Illness from unsound food.] A sold copra cattle cake to B, who re-sold it to C. C re-sold it to D stating that the cake was " free from castor." In fact it contained so much castor that it was not copra cake at all. Illness was caused to cattle that ate it. Farmers sued D, who settled the claims and sued C. C. sued B, and B sued A. All these actions succeeded, as the defect was not patent and the damages were not too remote (*British Oil Cake Co. v. Burstall*; *Burstall v. Rayner*; *Rayner v. Bowring*, 1923, K. B. D., 39 T. L. R. 406; 67 Sol. J. & W. R. 577).

Page 237.

Vermin.] To Note to sect. 120, add : As to cleansing verminous articles premises and persons, and the provision of cleansing stations, see sects. 45 to 50 of the Public Health Act, 1925 (*post*, pp. ccl, ccli).

Page 238.

Verminous children.] To Note to sect. 120, add : As to service of notices to cleanse verminous children, see *Hope's Case*, Vol. I., Part I., Div. I., p. 710 (13).

To footnote (12), add : But see *Bowen v. Hodgson* (1923, K. B. D., 93 L. J. K. B. 76; 130 L. T. 207; 87 J. P. 186; 21 L. G. R. 778).

Page 240.

Smallpox.] To footnote (27), add : See also M. H. Circulars and Memoranda referred to in Vol. II., Part V., p. 2412.

Page 242.

Ambulances.] To Note to sect. 123, add : See also sect. 63 of the Public Health Act, 1925 (*post*, p. cclv).

Page 250.

County councils.] To Note to sect. 130, add : And sect. 61 of the Public Health Act, 1925 (*post*, p. ccliv).

Page 253.

Contributions.] To Note to sect. 131, add : Such contributions may now be made under sect. 64 of the Public Health Act, 1925 (*post*, p. cclv).

Page 254.

Nuisance.] To footnote (20), add : Applied in the *Christchurch Case*, noted in Addendum to p. 1794. See also *Blake v. Fulham B. C.* (*Times*, Feb. 11, 1925) *re* chip from steel wedge being driven into concrete during highway repairs.

Page 255.

Probability.] To footnote (25), add : *A.G. v. Harper* (1925, Ch. D., 79 J. P. 80).

Page 272.

Highway materials.] To footnote (29), add: *Rex v. Adams* is now also reported in L. R. 1923, 1 K. B. 415; 92 L. J. K. B. 120; 128 L. T. 597; 87 J. P. 61; 21 L. G. R. 144.

Page 282.

Standard of repair.] To footnote (26), add: See also *A.G. for Ireland (Down C. C.) v. Lagan Navigation Co.* (L. R. 1924 A. C. 877; 93 L. J. P. C. 241; 131 L. T. 771; 88 J. P. 162; 22 L. G. R. 569).

Page 283.

Railway fires.] To Note to sect. 147, add: The Railway Fires Act, 1923 (13 & 14 Geo. V. c. 27) amended the Act of 1905. *Attorney General v. Great Western Ry. Co.* (L. R. 1924, 2 K. B. 1; 93 L. J. K. B. 524; 131 L. T. 222) dealt with this subject.

Page 287.

Dedication.] To footnotes (24) and (46), add: *South Eastern Ry. Co. v. Warr* (1923, C. A.) is now reported in 21 L. G. R. 669. To footnote (42), add: *Moser v. Ambleside U. D. C.* (1925, C. A., 89 J. P. 118; 23 L. G. R. 533). To footnote (46), add: As to the power of railway companies to grant private easements of way over level crossings, and the effect of increasing the burden of such easements, see *South Eastern Ry. Co. v. Cooper* (C. A., L. R. 1924, 1 Ch. 211; 93 L. J. Ch. 292; 130 L. T. 273; 88 J. P. 37; 22 L. G. R. 109. *Rex v. Leake Inhabitants* (1833, 5 B. & Ad. 469) followed; *Mulliner v. Midland Ry. Co.* (Part I., Div. I., p. 470) distinguished.

Page 300.

Alteration of character of road.] In line 3 of Note on this subject, for "park" read "pack."

Agreement for widening road.] To footnote (12), add: Where land has been given to widen a street, and the local authority have spent money on fitting it for public use, the donor is estopped from alleging non-fulfilment of a condition subject to which it has been given (*Michaud v. Montreal City Cpn.* (1923, 92 L. J. P. C. 161; 129 L. T. 417).

Page 304.

Repair of fences.] To footnote (17), add: Followed in *Fraser v. Pate*, 1923 S. C. (S.) 748.

Page 310.

Telegraph Acts.] In footnote (53), for 20 L. G. R. 538 read 20 L. G. R. 558.

Page 326.

Widening carriageway.] To footnote (20), add: And *Howard-Flanders v. Maldon Cpn.* (1925, Chelmsford C. Ct., 60 L. J. Jo. 522), where a local authority were ordered to re-instate part of a paved footpath which had been entirely removed. This case is under appeal.

Page 327.

Expenses.] To Note to sect. 150, add: Sect. 81 of the Public Health Act, 1925 (*post*, p. cclxi) enables local authorities to contribute towards expenses incurred under the present section.

Page 345.

Amendment of plans, etc.] To Note to sect. 150, add: The power given by sect. 8 to "amend the resolution" does not enable justices to add to it "that the council contribute 15% of the total cost" under sect. 15 (*Chester Cpn. v. Briggs*, L. R. 1924, 1 K. B. 239; 93 L. J. K. B. 69; 130 L. T. 221; 88 J. P. 1; 21 L. G. R. 807).

Page 346.

Appeal.] To footnote (11), add: For a successful appeal, see *Fear's Case*, cited in Addendum to p. 718.

Page 347.

Degree of benefit.] To Note to sect. 10, add: But an appeal lies to the Minister of Health under sect. 268 of the Act of 1875 (*Rex (Aldridge) v. Minister of Health* (1925, K. B. D., 89 J. P. 114; 23 L. G. R. 449).

Page 349.

Interest.] To Note to sect. 13, add: As to the rate of interest, see sect. 77 of the Public Health Act, 1925 (*post*, p. cclx).

Page 356.

Adoption of maintenance.] To Note to sect. 152, add: In 1900 the defendant made a road and, with the permission of the plaintiffs, a bridge over their canal. The permission was given subject to an undertaking by the defendant to maintain the bridge "until the said road and bridge are taken over and maintained by the local authority." In 1915 the local authority, by notice under the present section, declared the road a highway repairable by the inhabitants at large. It was held that the defendant need no longer maintain the bridge (*Regents Canal and Dock Co. v. Gibbons*, L. R. 1925, 1 K. B. 81; 94 L. J. K. B. 46; 132 L. T. 631; 89 J. P. 4; 22 L. G. R. 759).

As to compulsory adoption under the present Act, see sect. 82 of the Public Health Act, 1925 (*post*, p. cclxi).

Highways repairable.] To footnote (3), add: *Snushall v. Kaikoura C. C.* is now reported in L. R. 1923 A. C. 459; 92 L. J. P. C. 129; 129 L. T. 103.

Page 359.

Extent of premises.] To Note to sect. 154, add: The powers of the present section include the improvement and development of frontages, see sect. 83 of the P. H. Act, 1925 (*post*, p. cclxi).

Page 360.

Bonâ fide exercise of powers.] In footnote (17), for *Couron v. London C. C.*, cited in Note to Housing Act, 1890, s. 20, read: *Conron v. London C. C.*, cited in Note to H. T. P. Act, 1919, s. 12, Vol. I., Part II., Div. III., p. 1136.

Page 368.

On either side.] To footnote (37), add: and *A.G. v. Laird* (C. A.), L. R. 1925, 1 Ch. 318; 89 J. P. 95; 23 L. G. R. 273.

Page 370.

Consent.] To footnote (11), add: And *A.G. v. Denby* (1925, 89 J. P. 145).

Page 375.

Relaxation.] To footnote (15), add: And in Vol. II., Part V., p. 2505. The London Traffic Act, 1924, contains provisions under which regulations for relieving traffic congestion in the London traffic area may modify or suspend Acts and byelaws dealing with this subject (14 & 15 Geo. V. c. 34, s. 10). Further as to this Act, see Addenda to pp. 1651, 1675.

Page 376.

New streets.] To Note to sect. 157, add: Further as to new streets and their width, etc., see sects. 29-32 of the Public Health Act, 1925 (*post*, pp. ccxlv, ccxlv).

Page 409.

Gas standard.] To footnote (23), add: The Order of 1920 is quoted in Vol. II., Part V., p. 2491. See also the Gas (Special Orders) Rules, 1922, set out *ibid.*, at p. 2493.

Page 411.

Gas.] To footnote (2), add: which were amended by Rules of 1923 (see Vol. II., Part V., p. 2491 (10)).

Page 413.

Testing of gas.] To footnote (8), add: Set out in Vol. II., Part V., p. 2491.

Gas fund.] To footnote (10), add: For rate for 1924, see Vol. II., Part V., p. 2491.

Page 414.

Special orders.] To Note to sect. 161, add: As to oppositions to special orders under the Gas Regulation Act, 1920 (10 & 11 Geo. V. c. 28), s. 10, see M. C. Assoc. Circular, June 15, 1923, p. 143.

Page 415.

Special gas orders.] To footnote (18), add: Set out in Vol. II., Part V., p. 2493. For an instance of a special order under this section, see the East Kent Gas Order, 1923 (S. R. O. No. 349. Dated March 21).

Page 420.

Board of Trade.] In footnote (36), for *ante*, p. 416, read *ante*, p. 409.

Page 425.

Public library.] To footnote (32), add: See also *A.G. (Sheppard) v. Westminster City Cpn.*, noted in Addendum to p. 1406.

Page 432.

Rural districts.] To footnote (1), add: see also L. G. Bd. Order, Sep. 7, 1908, 6 L. G. R. (Orders) 120.

Page 435.

Fairs.] A Bill to consolidate and amend the Fairs Acts, 1871 and 1873, was read a second time in the House of Lords on the 12th June, 1923, was down for second reading in the House of Commons on the 13th November, 1923, but was then dropped.

Page 443.

Contracts ultra vires.] To footnote (5), add: In *Southport Cpn. v. Birkdale Electric Co.* (Astbury, J., L. R. 1925, 1 Ch. 63) a contract not to charge certain prices was held *ultra vires* as being incompatible with proper discharge of statutory duties. This decision was, however, reversed in the Court of Appeal (1925, W. N. 126; 23 L. G. R. 490).

Page 452.

Finality of contract.] To footnote (21), add: A contract to purchase land is not "final" if it is "subject to a proper contract to be prepared by the vendor's solicitors," and may be repudiated by the purchaser before he executes the formal contract, and the deposit may be recovered (*Chillingworth v. Esche*, C. A., L. R. 1924, 1 Ch. 97; 93 L. J. Ch. 129; 129 L. T. 808).

To footnote (22), add: See also *Allen v. Smith* (L. R. 1924, 2 Ch. 308; 93 L. J. Ch. 538; 131 L. T. 667), where onerous and unusual covenant was not disclosed to purchaser of lease.

Specific performance.] To footnote (22a), add: Applied in *Simpson v. Gilley* (1923, Ch. D., 92 L. J. Ch. 194; 128 L. T. 622).

Page 456.

Meaning of "under."] To footnote (19), add: *Cf. Rex v. Minister of Labour*, cited in Addendum to p. 2371, as to meaning of transfer "under" Electricity (Supply) Act, 1919.

Page 469.

Statutory powers.] To footnote (11), add: See also *York Cpn. v. Leetham & Sons* (L. R. 1924, 1 Ch. 557; 131 L. T. 127; 22 L. G. R. 371), where a contract not to charge certain tolls was held *ultra vires*. Also reported in 94 L. J. Ch. 159.

Page 471.

Building scheme.] To footnote (28), add: In *Kelly v. Barrett* (C. A., L. R. 1924, 2 Ch. 379) the essentials of a "building scheme" were discussed and held to be absent. It was also held that the benefit of a restrictive covenant runs with the soil of a road after dedication, but not after it has been taken over. Also reported in 94 L. J. Ch. 1; 132 L. T. 117.

Page 473.

Application of Acts.] The formalities required for the exercise of compulsory powers do not apply where the land is "given" (see *Michaud's Case*, cited in Addendum to p. 300).

Page 474.

Instructions.] To Note to sect. 176, add: The Instructions of the Minister of Health issued in 1920 (and set out in Vol. II., Part V., p. 2532) take the place of those issued by the Local Government Board.

Housing.] To footnote (11), add: Quoted in Vol. II., Part V., p. 2398.

Page 480.

Withdrawal of offer.] To footnote (8), add: *Cardiff Cpn. v. Cook* is now also reported in L. R. 1923, 2 Ch. 115; 92 L. J. Ch. 177; 128 L. T. 530; 87 J. P. 90.

Page 485.

Arbitration Act, 1889.] To footnote (2), add: Distinguished in *Bjornstad v. Ouse Ship-building Co.* (C. A.), L. R. 1924, 2 K. B. 673; 93 L. J. K. B. 977; 131 L. T. 663.

Discovery.] In footnote (11), for *Russell v. Timber Operators, Ltd.*, read *Kursell v. Timber Operators, Ltd.* This case is now also reported in L. R. 1923, 2 K. B. 202; 92 L. J. K. B. 607; 129 L. T. 21; 87 J. P. 79.

Page 489.

Evidence.] To Note to sect. 180, add: In certain circumstances an arbitrator may be called to give evidence before the umpire (*Bourgeois v. Weddell & Co.*, L. R. 1924, 1 K. B. 539; 93 L. J. K. B. 232; 130 L. T. 635).

Page 503.

Byelaws.] In footnote (82), for 3 Geo. IV. c. vi. read 3 Geo. IV. c. cvi.

Page 510.

Museums and libraries.] To Note to sect. 184, add: The confirming authority for byelaws under sect. 7 of the Museums and Gymnasiums Act, 1891, and sect. 3 of the Public Libraries Act, 1901, is now the Board of Education (see P. C. Order, May 17, 1920, 18 L. G. R. (Orders) 499).

Page 515.

War allowances.] To footnote (27), add: *Sutton v. A.G.* is now also reported in 1923 W. N. 124; 39 T. L. R. 295; 67 Sol. J. & W. R. 422.

Page 523.

Deductions.] To footnote (36), add: And *Simpson v. Tate* (L. R. 1925, 2 K. B. 214) *re* M. O. H. and subscriptions to societies.

Contracting out.] To Note to sect. 189, add: In *Dewhurst v. Salford Guardians* (1925 W. N. 127; 23 L. G. R. 364), it was held to be contrary to public policy that a poor law officer should contract out of superannuation provisions, so far as war bonuses were concerned (reversing *Astbury, J.*, L. R. 1925, 1 Ch. 139).

Page 525.

Arbitration.] In footnote (44), the dropped section is s. 180.

Page 527.

Notice of dismissal.] To Note to sect. 189, add: Clerks of the peace, though appointed after the coming into operation of the Local Government Act, 1888, may not be appointed subject to a condition that their office be terminated by notice (*Thornely v. Lord Leconfield*, 1924, C. A., reversing *Swift, J.*, L. R. 1925, 1 K. B. 236; 94 L. J. K. B. 192; 132 L. T. 353; 89 J. P. 9; 23 L. G. R. 100; 59 L. J. Jo. 789).

Public policy.] To footnote (9a), add: *Price v. Rhondda U. D. C.* is now also reported in L. R. 1923, 2 Ch. 372; 93 L. J. Ch. 1; 21 L. G. R. 753. For sequel as to costs, see *Price v. Rhondda U. D. C.* (No. 2) (1923 W. N. 228; 130 L. T. 156), where it was held that subscribers to the action could not be ordered to contribute because they were not "parties" to it.

In *Short v. Poole Cpn.* (*Times*, Aug. 1, 1925), it was held that a notice terminating a teacher's engagement, on the ground that her husband could support her, was invalid.

Page 532.

Compensation for accidents.] To footnote (18), add : Employers' Liability Act, 1880, made permanent by Expiring Laws Act, 1922. To footnote (19), add : The Act of 1906 has been amended by an Act of 1923 (13 & 14 Geo. V. c. 42), which repealed the Workmen's Compensation (War Addition) Acts, 1917 and 1919 (7 & 8 Geo. V. c. 42; 9 & 10 Geo. V. c. 83), see s. 1; altered certain provisions as to payment of compensation, see ss. 2-6 and 14-16; made a breach of regulations by the workman no defence in certain cases, see s. 7; extended the principal Act to certain share fishermen, see s. 8; altered £250 to £350 in the definition of "workman" and otherwise extended this definition, see s. 9; amended the provisions as to notices of accidents, see ss. 10, 28; and dealt with medical referees, see ss. 11, 25, lump sum agreements, see ss. 11, 21, disablement by disease, see s. 12, repayment of poor relief, see s. 23, first-aid appliances in factories, see s. 29, and other matters. The Workmen's Compensation (No. 1) Rules, 1924 (S. R. O. No. 167, L. 3, dated Feb. 19), amended the Consolidated Workmen's Compensation Rules of July, 1913 (S. R. O. No. 661), as amended by those of 1913, No. 1400; 1914, No. 1120; 1915, No. 1133; 1917, No. 497; 1918, No. 246; 1920, No. 394; 1921, No. 1745; and 1923, No. 1522.

Page 534.

Compensation for accidents.] To Note to sect. 189, add: On an application to register an agreement to accept a lump sum instead of weekly payments, the county court judge may consider the adequacy of the amount (*Russell v. Rudd*, L. R. 1923 A. C. 309; 92 L. J. K. B. 429; 129 L. T. 193, overruling numerous decisions to contrary).

The Scottish Sunday Observance Act of 1579 (James IV. c. 8 or c. 70) does not enable a partially disabled workman to refuse a watchman's job which involves work on Sundays (*Smith v. Beardmore & Co.*, 1922 S. C. (S.) 131; 59 Sc. L. R. 94; W. C. & Ins. 106).

A workman injured while doing an act forbidden by the regulations governing his employment was held not entitled to compensation (*Costello v. Addie & Sons*, L. R. 1922, 1 A. C. 164; 91 L. J. P. C. 72; 126 L. T. 609), but see now sect. 7 of Act of 1923 noted in Addendum to p. 532.

To footnote (43), add : See also *Estler Bros. v. Phillips* (1922, H. L.), 91 L. J. K. B. 470; 127 L. T. 73; W. C. & Ins. 120.

Page 541.

Inhabited house duty.] To footnote (17), add: Inhabited house duty was abolished by the Finance Act, 1924 (14 & 15 Geo. V. c. 21), s. 20.

Page 546.

Corruption.] To footnote (16), add : As to burden of proof, see *Rex v. Jenkins* (1923, C. C. A.), 87 J. P. 115; 17 Crim. App. 121; 39 T. L. R. 458.

Page 547.

Exceptions.] In third line of Note under heading "Interest in contract," for "shall not be lawful" read "shall not be unlawful."

Page 549.

Invalidity of contract.] To footnote (32), add: Non-compliance with the enactments relating to the sale of fertilisers renders the contract illegal, and prevents the vendor suing for the price (*Anderson, Ltd. v. Daniel*, cited in Addendum to p. 958).

Page 569.

Jurisdiction of the court.] To Note to sect. 210, add: Relief was given to strikers, though work sufficient to support them and their wives and families was available. *Held*, (1) that the powers of the auditor did not oust the jurisdiction of the court; (2) that the principle of the *Merthyr Tydfil Case* applied, whether all the men could or could not have obtained work at a particular time; (3) that the unemployment insurance legislation did not affect that principle; (4) that terrorism had not in fact made it impossible for the men to continue work; and (5) that a declaration that the payments were illegal must be granted (*Attorney General v. Poplar Guardians*, 1924, 40 T. L. R. 752). In a similar case (*Attorney General v. Bermondsey Guardians*, 1924, 40 T. L. R. 512) the illegality was admitted, and no order was made, except that the defendants pay the costs.

In a proper case the court will restrain the expenditure out of revenue of a sum properly chargeable to capital, see *Attorney General (Electricity Comrs.) v. Ealing Cpn.*, L. R. 1924, 2 Ch. 545; 93 L. J. Ch. 516; 131 L. T. 467; 88 J. P. 153; 22 L. G. R. 465.

See also, as to the fiduciary relationship between a local authority and the ratepayers, *Scurr's Case*, cited in Addendum to p. 642.

Page 579.

Meaning of occupation.] To Note to sect. 211, add: A fever hospital was held to be in rateable occupation while it was undergoing reconstruction (*Hackney B. C. v. Metropolitan Asylums Bd.* (1924, K. B. D.), 131 L. T. 136; 88 J. P. 129; 22 L. G. R. 397).

Page 581.

Agricultural land.] To Note to sect. 211, add: The Act of 1896 has been considerably

amended by the Act of 1923, which will be found set out with the Agricultural Rates Order, 1923, in Vol. II., Part V., p. 2422.

As to the extension of the relief in respect of land "used as arable, meadow, or pasture ground only" to other agricultural land, see sect. 4 of that Act, *ibid.* at p. 2423.

It is a temporary Act—see Addendum to p. 2425.

Page 582.

Tithe rentcharge.] To Note to sect. 211, add: A form for the statutory declaration required by sect. 1 (2) of the Act of 1920 was prescribed by the Minister of Health on the 5th August, 1920 (18 L. G. R. (Orders) 317). This form was amended by an Order of the 31st August, 1921 (set out with Circular thereon in 19 L. G. R. (Orders) 280-284). See also the Minister's Regulations under the Act and the Circular and Memorandum thereon (18 L. G. R. (Orders) 314-317, 319-330).

Page 584.

Land covered with water.] To Note to sect. 211, add: New docks constructed at Woolwich after 1901 were held not entitled to the partial exemption (*Port of London Authority v. Woolwich B. C.*; L. R. 1924 A. C. 936; 93 L. J. K. B. 1041; 132 L. T. 65; 88 J. P. 169; 22 L. G. R. 591).

Page 590.

Exemptions under local Acts.] To footnote (13), add: Relief in a private Act from "window tax" was held not to cover "inhabited house duty." The maxim *generalia specialibus non derogant* was also discussed, also the question whether a local Act of Parliament could be presumed (*Harper v. Hedges*, L. R. 1923, 2 K. B. 314; 92 L. J. K. B. 568; 129 L. T. 248; 87 J. P. 125; reversed in C. A. on the facts, L. R. 1924, 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 383; 88 J. P. 33).

Page 594.

Private improvement rate.] To Note to sect. 213, add: As to the rate of interest, see sect. 77 of the Public Health Act, 1925 (*post*, p. cclx).

Page 597.

Highway rates.] To Note to sect. 216, add: As to the provision in subsect. (2) of the present section with regard to highway rates, see sect. 3 (1) of the Agricultural Rates Act, 1923 (set out in Vol. II., Part V., p. 2423).

The Act of 1923 is, however, a temporary Act—see Addendum to p. 2425.

Page 618.

Permanent workmen.] To footnote (1), add: See also, as to permanent staff, L. G. Bd. Circular, Feb. 4, 1907, 15 L. G. R. (Orders) 7.

Page 622.

Short term loans.] To footnote (33), add: The Local Authorities (Emergency Provisions) Act, 1924 (14 & 15 Geo. V. c. 29, s. 2, Sched.), substituted April 1, 1924, for April 1, 1923, in ss. 3 (3) proviso, and 6 (1) and (2) of the present Act.

Page 623.

Investment of fund.] To Note to sect. 234, add: As to the direction in subsect. (4) of the present section to accumulate interest, see sect. 79 of the Public Health Act, 1925 (*post*, p. cclx).

Page 642.

Fiduciary position of council.] There is a fiduciary relationship between local authorities and ratepayers, and the discretion of the former must be exercised properly. Accordingly, where an auditor had disallowed excessive wages, a rule for a writ of *certiorari* quashing the surcharge was discharged by the Divisional Court on the ground that the excess was so great as to amount to an "illegal" payment; but the Court of Appeal made the rule absolute, considering that the excess was not of that character (*Rex (Scurr) v. Carson Roberts*, L. R. 1925, 2 K. B. 695). The House of Lords, however, reversed this decision (*sub nom. Roberts v. Hopwood*, L. R. 1925 A. C. 578; 89 J. P. 105; 23 L. G. R. 337).

Page 650.

Injunction to restrain summary proceedings.] To Note to sect. 251, add: An interlocutory injunction to restrain summary proceedings as to an alleged obstruction of a highway was refused in *Williams v. Deptford U. D. C.*, 1924, Ch. D., 41 T. L. R. 47.

Page 659.

The Crown and costs.] To footnote (77), add: *Rowland v. Air Council* (No. 1) was reversed in C. A., 39 T. L. R. 455. See also S. C., 1925, Ch. D., 41 T. L. R. 545.

To footnote (78), add: 67 Sol. J. & W. R. 385.

Statutory remedies.] To footnote (1), add: and *Everett's Case*, cited in Addendum to p. 2076.

Mandamus.] To footnote (12), add: See also *Rex (Kingsland) v. Income Tax Comrs.* (1923, K. B. D., 8 T. C. 327), where prohibition, *certiorari*, and *mandamus* were held not to lie because of the right to appeal against the additional assessment in question.

Page 660.

Action.] To Note to sect. 251, add: There is no right of action for damages for an injury suffered by a private person in consequence of a breach of the provision in the Motor Cars (Use and Construction) Order, 1904, Art. II. (6), that motor cars are to be "in such a condition as not to cause" danger to "any person on the highway" (*Phillips v. Britannia Laundry Co.* (C. A.), L. R. 1923, 2 K. B. 832; 93 L. J. K. B. 5; 129 L. T. 777; 21 L. G. R. 709). But see *McKenna's Case*, cited in Addendum to p. 863, and *Hughes v. Dundalk Harbour Comrs.* (1923 Ir. Ch. 38), where pilots were held entitled to sue for damages a harbour authority that had neglected to enforce the Pilotage Act against a shipowner who refused to pay the dues. See also *Macdonald v. Singer Mfg. Co.* (1923 S. C. (S.) 551) as to failure to pay statutory rate of wages.

Page 665.

Joint offenders.] To reports of *Munday v. S. Metrop. Electric Light Co.* in footnote (5), add: 1913 W. N. 90; and, at end of footnote, add: But see *Payne v. British Time Recorder Co.*, L. R. 1921, 2 K. B. 1; 90 L. J. K. B. 445; 124 L. T. 719.

Page 667.

Limitation of time.] To Note to sect. 256, add: A demand for payment of rates need not be made within one year after the making of the rate, and *à fortiori* proceedings to recover rates need not be commenced within that period (*Gill v. Mellor*, L. R. 1924, 1 K. B. 97; 93 L. J. K. B. 55; 130 L. T. 211; 87 J. P. 190; 21 L. G. R. 787).

Page 670.

Distress.] To Note to sect. 256, add: The exemption in 51 Hen. III. c. 4, st. iv., of "beasts that gain the land" from distress does not apply to distress for rates (*McCreagh v. Cox*, 1923, K. B. D., 92 L. J. K. B. 855; 129 L. T. 567; 87 J. P. 133; 21 L. G. R. 344).

Page 672.

Preferential payment of rates.] To Note to sect. 256, add: A water rate was held not to be a "local rate" for this purpose (*Worthing Cpn. v. Orbell*, Worthing C. Ct., June 25, 1923, M. C. Assoc. Circular 217).

Page 674.

Interest.] To Note to sect. 257, add: As to the rate of interest, see sect. 77 of the Public Health Act, 1925 (*post*, p. cclx).

Page 682.

Finality of apportionment.] To footnote (51), add: Though an assessment to income tax was made "final and conclusive" when entered in the list, it was held that this provision was immaterial where the taxpayer was not liable to assessment at all (*St. Lucia Estates Co. v. St. Lucia Colonial Treasurer*, L. R. 1924 A. C. 508; 93 L. J. P. C. 212; 131 L. T. 267).

Page 691.

Covenants.] To footnote (58), add: Cf. Celluloid; etc., Act of 1922, s. 8, quoted at end of Note to P. H. Am. Act, 1890, s. 51, Vol. I., Part I., Div. II., p. 876.

Page 692.

Covenants.] In footnote (63), for *Greaves v. Whitworth* read *Greaves v. Whitmarsh, Watson & Co.*

To footnote (65), add: Distinguished in *Hurst v. Aspey* (1924, Wigan C. Ct., L. J. C. Ct. R. 60), with regard to a water closet conversion which was held to be an "improvement" within the Rent Restrictions Acts, and not mere "repair."

Page 693.

Bias.] To footnote (9), add: And *Rex v. Bath Compensation Authority* (1925, C. A. 89 J. P. 82; 23 L. G. R. 405).

Page 697.

Interest of justices' clerk.] A clerk to justices went with them when they retired to consider their decision in criminal proceedings arising out of a motor accident, but took no part in the discussion. The conviction was quashed on the ground that he was a member of the firm of solicitors who were acting for the defendant in civil proceedings arising out of the same accident (*Rex (McCarthy) v. Sussex JJ.*, L. R. 1924, 1 K. B. 256; 93 L. J. K. B. 129; 130 L. T. 510; 88 J. P. 3; 22 L. G. R. 46).

Page 700.

Premature applications.] To footnote (11), add: *Rex (London Electricity Joint Committee) v. Electricity Comrs.* was reversed in C. A., see L. R. 1924, 1 K. B. 171; 93 L. J. K. B. 390; 130 L. T. 164; 88 J. P. 13; 21 L. G. R. 719.

Page 710.

Service of order.] In footnote (20), for cited in Note to H. W. C. Act, 1890, s. 49, read cited in Note to Housing, etc., Act, 1923, s. 15, Vol. I., Part II., Div. III., p. 1182 (20).

Page 712.

Appeals to M. of H.] To footnote (1), add: And see addendum to p. 347.

Page 717.

Notice of appeal.] To Note to sect. 269, add: In *Rex (Kingston-upon-Hull Guardians) v. Kingston-upon-Hull Recorder* (L. R. 1924, 1 K. B. 630; 93 L. J. K. B. 514; 22 L. G. R. 168), it was held that fourteen days' notice of appeal to quarter sessions against a rate made under a local Act was ineffective, as the provision in the Union Assessment Committee Act, 1864 (27 & 28 Vict. c. 39), s. 1, for a twenty-one days' notice applied.

A notice of appeal under the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 18, on the ground that the valuation is "unfair or incorrect," entitles the appellant to raise the point that insufficient statutory deductions have been made from the gross (*Redheugh Colliery Co. v. Gateshead U. A. C.* (C. A.), L. R. 1924, 1 K. B. 369; 93 L. J. K. B. 499; 130 L. T. 366; 88 J. P. 25; 22 L. G. R. 70).

In the House of Lords (*sub nom. Gateshead A. C. v. Redheugh Colliery Co.*, L. R. 1925 A. C. 309; 94 L. J. K. B. 258; 132 L. T. 583; 89 J. P. 53; 23 L. G. R. 145), the decision of the Court of Appeal on this point was affirmed, but the appeal was allowed on the facts, the majority of the House being of opinion that the justices at quarter sessions were not bound to reduce the rateable value to a nominal figure.

Adjournment of appeal.] In the same case it was held that, if the justices adjourn an appeal on the ground that the reasonable notice required by the Poor Relief Act, 1744 (17 Geo. II. c. 38), s. 4, has not been given, they are not bound to hear the appeal at the next sessions after the adjournment.

Page 718.

Costs.] To footnote (37), add: As to the power to order payment of a successful appellant's costs in the court below, see *Rex v. Cornwall JJ.*, L. R. 1903, 2 K. B. 178; applied in *Fear Bros. v. Feltham U. D. C.*, 1925, Mx. Q. S., 89 J. P. Jo. 155, 156, 171.

Page 737.

Certiorari.] To footnote (9), add: *Reg. v. Hastings Loc. Bd.* was distinguished in the *Electricity Commissioners' Case*, cited in Addendum to p. 700.

Page 743.

Exclusion of other remedies.] To Note to sect. 299, add: An enactment referring questions as to the "due fulfilment" of certain statutory duties to the Education Department was held not to oust the jurisdiction of the court in regard to the "measure" of the duties (*Norfar v. Aberdeenshire Education Authority*, 1923 S. C. (S.) 881).

Epping Forest.] In footnote (15), for 1873 read 1872.

Page 746.

Alteration of local Acts.] For the Instructions of the Minister of Health as to applications for Provisional Orders under the present section, see Vol. II., Part V., p. 2535.

Page 750.

Obstruction of local authority.] In footnote (15), for *Arlidge's Case*, *infra* (19), read *Arlidge's Case*, cited in Note to H. W. C. Act, 1890, s. 51, Vol. I., Part II., Div. III., p. 1068 (42).

Page 758.

Riots.] In footnote (26), to reports of *Motor Union Insurance Co. v. Boggan* add: 130 L. T. 588; 1923 Ir. K. B. 136; 1923 W. C. & Ins. 280; 67 Sol. J. & W. R. 656.

Page 764.

Common carriers.] To Note to sect. 308, add: The London County Council were held liable in damages for the loss of a valuable parcel carried with a passenger on one of their trams as they were not "common carriers," and were, therefore, not protected by the absence of a declaration as to the value of the goods such as is required by the Carriers Act, 1830 (11 & 12 Geo. IV. & 1 Wm. IV. c. 68), s. 1 (*Rosenthal v. London C. C.*, 1924, K. B. D., 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527).

To footnote (16), add: This decision (*Postmaster-General v. Liverpool Corporation*) was affirmed in *H. L.*, L. R. 1923 A. C. 587; 92 L. J. K. B. 791; 130 L. T. 41; 87 J. P. 157; 21 L. G. R. 553.

Page 765.

Action for damages.] To footnote (23), add: See recent Act and case cited in Addendum to p. 283.

Page 769.

Dangerous accumulation.] In footnote (70), for *ante*, p. 199 (14), read *ante*, p. 119 (14).

Page 784.

Actions against the Crown.] To Note to sect. 327, add: As to the transfer to the Board of Trade of the personal liability of the Shipping Controller for extortion, see *Marshal Shipping Co. v. Board of Trade* (C. A.), L. R. 1923, 2 K. B. 343; 92 L. J. K. B. 901; 129 L. T. 644.

For sequel, see S. C., 1925, K. B. D., 41 T. L. R. 285.

Page 786.

Costs.] To footnote (18a), add: *In re Carbonit*, affirmed in C. A., on different grounds, L. R. 1924, 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89.

Page 804.

Cumulative effect.] To footnote (16), add: See also H. W. C. Act, 1890, s. 91, and Note, Vol. I., Part II., Div. III., p. 1078.

Page 816.

Meaning of voting.] To Note to rule 6, add: Where a resolution is carried unanimously, everyone present must be taken as having "voted," see *Everett v. Griffiths*, *post*, p. ccxxiv.

Majority.] To reports of *Hurley's Case*, add: 87 J. P. Jo. 566; 67 Sol. J. & W. R. 767.

Page 841.

Use for building purposes.] Land acquired by a burial authority being found unfit for burials was exchanged for suitable land. *Held*, (1) that the land first acquired was not a "disused" burial ground (*Re Ponsford and Newport Sch. Bd.* and *Re Bosworth and Gravesend Cpn.* doubted), and (2) that the exchange was *intra vires* (*Nicholl v. Llantwit Major P. C.*, L. R. 1924, 2 Ch. 214; 93 L. J. Ch. 602; 131 L. T. 634).

Page 849.

Bye-laws.] To Note to sect. 13, add: The present Part is not to apply in places where sect. 25 of the Public Health Act, 1925 (*post*, p. ccxliii), is in force.

Page 851.

Drainage.] To Note to sect. 18, add: The present section is not to apply to places where sect. 38 of the Public Health Act, 1925 (*post*, p. ccxlviii) is in force.

Page 859.

Paving of yards.] To Note to sect. 23, add: Bye-laws under the present section cease on sect. 20 of the Public Health Act, 1925 (*post*, p. ccxlii), coming into force.

Page 863.

Builders' hoards.] To Note to sect. 34, add: A foot passenger, while walking in the road because of the removal of the platform outside a hoarding, was injured by a negligently driven vehicle, and held entitled to recover damages from the building contractor, as the removal of the platform was in breach of a condition attached to the licence from the local authority for the hoarding (*McKenna v. Stephens*, 1923 Ir. K. B. 112).

Page 872.

Conditional licences.] To footnote (30), add: But see *Mills v. London C. C.* (L. R. 1925, 1 K. B. 213; 94 L. J. K. B. 216; 132 L. T. 386; 89 J. P. 6; 23 L. G. R. 43; 59 L. J. Jo. 775).

Cinematograph licences.] As footnote to sect. 1 of Act of 1909, add: The Cinematograph Regulations, 1923 (S. R. O. No. 983. Dated July 30), revoked those of Feb. 18, 1910, and May 20, 1913.

Page 875.

Celluloid and film stores.] As Note to sect. 1 (4) (a), add: See Home Office Regulations of April 8, 1924, made under this enactment (S. R. O. No. 403).

Page 884.

Appeals.] To Note to sect. 7, add: The present section does not prevent justices, in proceedings to recover expenses under sect. 19, from going into the question whether the works executed come within the section: see the *Shoeburyness Case*, cited in Addendum to p. 889.

Page 889.

Settlement of disputes.] At end of first paragraph of Note to sect. 19, add: Unless the defendant can show that the works executed are such as do not come within the scope of the section at all (*Shoeburyness U. D. C. v. Burges*, 1924, K. B. D., 22 L. G. R. 684).

Page 891.

Naming streets.] To Note to sect. 21, add: The present section is not to apply in places where sect. 18 of the Public Health Act, 1925 (*post*, p. ccxli), is in force.

Page 894.

Paving of yards.] To Note to sect. 25, add: The present section is extended by sect. 20 of the Public Health Act, 1925 (*post*, p. ccxlii).

Page 895.

Temporary buildings.] To footnote (4), add: And *Rodwell v. Wade* and *Keeling v. Wirral R. D. C.* (1925, K. B. D., 23 L. G. R. 174, 201).

Page 900.

Gutters.] To footnote (2), add: As to obstruction by creeper, see *Simpson v. Webber* 1925, 41 T. L. R. 302).

Page 916.

Public pleasure grounds.] To Note to sect. 76, add: The present section is extended by sect. 56 of the Public Health Act, 1925 (*post*, p. cclii). See also sect. 69 of the same Act (*post*, p. cclvii), as to playing fields.

Page 919.

Injuries by animals.] To footnote (10), add: *Gayler & Pope, Ltd. v. Davies & Son*, L. R. 1924, 2 K. B. 75 (bolting of unattended horse and damage to window and contents of shop). In this case McCardie, J., fully discussed authorities on trespass and negligence, and held that unexplained bolting needed answer. Also reported in 93 L. J. K. B. 702; 131 L. T. 507.

Page 922.

Public notice.] In footnote (29), for c. 27 read c. 24.

Page 948.

Ambulances.] As Note to sect. 13, add: The present section is extended by sect. 63 of the Public Health Act, 1925 (*post*, p. cclv).

Page 952.

County councils.] As Note to sect. 2, add: See also sect. 61 of the Public Health Act, 1925 (*post*, p. ccliv).

Page 955.

Removal to hospital.] As Note to sect. 1, add: As to the removal of tubercular patients to hospitals, see sect. 62 of the Public Health Act, 1925 (*post*, p. ccliv).

PART II.

Page 958.

Feeding stuffs.] To Note on this subject, add: The warranty given by the Act of 1906 was held to apply to bakery sweepings sold for pig food, which killed the plaintiff's pigs (*Pulling v. Lidbetter, Ltd.* (C. A.), L. R. 1924, 2 K. B. 114; 93 L. J. K. B. 542; 131 L. T. 119; 83 J. P. 83; 22 L. G. R. 456).

To reports of *Anderson, Ltd. v. Daniel* in footnote (22), add: 130 L. T. 418; 88 J. P. 53; 22 L. G. R. 49.

Food pests.] To footnote 32, add: And the Destructive Insects and Pests Order, 1923 (S. R. O. No. 1360. Dated Oct. 30), imposing penalty of £10 for obstructing entry by inspector; the Colorado Beetle Order, 1923 (S. R. O. No. 1529. Dated Dec. 6); the Silver Leaf Order, 1923 (S. R. O. No. 616. Dated May 22. Revoking S. R. O. 1919, No. 1935), *re* dead wood of plum and apple trees and the fungus *stereum purpureum*; and the Wart Disease of Potatoes Order, 1923 (S. R. O. No. 627. Dated May 28. Revoking S. R. O. 1919, No. 2239; 1920, No. 2129; and 1921, Nos. 863 and 1702).

Page 962.

Sale by servant.] To footnote (9), add: *Cf. Burns' Case*, cited in Addendum to p. 1230, and *Griffiths' Case*, cited in Addendum to p. 2495.

Page 963.

Notice to purchaser.] To Note to sect. 6, add: And, though the following notice was read by a purchaser, it was held to be too ambiguous and misleading to afford a defence: "All spirits sold in this establishment are of the same superior quality as heretofore, but to meet the requirements of the Sale of Food and Drugs Acts they are sold as diluted spirits; no alcoholic strength guaranteed" (*Rodbourne v. Hudson*, L. R. 1925, 1 K. B. 225; 94 L. J. K. B. 129; 132 L. T. 444; 89 J. P. 25; 23 L. G. R. 22).

Page 967.

Milk as from cow.] To footnote (68), add: Followed in *Bridges v. Griffin*, L. R. 1925, 2 K. B. 233; 89 J. P. 122; 23 L. G. R. 564.

Page 972.

Label.] To Note to sect. 6, add: A customer demanded "one pound of that butter in the window." The butter in the window was labelled "Butter mixture, 1s. 2d. per lb." It was margarine containing a small percentage of butter. The majority of the Court of Justiciary held that, the words on the label not rendering it clear to a purchaser of ordinary intelligence that the article was not butter, it was not of the nature substance and quality demanded (*Robertson v. McKay*, 1924, S. C. (J.) 31).

In footnote (22), after 1902, add: 1.

To same footnote, add: But where justices found that a notice as to dilution of spirits was not seen by the purchaser, and was not called to his attention, this case was distinguished (*Preston v. Grant*, L. R. 1925, 1 K. B. 177; 94 L. J. K. B. 125; 132 L. T. 203; 88 J. P. 198; 23 L. G. R. 15).

Page 978.

Postal regulations.] To Note to sect. 16, add: See also Art. 7 of the Inland Post Warrant, 1923 (S. R. O. No. 575. Dated May 12).

Page 1019.

Fancy names.] To Note to sect. 8, add: Adding the unapproved words "Mixed with Maypole Butter" to the approved fancy name, "Mayco Margarine," was held to be an offence under the present section (*Maypole Dairy Co. v. Patterson*, 1923 S. C. (J.) 85). But the present section was held not to prevent the printing on the inner wrapper, underneath and in smaller letters than the approved fancy name, of the words "churned with fresh milk" (*Hawes v. Stephens*, L. R. 1924, 2 K. B. 179; 93 L. J. K. B. 891; 131 L. T. 140; 88 J. P. 97; 22 L. G. R. 422).

Page 1022.

Regulations.] To Note to sect. 1, add: See also the Public Health (Meat) Regulations, 1924, set out *post*, p. ccxxxii.

Page 1044.

Housing Acts.] To Note to sect. 1, add: The Housing Act, 1925 (15 Geo. V. c. 14), repealed and consolidated most of these Acts. In the Index, after pages referring to provisions in repealed Acts, references are given to the new Act—see, *e.g.*, "ACCOUNTS, Housing."

See also Addendum to p. 2565 (*post*, p. ccxxxvii).

Page 1045.

Town Planning Acts.] To Note to sect. 1, add: The Town Planning Act, 1925 (15 Geo. V. c. 16), repealed and consolidated these Acts. In the Index, after pages referring to provisions in repealed Acts, references are given to the corresponding sections of the new Act:—see, *e.g.*, "ANCIENT MONUMENTS, Protection."

Page 1069.

Contracts.] To Note to sect. 56, add: For a case where it was held that a local authority had given a proper notice determining a housing contract "at the completion of the first section of seventy houses" on the ground that the Ministry of Health were not going to find money for more than that number, see *Boot & Sons v. Uttoxeter U. D. C.* (1924, C. A., 88 J. P. 118; 22 L. G. R. 303; 68 Sol. J. & W. R. 684; 59 L. J. Jo. 195).

To footnote (8), add: *Nixon v. Erith U. D. C.*, was affirmed in C. A., L. R. 1924, 1 K. B. 819; 93 L. J. K. B. 756; 131 L. T. 303; 88 J. P. 115; 22 L. G. R. 448.

Architect's housing fees.] The remuneration of an architect for work done on a housing scheme is not to depend on the order in which the houses are erected, and if part of the scheme is abandoned the remuneration in respect of that part is to be on a *quantum meruit* basis (*Elkington v. Wandsworth B. C.*, 1924, 41 T. L. R. 76; 88 J. P. Jo. 702).

Page 1075.

Implied condition.] To Note to sect. 75, add: As to the relation between the "standard" of repair required under this statutory condition and that required under a covenant, see *Jones v. Geen*, L. R. 1925, 1 K. B. 659.

Page 1100.

Meaning of good repair.] To footnote (54), add: *Calthorpe v. McOscar* was reversed in C. A. (L. R. 1924, 1 K. B. 716; 93 L. J. K. B. 273; 130 L. T. 691).

Page 1119.

Compensation.] To footnote (24), add: For Rules of 1923, see Vol. II., Part V., p. 2566.

Page 1126.

Rules.] To footnote (5), add: The Rules of 1912 are set out in Vol. II., Part V., p. 2500.

Page 1140.

Duration.] For footnote (47), read: Extended to Dec. 31, 1925, by Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.).

Page 1146.

Jurisdiction of justices.] In footnote (27), for reports of *Adams v. Tuer*, read: 130 L. T. 218; 87 J. P. 193; 22 L. G. R. 88; 40 T. L. R. 49.

Page 1147.

Payment by instalments.] To Note to sect. 28, add: As to the recovery of expenses incurred by local authorities under the present section when made payable by instalments, see *Salford Cpn. v. Hale* (C. A.), L. R. 1925, 1 K. B. 503; 94 L. J. K. B. 326; 132 L. T. 320; 89 J. P. 19; 23 L. G. R. 166.

Page 1148.

Alternative accommodation.] As Note to sect. 35, add: The Rent Act of 1923 does not take away the benefit of the present section (*Parry v. Harding*, L. R. 1925, 1 K. B. 111; 94 L. J. K. B. 37; 132 L. T. 390; 88 J. P. 194; 22 L. G. R. 773).

Page 1173.

Duration.] To Note to sect. 19, add: And by the Act of 1925 (15 & 16 Geo. V. c. 32) until the 25th Dec., 1927.

Page 1175.

Circular on Act.] To footnote (1), add: See also M. H. Circular of Jan. 17, 1924, 22 L. G. R. (Orders) 25.

Page 1176.

Financial provisions.] As Note to sect. 1, add: The present section, and sects. 2, 3, and 5 of the present Act, have been amended by the Housing (Financial Provisions) Act, 1924 (set out in Vol. II., Part V., p. 2560).

Page 1177.

Financial provisions.] To Note to sect. 2, and as Note to sect. 3, add: See Note to sect. 1, in Addendum to p. 1176.

Page 1178.

Financial provisions.] As Note to sect. 5, add: See Note to sect. 1, in Addendum to p. 1176.

PART III.

Page 1203.

Pipes in undedicated streets.] To Note to sect. 7, add: Sect. 80 of the Public Health Act, 1925 (*post*, p. cclx), contains an exception from the present section.

Meaning of building.] To footnote (4), add: See also *Thompson & Co. v. Sunderland Gas Co.*, cited in Note to P. H. Act, 1875, s. 161, Vol. I., Part I., Div. I., p. 417 (4).

Page 1204.

Quantum of soil dedicated.] To footnote (3), add: See also *Porter v. Ipswich Cpn.*, L. R. 1922, 2 K. B. 145; 91 L. J. K. B. 962; 128 L. T. 125; 20 L. G. R. 502.

Page 1210.

Accounts and returns.] As Note to sect. 38, add: The provisions of sect. 15 of the Gas Regulation Act, 1920 (quoted in Note to P. H. Act, 1875, s. 161, Vol. I., Part I., Div. I., p. 416) are substituted for the present section and sect. 35 of the Act of 1871 (Vol. II., Part III., Div. I., p. 1260) "in so far as such provisions are incorporated with the special Act of the undertakers."

Page 1216.

Compensation.] To footnote (3), add: This case has been held to be still an authority on the above point, where the facts are "exactly similar" (*Consett Industrial Soc. v. Consett Iron Co.* (C. A.), L. R. 1922, 2 Ch. 135; 91 L. J. Ch. 630; 127 L. T. 383).

Page 1219.

Pipes in undedicated streets.] As Note to sect. 29, add: See Addendum to page 1203.

Page 1230.

Unauthorised appropriation of water.] To footnote (4), add: See also *Burns v. Scholfield* (1923, K. B. D., 128 L. T. 382; 87 J. P. 54; 21 L. G. R. 39), where the owner of a steam wagon was held liable under the present section for the unauthorised taking of water for the wagon by his servant. Further as to scope of servants' duties, see *Goh Choon Seng v. Lee Kim Soo* (L. R. 1925 A. C. 550), distinguishing *Lord Bolingbroke v. Swindon Loc. Bd.* (1874, L. R. 9 C. P. 575).

Page 1240.

Theatres.] To Note to sect. 12, add: The *Bristol Case* (footnote (8)) was applied to theatres in *Northern Theatres Co. v. Shillito* (1925, C. A., L. R. 1925, 2 K. B. 100; 94 L. J. K. B. 472; 79 J. P. 101; 23 L. G. R. 288).

Page 1246.

Transfer of powers.] To initial Note, add: The powers of the Minister of Health under the present Act, and the amending Act of 1873, were transferred to the Board of Trade by the Order quoted in Vol. II., Part V., p. 2491.

Page 1248.

Regulations.] To Note to sect. 4, add: These Regulations will be found in Vol. II., Part V., p. 2537.

Page 1251.

Metropolis.] As Note to sect. 15, add: For the purposes of sect. 10 of the Gas Regulation Act, 1920 (quoted in Note to P. H. Act, 1875, s. 161, Vol. I., Part I., Div. I., p. 414), the present section is to apply to the Metropolis.

Page 1260.

Accounts and returns.] As Note to sect. 35, add: The provisions of sect. 15 of the Gas Regulation Act, 1920 (quoted in Note to P. H. Act, 1875, s. 161, Vol. I., Part I., Div. I., p. 416) are substituted for those of the present section and sect. 38 of the Act of 1847 (Vol. II., Part III., Div. I., p. 1210) "in so far as such provisions are incorporated in the special Act of the undertakers."

Page 1281.

Loans.] To Note to sect. 8, add: See also sects. 2 and 5 of the Electricity (Supply) Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2364).

Page 1282.

Miscellaneous business.] To footnote (1), add: But see *Deuchar v. Gaslight & Coke Co.* (L. R. 1925 A. C. 691; 23 L. G. R. 525; affirming C. A., L. R. 1924, 2 Ch. 426; 94 L. J. Ch. 19), and applying *Ashbury Railway Carriage Co. v. Riche* (1875, L. R. 7 H. L. 653).

Page 1289.

Undue preference.] To footnote (1), add: See also, as to photographer's arc lights, *Westminster Electric Supply Cpn. v. Wykeham Studios, Ltd.*, 1922 M. C. Assoc. Circular 204.

Page 1291.

Telegraph Act.] To footnote (1), add: As to sect. 7, and the alteration of telegraph lines, see sect. 27 (1) (d) of the Public Health Act, 1925 (*post*, p. ccxliv). As to sect. 8, and non-negligent injuries to telegraph lines, see *Postmaster General v. Beck & Pollitzer* (C. A., L. R. 1924, 2 K. B. 308; 93 L. J. K. B. 1017; 131 L. T. 750; 88 J. P. 137; 22 L. G. R. 657).

Page 1296.

Financial assistance.] To Note to sect. 3, add: The present section is not to prevent the exercise of the powers of sect. 5 of the Act of 1922 (see sect. 5 (5), set out in Vol. II., Part IV., Div. II., at p. 2366).

Page 1306.

Injury to electric cables.] To footnote (1), add: See also, as to claim for damage to telephone cable by explosion due to contact with local authority's electricity main, and successful defence that plaintiff was licensee with knowledge of risk, *Postmaster General v. Liverpool Cpn.* (noted in Vol. I., Part I., p. 764. For reports in H. L., see Addendum to that page).

Page 1311.

Charges.] As Note to sect. 31, add: Sub-sect. (2) of the present section was repealed by sect. 22 (1) of the Act of 1922 (set out in Vol. II., Part IV., Div. II., p. 2371).

To Note to sect. 32, add: New provisions have been substituted for sub-sect. (2) of the present section by sect. 22 (2) and the Schedule to the Act of 1922 (set out *ibid.*, p. 2373).

Page 1327.

Maximum price.] For Note to sect. 10, substitute: The present section was repealed by the Act of 1922 (see sect. 22 (6), set out *ibid.*, p. 2371).

Page 1328.

Consumers with separate supply.] For Note to sect. 15, substitute: The present section was repealed by the Act of 1922 (see sect. 23 (2), set out *ibid.*, p. 2371).

Page 1329.

Borrowing.] To Note to sect. 21, add: The present section is applied to money borrowed under sect. 5 of the Electricity (Supply) Act, 1922 (see sect. 5 (2), set out *ibid.*, p. 2365).

Page 1330.

Private competition.] To Note to sect. 23, add: As to the meaning of "supply" in the present section, see the *Southport Case*, cited in Addendum to p. 139.

Page 1333.

Electricity Supply Acts.] As Note at commencement of Act, add: The present Act is amended by the Electricity (Supply) Act, 1922 (12 & 13 Geo. V. c. 46), and is therein referred to as "the principal Act." As to the citation of these Acts now, see sect. 31 (1) of the Act of 1922. The whole of this last mentioned Act has been set out in Vol. II., Part IV., Div. II., p. 2364.

Page 1334.

Electricity districts.] As Note to sect. 5, add: Sect. 19 of the Act of 1922 (set out *ibid.*, p. 2370) adds, after the word "authority" in the last line but one of sub-sect (2) of the present section, the words "or other body."

Page 1334 (continued).

Joint electricity authorities.] As Note to sect. 6, add: Words are added, after "interests" and "electricity district," to sub-sect. (1) of the present section by sect. 20 of the Act of 1922 (set out *ibid.*, p. 2370).

Schemes.] As Note to sect. 6, also add: Further as to schemes constituting joint electricity authorities under the present section, see sect. 5 (4) of the Act of 1922 (set out *ibid.*, p. 2366).

Page 1335.

Generating stations.] To footnote (2), add: Further as to generating stations, see sects. 10, 12, and 13 of the Act of 1922 (set out *ibid.*, p. 2367).

Page 1336.

Extension of plant.] As Note to s. 11, add: The present section, coupled with the definition of "generating station" in sect. 36 of the present Act, was held to prevent a local authority enlarging the capacity of their generating plant without the consent of the Electricity Commissioners (*A.G. v. Ealing Cpn.* cited in Addendum to p. 569).

Modification of restrictions.] The restrictions imposed by the present section are modified by sect. 13 of the Act of 1922 (set out in Vol. II., Part IV., Div. II., p. 2368).

Page 1337.

Joint electricity authorities.] As Note to sect. 12, add: The present section is considerably amended by sect. 16 of the Act of 1922 (set out in Vol. II., Part IV., Div. II., p. 2369).

Transfer of undertakings.] As Note to sect. 13, add: As to the consideration payable in respect of transfers under the present section, see sect. 8 of the Act of 1922 (set out *ibid.*, p. 2367).

Page 1338.

Repeal.] As Note to sect. 14, add: The present section was repealed by the Act of 1922 (see sect. 17 (3), set out *ibid.*, p. 2370).

Page 1339.

Compensation.] As Note to sect. 16, add: The present section is considerably amended by sect. 21 of the Act of 1922 (set out *ibid.*, p. 2370).

Page 1340.

Borrowing.] As Note to sect. 18, add: The purposes for which joint electricity authorities may borrow money under the Act of 1922 include "the payment of any sum payable under" sub-sect. (3) of the present section (see sect. (1) (2) (b) of the Act of 1922, set out *ibid.*, p. 2364).

Page 1341.

Mutual assistance.] As Note to sect. 19, add: For circumstances in which the Electricity Commissioners were held justified in refusing to approve, under sub-sect. (1) of the present section, of an agreement for mutual assistance, see *Rex (Ealing Cpn.) v. Electricity Commissioners* (1922, C. A., 128 L. T. 100; 86 J. P. 191; 20 L. G. R. 740).

To footnote (1), add: And s. 13 of Act of 1922, set out in Vol. II., Part IV., Div. II., p. 2368.

Page 1343.

Wayleaves.] As Note to sect. 22, add: Further as to wayleaves, see sect. 11 of the Act of 1922 (set out *ibid.*, p. 2367).

Page 1345.

Expenses of Electricity Commissioners.] As Note to sect. 29, add: The periods mentioned in the proviso to sub-sect. (2) of the present section are extended by sect. 7 (1) of the Act of 1922, and other amendments are made by that section (set out *ibid.*, p. 2366).

Page 1346.

Rules.] As Note to sect. 34, add: The Electricity Commissioners (Costs and Expenses) Rules, 1922, were made under the present section on the 4th July ("Loc. Gov. 1922," p. 247).

Page 1347.

Generating station.] As Note to sect. 36, add: For a case relating to the definition of generating station, see the Addendum to p. 1336.

Page 1349.

Ministry of Transport.] To initial Note, add: See also P. C. Order, Nov. 10, 1921, Art. II. (S. R. O. No. 1733).

Page 1377.

Light Railways Rules.] To footnote (1), add: These Rules were amended by P. C. Order, Nov. 10, 1921 (S. R. O. No. 1733). For an instance of a local order, see the Harefield Light Railway Order, 1923 (S. R. O. No. 386. Dated Feb. 10).

Page 1381.

Amending Acts.] To initial Note, add: These Acts are also amended by sects. 1, 9, 85, and 87, and Scheds. I. and V., of the Public Health Act, 1925 (*post*, pp. ccxxxviii, cclxi, cclxii).

Page 1397.

Adoption of Act.] In sect. 3 (4), for Minister of Health, read Board of Education (see P. C. Order, May 17, 1920, 18 L. G. R. (Orders) 499).

Page 1399.

Confirming authority.] As Note to sect. 7, add: The confirming authority is now the Board of Education (see Addendum to p. 1397).

Pages 1399, 1400.

Power of sale.] In sect. 12 (1) and (2), for Minister of Health, read Board of Education (see Addendum to p. 1397).

Page 1406.

Power of sale.] In sect. 12 (3), for Minister of Health, in both places, read Board of Education (see Addendum to p. 1397).

Use of library as town hall.] To Note to sect. 12, add: The present section does not enable a library authority to use a public library as a town hall (*A.G. (Sheppard) v. Westminster City Cpn.* (C. A.), L. R. 1924, 2 Ch. 416; 22 L. G. R. 506; 40 T. L. R. 711; 68 Sol. J. & W. R. 736).

Page 1417.

Byelaws.] To Note to sect. 3, add: Byelaws under sub-sect. (2) of the present section are now confirmed by the Board of Education (see Addendum to p. 1397).

Notice.] In sect. 8, for Minister of Health, read Board of Education (see *ibid.*).

Page 1429.

Sale in shop.] To Note to sect. 13, add: A stall on vacant land rented at 5s. a day was held not to be a "shop" for this purpose (*Pike v. Jones* (1922, K. B. D.), 128 L. T. 373; 87 J. P. 36; 20 L. G. R. 798).

Prescriptive market.] In footnote (5), for *Gard v. Ford* read *Yard v. Ford*. To footnote (6), add: applied in *Winsford Entertainments, Ltd. v. Winsford U. D. C.* (1925, K. B. D., 23 L. G. R. 254).

Page 1438.

Auction marts.] To Note to sect. 42, add: A byelaw purporting to control auction marts in a market was held *ultra vires* (*Nicholls v. Tavistock U. D. C.*, L. R. 1923, 2 Ch. 18; 92 L. J. Ch. 233; 128 L. T. 565; 87 J. P. 98; 21 L. G. R. 194).

Page 1441.

Auction marts.] To Note to sect. 4, add: As to weighing facilities in auction marts, see *Knott v. Stride*, cited in Note to P. H. Act, 1875, s. 166, Vol. I., Part I., Div. I., p. 433 (4).

Page 1445.

Recreation Grounds Act, 1859.] To Note to sect. 1, add: As to the enforcement of byelaws under this Act, see *Reg. v. Hambly*, cited in Note to P. H. Act, 1875, s. 164, Vol. I., Part I., Div. I., p. 426 (2).

Page 1448.

Protective clauses.] At the end of initial Note, add: And sect. 10 (6) of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. I., p. 2378).

Page 1454.

Forms.] To Note to sect. 9, add: As to the form of applications under the present section, see the Note to Art. I. of the Commons Regulations, 1900, set out in Vol. II., Part V., p. 2390.

Page 1460.

Injury to pasture.] In footnote (1), for 14 Geo. IV., read 14 Geo. III.

Page 1464.

Illegal inclosures.] To Note to sect. 30, add: The present section is applied to inclosures rendered illegal by sect. 103 of the Law of Property Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2359). As to amending Act of 1924, see Addendum to p. 2355.

Page 1468.

Tenants' compensation.] To Note at commencement of Act, add: The present Act (50 & 51 Vict. c. 26), and the Tenants Compensation Act, 1890 (53 & 54 Vict. c. 57), were wholly repealed by sect. 23 (2) of the Allotments Act, 1922 (set out *ibid.*, p. 2382).

Page 1469.

Claim for compensation.] To Note to sect. 8, add: The tenant of a small holding agreed to pay any compensation which "may" be due to the outgoing tenant. The county council, more than six years after the tenant's entry, sued him for this compensation. It was held that, as it had been assessed within six years before the commencement of the action, it was not barred (*Cheshire C. C. v. Hopley*, 1923, K. B. D., 130 L. T. 123; 21 L. G. R. 524).

Page 1470.

Allotment gardens.] For Note to sect. 18, substitute: The whole of sect. 11 of the Agriculture Act, 1920 (10 & 11 Geo. V. c. 76), was repealed by sect. 23 (2) of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2382).

To footnote (3), add: And *Hamilton Gell v. White* (C. A.), L. R. 1922, 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; *Minister of Ag. & F. v. Dean*, L. R. 1924, 1 K. B. 851.

Page 1471.

Regulation of commons.] In footnote (2), for p. 2361 read p. 2390; and for Instructions of the 1st June, 1911, in text read: Instructions of January, 1923, set out in Vol. II., Part V., p. 2393.

Page 1487.

Savings.] To footnote (1), add: And sect. 10 (6) of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2378).

Page 1496.

Small Holdings and Allotments Acts.] To Note on citation of Acts, add: As to the effect, on these citations, of the Allotments Act, 1922, see sect. 23 (1) of that Act (set out *ibid.*, p. 2382).

Page 1499.

Acquisition of land.] To Note to sect. 7, add: An injunction to restrain compulsory acquisition because of non-compliance with sub-sect. (2) of the present section was refused, as an inquiry by the Minister of Agriculture was pending under sect. 39 (3) (*Reddaway v. Lancashire C. C.*, 1925, Ch. D., 41 T. L. R. 422).

Page 1500.

Letting of small holdings.] As Note to sect. 9, add: As to letting for allotments land acquired for small holdings, see sect. 15 of the Allotments Act, 1922 (set out *ibid.*, p. 2379).

Notices to quit.] To footnote (2), add: and *Blay v. Dadswell* (C. A.), L. R. 1922, 1 K. B. 632; 127 L. T. 6; 20 L. G. R. 221.

Page 1505.

Default of duty by council.] To line 3 from bottom, add: For a further limitation, where the population of a borough or urban district exceeds 10,000, see sect. 13 of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2379).

Page 1507.

Transfers on default.] To Note to sect. 24, add: As to sub-sect. (2) of the present section, see sects. 8 (2) and 10 (1) of the Allotments Act, 1922 (set out *ibid.*, p. 2377), and, as to the substitution of the Small Holding Commissioners for the county council, see sect. 20 of the same Act (set out *ibid.*, p. 2380).

Acquisition of land.] To line 5 of Note to sect. 25, add : and the Allotments Act, 1922 (set out *ibid.*, p. 2374).

For remainder of this Note, substitute : The whole of sub-sect. (3) of the present section was repealed by sect. 23 (2) of the Allotments Act, 1922, and replaced by sect. 16 of that Act (set out *ibid.*, p. 2379).

Page 1509.

Repeal.] To Note to sect. 27, add : The whole of sub-sect. (1) of the present section was repealed by sect. 23 (2) of the Allotments Act, 1922, and see, now, sect. 16 of that Act (set out *ibid.*, p. 2379).

Rates.] To the same Note, add : Further as to the rating of allotments, see sect. 17 of the Allotments Act, 1922 (set out *ibid.*, p. 2380).

Page 1511.

Compensation.] To Note to sect. 30, add : The Act of 1887 has now been repealed by sect. 23 (2) of the Allotments Act, 1922. As to the determination of allotment tenancies and compensation on quitting, see sects. 1-7 of that Act (set out *ibid.*, p. 2374).

Page 1515.

Notice to treat.] To Note to sect. 39, add : As to the time limit for serving the notice to treat, see sect. 12 of the Allotments Act, 1922 (set out *ibid.*, p. 2379).

Compulsory purchase and hiring.] The Small Holdings and Allotments (Compulsory Purchase) Regulations, 1922, and the Compulsory Hiring Regulations of the same year, will be found set out in Vol. II., Part V., pp. 2401, 2404.

Page 1516.

Acquisition of land.] To footnote (1), add : and sect. 8 (2) of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2377).

As Note to sect. 40, add : The present section and sect. 44 are referred to in the Law of Property Act, 1922 (set out *ibid.*, p. 2358).

Page 1518.

Resumption.] As Note to sect. 46, add : Further as to the resumption of land, see sect. 11 of the Allotments Act, 1922 (set out *ibid.*, p. 2378).

Page 1519.

Compensation.] For the last paragraph of the Note to sect. 47, substitute : The Act of 1887 mentioned in sub-sect. (3) of the present section was repealed by sect. 23 (2) of the Allotments Act, 1922 ; see, now, sect. 6 of that Act (set out *ibid.*, p. 2376).

Agricultural Holdings Act.] To Note to sect. 47, add : As to arbitration awards, see the Agricultural Holdings (England) Rules, 1923 (S. R. O. No. 779. Dated July 6).

Page 1520.

Allotment committees.] To footnote (4), add : and, as to allotment committees of urban authorities, s. 14 of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2379).

Page 1522.

Borrowing powers.] To Note to sect. 52, add : Further as to borrowing for allotment purposes, see sect. 18 of the Allotments Act, 1922 (set out *ibid.*, p. 2380).

Page 1524.

Definitions.] As Note to sect. 61, add : For definitions of " allotment garden," " landlord," " council," " industrial purpose," " agriculture," " the Allotments Acts," " Minister," " borough," " sinking fund charges," and " holding," see sect. 22 of the Allotments Act, 1922 (set out *ibid.*, p. 2381).

Page 1527.

Breaking up of pasture.] To Note to Part II., add Paragraph (2) (b) of this Part of the present Schedule is not to " apply to land compulsorily hired for the provision of allotment gardens," see sect. 8 (5) of the Allotments Act, 1922 (set out *ibid.*, p. 2377).

Page 1527 (continued).

Acquisition of land.] To Note to Sched. I., add: The Small Holdings and Allotments (Costs) Rules, 1910, were made under Part I. (6) of the present Schedule. As to expert witnesses, see the Note at the commencement of the Order of 1922, set out in Vol. II., Part V., p. 2401.

Satisfaction of Minister.] To footnote (8), add: After the action had been set down for trial before the Vice-Chancellor, an amicable settlement was reached and the action was withdrawn.

Page 1532.

Ancient monuments.] To footnote (1), add: See also P. C. Orders of Nov. 21, 1922 ("Loc. Gov. 1922," pp. 77-80), and Oct. 11, 1923 (S. R. O. No. 1281).

Page 1539.

Confirmation of orders.] As Note to sect. 1, add: The period mentioned in sub-sect. (1) of the present section was extended to the 31st December, 1922, by sect. 8 (1) of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2376).

Compulsory purchase regulations.] See the Small Holdings and Allotments (Compulsory Hiring) Regulations, 1922, and the Small Holdings and Allotments (Compulsory Purchase) Regulations, 1922, set out in Vol. II., Part V., pp. 2401, 2404.

Page 1540.

Arbitration rules.] To Note to sect. 2, add: The whole of the Agricultural Holdings Act, 1908 (8 Edw. VII. c. 28), was repealed by the Agricultural Holdings Act, 1923 (13 & 14 Geo. V. c. 9), s. 58, Sched. IV. The arbitration provisions of the Act of 1908 are replaced by sect. 16 and Sched. II. of the Act of 1923 (*ibid.*, s. 16, Sched. II.). The main difference between Sched. II. of the Act of 1908 and Sched. II. of the Act of 1923 is that between rules 4 and 5 of the old Schedule there is a new rule which provides for the appointment by the Lord Chief Justice of "a panel of persons from whom any arbitrator nominated, otherwise than by agreement, for" these arbitrations "shall be selected"; and for the remuneration of such arbitrators, and the recovery thereof from the parties; and there is a further provision that an arbitrator chosen from the panel for an arbitration in Wales shall have a knowledge of Welsh agricultural conditions, and, "if either party to the arbitration so requires," of the Welsh language.

Arbitrations.] To footnote (1), add: This schedule is applied to arbitrations under sect. 11 of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2378).

Page 1541.

Repeal.] As Note to each of sects. 3, 4, and 5, add: This section was repealed by the Expiring Laws Act, 1922 (12 & 13 Geo. V. c. 50, s. 2, Sched. II.).

Page 1542.

Fee farm rents.] To footnote (2), add: And, as to application of these provisions to allotments, s. 9 of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2377).

Page 1545.

Loans to tenants.] As Note to sect. 18, add: Treasury Regulations (cancelling those of Dec. 8, 1919) were made under sub-sect. (1) of the present section on July 28, 1922 ("Loc. Gov. 1922," pp. 54-56). A Circular thereon was issued by the Minister of Agriculture and Fisheries on Aug. 23, 1922.

Page 1546.

Damage to allotments.] As Note to sect. 21, add: Sub-sect. (4) of the present section was repealed and replaced by sect. 19 of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2380).

Appropriation of land.] As Note to sect. 23, add: The application of the present section is restricted by sect. 2 (6) of the Allotments Act, 1922 (set out *ibid.*, p. 2375).

Page 1547.

Recoupment of losses.] As Note to sect. 26, add: The Land Settlement (Claims for Losses) Regulations, 1919, were made by the Minister of Agriculture and Fisheries on the 28th April, 1920 (S. R. O. 1920, No. 716).

Page 1548.

New Forest.] As Note to sect. 28, add: For provisions relating to allotments in the New Forest, see sects. 10 (6) and 21 of the Allotments Act, 1922 (set out in Vol. II., Part IV., Div. II., pp. 2378, 2380).

Acquisition under D.O.R.A.] To Note to sect. 30, add: See also sect. 10 (6) (b) of the Allotments Act, 1922 (set out *ibid.*, p. 2378).

Page 1550.

Annuities.] As Note to Sched. I., add: The Land Settlement (Annuities) Regulations, 1919 (S. R. O. No. 1961), were made by the Minister of Health under par. (10) of the present Schedule.

Page 1568.

Rentcharge.] To footnote (4), add: But see Law of Property Act, 1922, s. 39, set out in Vol. II., Part IV., Div. II., p. 2355.

PART IV.

Page 1621.

Names of streets.] To Note to sect. 64, add: The present section and sect. 65 are not to apply to places where sect. 19 of the Public Health Act, 1925 (*post*, p. ccxli), is in force.

Page 1623.

Projections.] To Note to sect. 69, add: The present section and sect. 70 are extended by sect. 24 of the Public Health Act, 1925 (*post*, p. ccxliii).

Page 1625.

Gutters.] To Note to sect. 74, add: The present section is extended by sect. 21 of the Public Health Act, 1925 (*post*, p. ccxlii).

Page 1632.

Byelaws.] To Note to sect. 128, add: The model byelaw as to humane slaughtering (No. 9 (b)) has been withdrawn in consequence of the decision of the justices in *Dodd v. Venner*, cited in Vol. I., Part I., Div. I., p. 498 (29) see M. H. decision, "Loc. Gov. 1922," p. 456).

Page 1651.

London Traffic Act, 1924.] To Note to sect. 28, add: The London and Home Counties Traffic Advisory Committee, which includes members appointed by county and county borough councils in the London traffic area, was established by the London Traffic Act, 1924 (14 & 15 Geo. V. c. 34, ss. 1, 2), to advise and assist the Minister of Transport "with a view to facilitating and improving the regulation of traffic in and near London"; and was expressly given power to hold local inquiries (*ibid.*, s. 3), and to report upon the six-monthly statements required from highway authorities as to their intended street works which will necessitate the closing of highways (*ibid.*, s. 4). The Act also contains provisions for mitigating obstruction to traffic by materials, barriers, etc. (*ibid.*, s. 5), punishing disobedience to signals of constables in uniform (*ibid.*, s. 9), and enabling the Minister to make regulations on certain specified subjects (*ibid.*, s. 10, Sched. III.). For other provisions of this Act, see Addendum to p. 1675.

Page 1654.

Claim of right.] In footnote (2), for *Smith v. Cooke* (1917, K. B. D.), 99 J. P. 245, read: *Smith v. Cooke* (1914, K. B. D.), 79 J. P. 245.

Page 1656.

Street collections.] For footnote (4), read: The Regulations as to street collections in the metropolitan police district are dated the 15th September, 1923 (S. R. O. No. 1133). They revoked Orders of the 2nd January and the 30th June, 1917 (S. R. O. Nos. 2, 812), and the 20th December, 1920 (S. R. O. No. 2473).

Page 1661.

Wild birds.] To Note to sect. 36, add: For a local Order under these Acts, see the Wild Birds Protection (Administrative County of Stafford) Order, 1923 (S. R. O. No. 302. Dated March 7).

Incorporation.] To Note preceding sect. 37, add: And see sect. 76 of the Public Health Act, 1925 (*post*, p. cclx).

Page 1663.

Motor vehicle licences.] To footnote (11), add: quoted in Vol. II., Part IV., Div. II., p. 2221 B.

Page 1665.

Plying for hire.] To reports of *Sales v. Lake* in footnote (16), add: L. R. 1922, 1 K. B. 553; 91 L. J. K. B. 563; 126 L. T. 636; 86 J. P. 80.

Page 1669.

Negligence of driver.] To Note to sect. 61, add: If the driver has two masters, either the statutory master or the master at the time of the accident can be sued (*Bygraves v. Dicker*, L. R. 1923, 2 K. B. 585; 92 L. J. K. B. 1021; 129 L. T. 688).

Page 1675.

Omnibuses in London traffic area.] To Note to sect. 3, add: The London Traffic Act, 1924, contains provisions relating to the attaching of conditions to the grant of omnibus licences in the London traffic area (14 & 15 Geo. V. c. 34, s. 6), the limiting of the number of omnibuses plying on certain streets (*ibid.*, s. 7), and the keeping of records (*ibid.*, s. 8), and the supplying of particulars (*ibid.*, s. 14), by licensees. The area in question includes the administrative counties of London and Middlesex, the county boroughs of Croydon, East Ham, and West Ham, and parts of the counties of Buckingham, Essex, Hertford, Kent, and Surrey (*ibid.*, Sched. I.). There are definitions of "omnibus" and "omnibus proprietor" (*ibid.*, s. 16), and provisions enabling the Minister of Transport to make regulations as to the routes, position in the roadway, turning and waiting places, etc., of omnibuses and other vehicles (*ibid.*, s. 10, Sched. III.). For the provisions relating to the Advisory Committee set up by the Act, see Addendum to p. 1651.

Pages 1675, 1676.

Incidental undertakings.] To footnote (9) on p. 1675, and footnote (1) on p. 1676, add: *London C. C. v. A.G.* and *A.G. v. Mersey Ry. Co.* were distinguished in *Deuchar's Case*, cited in Addendum to p. 1282.

Page 1677.

Overcrowding motor omnibuses.] To Note to sect. 6, add: A summons for allowing overcrowding in a motor omnibus in breach of sect. 13 of the Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), which provides that no "stage carriage" shall carry more than a limited number of passengers, was dismissed on the ground that the definition of "stage carriage" in sect. 5 of the Stage Carriage Act, 1832 (2 & 3 Wm. IV. c. 120), did not apply to motor vehicles. It was held that, as sect. 1 (1) of the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), provides that light locomotives are to be deemed to be carriages within the meaning of any Act, and that if used as a carriage of any particular class are to be deemed carriages of that class, an offence had been committed (*Dennis v. Miles*, L. R. 1924, 2 K. B. 399; 93 L. J. K. B. 1115; 131 L. T. 146; 88 J. P. 105; 22 L. G. R. 489).

Page 1678.

Malicious prosecution.] To footnote (6), add: But see *Percy v. Glasgow Cpn.*, L. R. 1922, 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 86 J. P. 201; 20 L. G. R. 605, *re* giving passenger into custody after tender of bent coin.

Page 1681.

Heading to page.] In heading to this page: for Part VI. read Part IV.

Page 1689.

Petroleum in harbours, etc.] To Note at commencement of Act, add: As to the discharge of oil into the territorial waters of Great Britain and Northern Ireland and the waters of harbours therein, see the Oil in Navigable Waters Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2361).

Light locomotives.] For footnote (4), read: Set out in Vol. II., Part V., p. 2514.

Page 1694.

Carbide.] For footnote (3), read: Now revoked and replaced by P. C. Order, July 14, 1922, set out in Vol. II., Part V., p. 2512.

Page 1695.

Fees for testing.] To Note to Sched. I., add: The Petroleum Testing Apparatus Fees Order, 1923 (S. R. O. No. 943. Dated Aug. 9), made under sect. 3 of the Act of 1879 and the Fees (Increase) Act, 1923 (13 Geo. V. c. 4, s. 4), provided that "the fee to be paid upon the comparison of apparatus for testing petroleum with the model deposited with the Board of Trade, and the verification of such apparatus, shall be twenty shillings for each apparatus, provided that where the apparatus is rejected without completion of the test the fee shall be ten shillings only."

Page 1702.

Polls.] For footnote (1), read: Set out in Vol. II., Part V., p. 2516.

Page 1706.

Traffic facilities.] To Note to sect. 10, add: A local authority's application to the Commissioners for the re-opening of a closed entrance to a railway station failed, as the closing did not, in the circumstances, constitute a denial of reasonable facilities (*Nottingham Cpn. v. Midland Ry. Co.* (1922), 128 L. T. 539; 21 L. G. R. 71; 67 Sol. J. & W. R. 404).

Railway and Canal Commissioners.] To footnote (12), after words "as amended by," add: Ry. & C. T. Act, 1913 (2 & 3 Geo. V. c. 29), s. 1.

Mines.] As to applications to the Commissioners in respect of the working of mines under small properties, see the Mines (Working Facilities and Support) Act, 1923 (13 & 14 Geo. V. c. 20). As to protection of ancient monuments, see sect. 8 (8).

Page 1709.

Pawnbrokers Act.] To Note to sect. 40, add: The present Act and the Pawnbrokers Act, 1922 (12 Geo. V. c. 5), may be cited as "the Pawnbrokers Acts, 1872 and 1922." The Act of 1922 does not affect the matters dealt with in this work.

Page 1714.

Debenture stock.] To Note to sect. 6, add: As to the issue of stock for electricity purposes, see sect. 3 of the Electricity (Supply) Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2364).

Page 1743.

Pollution of fisheries.] To Note to sect. 1, add: As to the pollution of fisheries, see the provisions of the Act of 1923, quoted in Vol. II., Part V., p. 2522.

Page 1746.

Prescription.] To reports of *Hulley v. Silversprings Bleaching Co.* in footnote (7), add: L. R. 1922, 2 Ch. 268.

Page 1758.

Port of London.] To footnote (9), add: Now repealed and re-enacted by Port of London Act, 1920 (10 & 11 Geo. V. c. clxxiii.).

Page 1761.

Tidal waters.] To Note to sect. 20, add: As to the extension of the meaning of "tidal waters," for the purposes of the Salmon Fisheries Acts, see sect. 55 of the Act of 1923 (set out in Vol. II., Part V., p. 2525).

Page 1762.

Polluting.] To Note to sect. 20, add: As to the discharge of oil into navigable rivers, canals, etc., see the Oil in Navigable Waters Act, 1922 (set out in Vol. II., Part IV., p. 2361).

Page 1768.

Definition of canal boat.] To Note to sect. 14, add: An order under this section was made in 1922 (see Vol. II., Part V., p. 2384).

Page 1774.

Hundred.] In footnote (4), for 38 & 39 Vict. c. xciv., read 38 & 39 Vict. c. cxciv.

Page 1779.

Extraordinary traffic.] To reports of *Butt & Co. v. Weston-super-Mare U. D. C.* in H. L. in footnote (11), add: L. R. 1922, 1 A. C. 340; 91 L. J. Ch. 305; 86 J. P. 113; 20 L. G. R. 397; considered in the *Glasgow Case*, cited in Addendum to p. 1781.

Page 1781.

Nuisance.] To Note to sect. 23, add: As the defendants' traffic had not rendered the highway inconvenient for the public use, a common law action for damages was dismissed (*Glasgow City Cpn. v. Barclay Curle & Co.*, 1923, H. L., 93 L. J. P. C. 1; 130 L. T. 33; 87 J. P. 160; 21 L. G. R. 565).

Page 1790.

Payment into bank.] To Note to sect. 5, add: The Accounts (Payment into Bank) Order, 1922, was made under the present section by the Minister of Health on Dec. 28, 1922 (set out in Vol. II., Part V., pp. 2417, 2418). For M. H. Circular on Order, see 21 L. G. R. (Orders) 15.

Page 1794.

Sparks.] To footnote (7), add: And *Mansell's Case*, cited in Note to P. H. Act, 1875, s. 91, in Vol. I., Part I., p. 186. As to sparks from railway engines, see *ibid.*, p. 283, and Addendum to that page. A highway authority were held liable in damages for the burning down of a thatched roof cottage by a spark from their steam roller, but a new trial was ordered as the wrong measure of damages had been applied (*Moss and Rogers v. Christchurch R. D. C.*, 1925, K. B. D., 23 L. G. R. 331; 89 J. P. Jo. 89; 60 L. J. Jo. 159, 183, 212). Compare the *Fulham Case*, cited in Addendum to p. 254.

Continuance of Acts.] To Note to sect. 33, add: The Act of 1865 is now permanent—see Addendum to p. 2190.

Page 1798.

Forms for financial statements.] To Note to sect. 3, add: No financial statement is required in the case of the "extraordinary audits" provided for by sect. 2 of the Audit (Local Authorities, etc.) Act, 1922 (quoted in full in Vol. I., Part I., Div. I., p. 636).

Page 1813.

Personation.] To footnote (10), add: as amended by Costs in Criminal Cases Act, 1908 (8 Edw. VII., c. 15), s. 10, Sched.

Pages 1829, 1830.

Income tax.] In Note to sect. 139, for note on *Sugden v. Leeds Cpn.*, substitute cross-reference to note on that case in Note to Public Health Act, 1875, s. 209, Vol. I., Part I., Div. I., p. 567 (12).

Page 1851.

Corrupt practices.] To footnotes (4) and (6), add: Now made permanent by Expiring Laws Act, 1922 (12 & 13 Geo. V. c. 50), s. 1, Sched. I., Part I.

Page 1870.

Failure to make return.] To Note to sect. 21, add: In a case in which it was held (a) that sect. 224 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 224), has no application to proceedings under the present section, and (b) that the words in sub-sect. (4) of the present section "sit or vote in the council" do not refer to committees of the council, judgment was postponed for the defendant to apply for relief, the action not having been brought by the common informer in the public interest (*Nichol v. Fearby (No. 1)* (1922, K. B. D.), 127 L. T. 522; 86 J. P. 204; 20 L. G. R. 705).

On the application for relief, it was held (1) that a High Court Judge not on the election rota and sitting in the ordinary course of King's Bench work has jurisdiction, (2) that ignorance of the law may amount to "inadvertence," and (3) that the making of the application after the institution of proceedings for the penalty is no bar to the granting of relief (*Nichol v. Fearby (No. 2)*, L. R. 1923, 1 K. B. 480; 92 L. J. K. B. 280; 128 L. T. 662; 87 J. P. 70; 21 L. G. R. 157).

Page 1889.

Appointed day.] To footnote (2), add: The date was the 1st April, 1889 (51 & 52 Vict. c. 41, s. 109).

Page 1892.

Cost of extra police.] To Note to sect. 3, add: The manager of a colliery agreed to pay for police billeted at the colliery during a strike. It was held that, though police protection must be provided without payment, billeting was not necessary and the agreement was therefore neither illegal nor devoid of consideration (*Glasbrook Bros. v. Glamorgan C. C.*, L. R. 1925 A. C. 270; 94 L. J. K. B. 272; 132 L. T. 611; 89 J. P. 29; 23 L. G. R. 61).

Damage during riots.] To footnote (6), add: Applied, in *Pitchers v. Surrey C. C. (C. A.)*, L. R. 1923, 2 K. B. 57; 92 L. J. K. B. 415; 128 L. T. 746; 87 J. P. 113; 21 L. G. R. 264, to mutiny of Canadian soldiers in Whitley Camp.

An action for compensation under this Act not being a "penal action," the two years' limit imposed by the Civil Procedure Act, 1833 (3 & 4 Wm. IV. c. 42, s. 3), does not apply, and in any case the time limit would run from the failure of the police authority to fix the compensation and not from the date of the damage (*Jarvis v. Surrey C. C.*, L. R. 1925, 1 K. B. 554; 132 L. T. 745; 89 J. P. 51; 23 L. G. R. 195).

Page 1893.

Explosives.] To Note to sect. 7, add: Fresh conditions on the sale of explosives were imposed by Order in Council dated February 6, 1922, under 38 Vict. c. 17, s. 43 ("Loc. Gov. 1922," p. 253). As to explosives in dustbins, see the Note to sect. 42 of the Public Health Act, 1875 (Vol. I., Part I., Div. I., p. 120).

Page 1900.

Retention of main road.] To Note to sect 11, add: In 1922 the Minister of Health informed an urban district council that they could not revoke the retention of a main road which they had maintained out of county council re-imbursements for thirty-two years.

In an action to restrain a county council from imposing a condition, on the maining of a highway, that the urban authority should not claim to retain it, the defendants submitted to judgment (*Walton-on-Thames U. D. C. v. Surrey C. C.*, 1924, Ch. D., MS.).

Page 1901.

Footpaths.] To footnote (5), add: See also *Cumnock and Holmhead Magistrates v. Murdock*, 1910 S. C. (S.) 748; 47 Sc. L. R. 639; 1 Glen's Loc. Gov. Case Law 55.

Page 1910.

Local taxation licences.] To footnote (6), add: And the Local Taxation (Licence Officers) Order, 1922 (S. R. O. No. 213), set out with M. H. Circular in 20 L. G. R. (Orders) 61-64, 165, 166.

Page 1911.

Authority to prosecute.] To footnote (4), add: But see *Adams v. McGill*, 1923 Ir. K. B. 98.

Page 1912.

Entertainments duty.] To footnote (2), add: 12 & 13 Geo. V. c. 17, ss. 11, 13.

To footnote (13), add: See also *Attorney General v. Valentia* (1924, C. A., 41 T. L. R. 78), *re* Hurlingham Club subscriptions; *Gibson v. Reach* (L. R. 1924, 1 K. B. 294; 93 L. J. K. B. 154; 130 L. T. 411; 87 J. P. 206; 21 L. G. R. 802), *re* room for viewing procession.

Page 1915.

Sanitary officers.] In footnote (4), for the headings "Medical Officer of Health" and "Sanitary Inspector," read the heading "Sanitary Officers."

Page 1916.

Police.] To footnote (4), add: See H. O. Order, March 24, 1922 (20 L. G. R. (Orders) 154-164).

Page 1920.

Main roads.] To reports of *Southampton C. C. v. Bournemouth Cpn.* in footnote (12), add: 20 L. G. R. 445. For Green, J., read Greer, J.

Page 1928.

Alteration of electoral divisions.] To Note to sect. 54, add: As to the alteration of electoral divisions under the present section without local inquiries, see sect. 2 of the Representation of the People Act, 1922 (set out in Vol. II., Part IV., Div. II., p. 2298).

Counties and boroughs.] To footnote (10), add: The M. H. Instructions of 1920 will be found in Vol. II., Part V., p. 2526.

Page 1929.

Local inquiries.] To Note to sect. 54, add: As to the necessity for local inquiries under the present section in connection with alterations of county electoral divisions, see sect. 2 of the Representation of the People Act, 1922 (12 & 13 Geo. V. c. 12, s. 2).

Page 1932.

Local inquiries.] To footnote (6), add: These Orders have now been superseded by one of 1921 set out in Vol. II., Part V., p. 2508.

Page 1941.

Adjustment of financial relations.] In Note in text on *Southampton C. C. v. Bournemouth Cpn.* (footnote (6)) : for payable by, read payable to.

Page 1946.

Repeal.] In Note to sect. 69, after words "public libraries," add: housing (see *H. T. P. Act*, 1919, ss. 8 (1), 18 (4), Vol. I., Part II., Div. III., pp. 1134, 1138).

Page 1947.

Accounts.] To Note to sect. 73, add: Under sect. 1 of the Audit (Local Authorities, etc.) Act, 1922 (quoted in full in Vol. I., Part I., Div. I., p. 636), these accounts are now made up yearly instead of half-yearly, and, under sect. 2 of the same Act (quoted *ibid.*), "extraordinary audits" may be directed by the Minister of Health.

Page 1950.

Motor cycles.] In footnote (7), for *O'Donoghue v. Moor* read *O'Donoghue v. Moon*.

Page 1952.

Local inquiries.] To Acts mentioned in Note to sect. 87, add: the Isolation Hospitals Act, 1893 (see sect. 24, Vol. I., Part II., Div. I., p. 951), and the Housing Act, 1903 (see Sched., par. (8), Vol. I., Part II., Div. III., p. 1093, now 1925 Act, s. 116).

In footnote (7), for 2214 read 2210.

Page 1956.

Officer.] To footnote (9), add: As to the effect of s. 118 on right to dismiss clerks of the peace, see Addendum to p. 527.

Page 1960.

Audit stamp duties.] In footnote (4), after words "present Schedule," add: as amended by Finance Act, 1921 (11 & 12 Geo. V. c. 32), s. 61.

Page 1963.

Retrospective statutes.] To footnote (21), add: *Landrigan v. Simons*, L. R. 1924, 1 K. B. 509, a decision that the Rent Restrictions (Notices of Increase) Act, 1923 (13 & 14 Geo. V. c. 13), s. 1 (1), is "retrospective."

See also (*re* Gaming Acts) *Beadling v. Goll* (1922, C. A.), 39 T. L. R. 128; 67 Sol. J. & W. R. 298; and *Bowling v. Camp* (1922, K. B. D.), 128 L. T. 342; 39 T. L. R. 31; 67 Sol. J. & W. R. 114.

Page 1968.

Irish Free State.] As Note to sect. 18, add: By the Irish Free State (Consequential Adaptation of Enactments) Order, 1923 (S. R. O. No. 405. Dated March 27), made under the Irish Free State (Consequential Provisions) Act, 1922 (13 Geo. V. Sess II. c. 2, s. 6), "references in any enactment passed before the establishment of the Irish Free State to 'the United Kingdom,' or 'the United Kingdom of Great Britain,' or 'Great Britain and Ireland' or 'Great Britain or Ireland,' or 'the British Islands,' or 'Ireland,' shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State, except that in the Acts mentioned in the Schedule to this Order any such expression as aforesaid shall, to the extent specified in that Schedule, be construed as including the Irish Free State." By the Schedule, "the definition of the British Islands in" the present section, "so far as that section applies to the interpretation of any Act passed after the establishment of the Irish Free State," is the "extent specified" with regard to the present section. A large number of Acts is mentioned in the Schedule, but few of these come within the scope of this work.

Committal for trial.] In footnote (5), after *Rex v. Daily Mirror, Ltd.*, for (K. B. D.) and the reports which follow, read: (C. C. A.), L. R. 1922, 2 K. B. 530; 91 L. J. K. B. 712; 127 L. T. 218; 86 J. P. 151.

Page 1971.

Effect of repeals.] To Note to sect. 38, add: Where one statute repeals another, the later statute is not to be construed by an examination of a differing clause in the earlier statute:

see *per* Pollock, M.R., *re* Bills of Sale Acts, 1854 and 1858, in *Stephenson v. Thompson* (1924, 22 L. G. R. at p. 361). As to causes of action accruing before repeals, see *Henshall v. Porter*, L. R. 1923, 2 K. B. 193; 92 L. J. K. B. 866; 129 L. T. 443 (*re* Gaming Acts).

As to the effect in a repealing Act of a clause saving "any right or liability which may have accrued" before the repeal, see *In re Coal Mines Central Agreement* (C. A., L. R. 1923, 1 Ch. 586; 92 L. J. Ch. 446; 129 L. T. 203).

The repeal of an Act of 1910 by an Act of 1921 was held to render inoperative a provision in an unrepealed Act of 1864 (*re* closing licensed premises): see *Smith v. Fennell*, L. R. 1924, 1 K. B. 556; 88 J. P. 74; 22 L. G. R. 192.

To footnote (6), add: See also *Hamilton Gell's Case*, cited in Addendum to p. 1470.

In footnote (9), add: See also *Rex v. McLain* (1922, C. C. A.), 91 L. J. K. B. 562; 126 L. T. 642; 86 J. P. 135; 16 Cr. App. R. 107, as to effect of expiry of Grand Juries (Suspension) Act, 1917 (7 Geo. V. c. 4).

Page 1979.

Water rights.] To Note to sect. 1, add: The present Act was held not to apply to a dispute as to water rights (see Addendum to p. 1990).

Libel.] To footnote (1), add: See also *Hope's Case*, cited in Addendum to p. 1986.

Page 1986.

Officers of local authority.] To Note to sect. 1, add: The present Act was held to protect the medical officer of certain schools of the Bermondsey Guardians from an action for libel brought after the expiration of six months from its publication (*Hope v. Ridley*, 1924, Bailhache, J., *Times*, March 28, 59 L. J. Jo. 188). Further as to this case, see Addendum to p. 1987.

Page 1987.

Time to take point.] To Note to sect. 1, add: Dismissal of an action against a medical officer of health for libel, ordered by a master to be tried on a preliminary point of law based on the present Act, was held wrong as the evidence might show that the Act did not apply, malice being alleged (see *Hope's Case* in Addendum to p. 1986).

Delegated powers.] In footnote (4), for *Scott v. Gamble* read *Stott v. Gamble*.

Page 1988.

Continuance of injury.] To footnote (10), add: See also *Brownlie v. Barrhead Magistrates* (1923 S. C. (S.) 915) where premises were flooded three times and the Court held that claims in respect of the first two were barred by the present Act.

Page 1990.

Costs.] To Note to sect. 1, add: An action against a local authority claiming a declaration that the plaintiff had the sole right to use a certain stream, and an injunction restraining trespass on the stream, having been dismissed, the defendants claimed solicitor and client costs under the present Act. This claim was held bad, the action, though in form for a wrong, being in substance to determine water rights (*Grant & Sons v. Dufftown Magistrates*, 1924, 61 Sc. L. R. 650). But see the *Acton Case*, cited in Vol. I., Part I., Div. I., p. 471.

Page 2006.

Gifts of property.] In 1922 the Minister of Health decided that a parish council could receive a gift of land for allotment purposes on trust to be let to parishioners at a maximum rent and proceeds in excess of expenses to be paid to incumbent for upkeep of church.

Page 2010.

Compulsory purchase.] To footnote (2), add: Now revoked by the Parish Councils (Compulsory Purchase of Lands) Order, 1922 (20 L. G. R. (Orders) 30-34).

Page 2012.

Maintenance of footpaths.] To Note to sect. 13, add: Where an auditor surcharged a parish council that had repaired what was really a "road" and not a mere "footpath," the Minister of Health (in 1922) discharged the surcharge on the merits under sect. 247 (8) of the Public Health Act, 1875, but recommended communication with the rural district council before further money was so spent.

Page 2015.

Endowed Schools Act.] To footnote (7), add: Made permanent by Expiring Laws Act, 1922 (12 & 13 Geo. V. c. 50), s. 1, Sched. I., Part I.

Page 2020.

Summary remedies.] To footnote (6), add: As to costs, see now Costs in Criminal Cases Act, 1908 (set out in Vol. II., Part IV., Div. II., p. 2208), which repeals 5 & 6 Wm. IV. c. 50, s. 95, from "and the costs" to "shall be situate," and 25 & 26 Vict. c. 61, s. 19, from "and the costs," to the end of the section.

Page 2021.

Validity of dismissal.] In footnote (3), for 82 L. J. read 88 L. J.

Page 2022.

Custody of court rolls.] To Note to sect. 17, add: An action in detinue by the purchaser of a manor against a bookseller, who had purchased the court rolls of the manor from a waste-paper merchant and advertised them for sale ten years before the commencement of the action, was held barred by the Statute of Limitations. It was also held that the plaintiff could not have obtained the rolls without payment, even if the action had not been barred (*Beaumont v. Jeffery*, L. R. 1925, 1 Ch. 1; 93 L. J. Ch. 532; 132 L. T. 246).

Page 2059.

Rating owners.] To Note to sect. 34, add: Where owners were rated under these provisions, and rent collectors paid the rates from 1916 to 1920, though their name was not in the rate books, it was held that these collectors were not estopped from resisting distress warrants for the 1921 rate on the ground that their name was not in the rate book (*Pigg v. Tow Law Overseers*, 1924, K. B. D., 22 L. G. R. 17).

Page 2070.

Abolition of disqualification.] To Note to sect. 46, add: But relief from poor law guardians, though granted to an unemployed person "on loan," still disqualifies for membership of an urban district council (see *Chard v. Bush*, Vol. I., Part I., Div. I., p. 821 (15a); now also reported in L. R. 1923, 2 K. B. 849; 92 L. J. K. B. 1013; 130 L. T. 60; 87 J. P. 154; 21 L. G. R. 601).

Page 2071.

Paid officer.] To Note to sect. 46, add: But a payment made to a medical practitioner in pursuance of the Infectious Diseases (Notification) Act, 1889, creates no disqualification (see s. 11, Vol. I., Part II., Div. I., p. 934).

Page 2073.

Disqualification.] In footnote (3), for c. 50 read c. 76.

Page 2074.

Assignment of contract.] To footnote (8), add: See also *Hyde's Case*, cited in Vol. I., Part I., Div. I., p. 451 (13).

Page 2076.

Concern in contracts.] To Note to sect. 46, add: The principle of *Gophir Diamond Co. v. Wood* has now been extended to a case arising under the present section (*Everett v. Griffiths*, L. R. 1924, 1 K. B. 941; 93 L. J. K. B. 583; 88 J. P. 93; 22 L. G. R. 330) in which it was held that an employee not remunerated according to profits was neither interested nor concerned in a contract between a board of guardians and his employers. But it was held that, as he held one £1 share in the company and had been present when a resolution as to the contract was "carried unanimously," he had "voted" and was accordingly disqualified. The action was dismissed, however, because, so far as the penalty claim was concerned the summary remedy was exclusive, and so far as the claim for a declaration and injunction was concerned the plaintiff's motives were "revenge and resentment."

To footnote (3), add: But a salaried managing director of a company was held not to be disqualified by sect. 12 of the Municipal Corporations Act, 1882 (*Lapish v. Braithwaite*, C. A., L. R. 1925, 1 K. B. 474; 93 L. J. K. B. 1123; 131 L. T. 586; 88 J. P. 187; 22 L. G. R. 665),

The decision of Bailhache, J., to the contrary was reversed, Atkin, L.J., dissenting, and an appeal to the House of Lords is pending (see comments adverse to decision of C. A. in 59 L. J. Jo. 673 and 59 Sol. J. & W. R. 43).

In footnote (4), for *O’Ryan* read *O’Regan*.

Page 2077.

Interest in dwellings.] To Note to sect. 46, add: See also sect. 22 (f) of the Housing, etc., Act, 1923 (Vol. I., Part II., Div. III., p. 1083).

Page 2079.

Disqualification.] In footnote (2), for c. 50 read c. 76.

Page 2084.

Applied enactments.] To Note to sect. 48, add: sub-sect. (3) of the present section and the Schedule to the Order of 1898 are impliedly repealed, so far as forgery of nomination papers is concerned, by the Forgery Act, 1913 (*Rex v. Taylor*, July 7, 1924, C. C. A., 22 L. G. R. 681; 40 T. L. R. 836; 59 L. J. Jo. 482).

Page 2092.

Accounts and audit.] To Note to sect. 58, add: See Addendum to p. 1947.

Page 2093.

Reports and privilege.] To footnote (8), add: In *The Hopper No. 13* (L. R. 1925 P. 52; 94 L. J. P. 45; 132 L. T. 736) a report, as to a collision, made to the Port of London Authority in accordance with general instructions to masters to make reports “immediately after every casualty,” but on a printed form headed “confidential report furnished for the information of the Authority’s solicitor in view of anticipated litigation,” was held privileged.

Page 2096.

Division of parish into wards.] A parish which was an urban district was for the purpose of the election of urban district councillors divided into five wards, but for the purpose of the election of the guardians of the poor for the parish, who were seven in number, it remained undivided, the guardians being elected in one election for the whole parish. In these circumstances the county council made an order that for the purpose of the election of guardians the parish should be divided into the same five wards, and that of the seven guardians for the parish three of the wards should have one guardian each and the other two wards two guardians each. It was held that the order, notwithstanding that it re-affirmed the existing number of guardians for the parish, did “fix” the number of guardians for the parish within the meaning of the earlier part of sub-sect. (1) of the present section, and therefore, having been made for that purpose, that in purporting to divide the parish into wards under the later part of the sub-section it was a valid order. *Rex (Hemsworth Guardians) v. Yorkshire (W. R.) C. C.* (K. B. D.), L. R. 1922, 2 K. B. 368; 92 L. J. K. B. 17; 127 L. T. 146; 86 J. P. 102; 20 L. G. R. 388.

Page 2103.

Summer time.] To Note to sect. 73, add: See also the Act of 1922 set out in Vol. II., Part IV., Div. II., p. 2360.

Calendar month.] To footnote (8), add: “But in mortgage transactions a month means “calendar” month (*Schiller v. Petersen & Co.* (C. A.), L. R. 1924, 1 Ch. 394; 130 L. T. 810; 40 T. L. R. 268). See also *Phipps & Co. v. Rogers* (C. A., L. R. 1925, 1 K. B. 14; 93 L. J. K. B. 1009; 132 L. T. 240; 89 J. P. 1) as to validity of notice to quit hotel.

Page 2106.

Sunday.] To Note to sect. 73, add: Sundays, etc., are expressly required to be excluded in reckoning time for certain purposes, *e.g.*, under Rule 42 of Sched. I. of the Representation of the People Act, 1918 (set out in Vol. II., Part IV., Div. II., p. 2297).

In footnote (8), for 2 E. & E. 399 read 2 E. & E. 392.

Page 2108.

Ecclesiastical charity.] In footnote (4), page in 2 Glen’s Loc. Gov. Case Law is 51 and not 5.

Page 2122.

Continuance of Act.] To Note to sect. 1, add: By the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part III.), it was continued until the 31st March, 1926. It was amended by the temporary Agricultural Rates Act, 1923, which will be found in the Note to the Agricultural Rates Order, 1923, which is set out in Vol. II., Part V., p. 2422. As to expiry of Act of 1923, see Addendum to p. 2425.

Page 2128.

Ecclesiastical tithe rentcharge.] As to the partial relief of ecclesiastical tithe rentcharge from rates, see the Acts of 1920 and 1922 set out in Vol. I., Part I., Div. I., pp. 582, 583.

Page 2129.

Locomotives Acts.] To footnote (4), add: Made permanent by Expiring Laws Act, 1922 (12 & 13 Geo. V. c. 50, s. 1, Sched. I., Part I.): and to footnote (7), add same.

Page 2133.

Motor cars.] In footnote (7), for *O'Donoghue v. Moore* read *O'Donoghue v. Moon*.

Page 2138.

Factory Acts.] For footnote (6), read: This Bill has been dropped.

Page 2150.

Night work.] For footnote (2), read: This Bill has been dropped.

Page 2151.

Underground bakehouses.] In footnote (5), for *Morris v. Beale* read *Morris v. Beal*.

Page 2152.

Special orders.] For first part of Note to sect. 107, read: The Home Work Order of 1907 was replaced by the Order of 1911 set out in Vol. II., Part V., p. 2415.

Page 2160.

Warning.] As Note to sect. 136, add: Warnings by employers against dangers (*e.g.*, live electric wire) do not afford a defence to proceedings under the present section (*Fotheringham v. Babcock & Wilcox, Ltd.*, 1922 S. C. (J.) 60; 59 Sc. L. R. 497).

Page 2170.

Public building.] To footnote (1), add: As to the meaning of "public building" in this clause, see *Mile End Old Town Guardians v. Hoare*, cited in Note to P. H. Act, 1875, s. 157, Vol. I., Part I., Div. I., p. 387 (56).

Page 2176.

Cremation regulations.] To footnote (2), add: See amendment made in 1920, and quoted in Vol. II., Part V., p. 2409.

Page 2178.

Registration of nurses.] To footnote (5), add: By order dated Dec. 5, 1922, the Minister gave notice that a register of nurses had been compiled (see 20 L. G. R. (Orders) 328).

Dangerous drugs.] To footnote (9), add: See also Orders mentioned in Vol. I., Part II., Div. II., p. 958 (29), and in the Addenda to that page.

Page 2179.

Medical supervision.] To Note to sect. 1, add: The words in sub-sect. (2) of the present section "under the direction of a qualified medical practitioner" mean that the practitioner must give proper instructions to the uncertified midwife (*Davis v. Morris*, L. R. 1923, 2 K. B. 508; 92 L. J. K. B. 678; 129 L. T. 88; 87 J. P. 83; 21 L. G. R. 462).

Page 2181.

Emergency cases.] To footnote (4), add: As to "Fees of doctors called in by midwives," see M. H. Circular, Dec. 20, 1922 (set out in 20 L. G. R. (Orders) 315).

Page 2190.

Permanence of Act.] For Note to sect. 8, read: The present Act was made permanent by the Expiring Laws Act, 1922 (12 & 13 Geo. V. c. 50, s. 1, Sched. I., Part I.).

Page 2195.

Stamp duty.] To Note to sect. 9, add: The Finance Act, 1922 (12 & 13 Geo. V. c. 17, s. 47) altered the stamp duties chargeable under sub-sect. (6) of the present section after Apr. 1, 1923, from £5 to £10 and from £3 to £6 respectively.

Page 2203.

New Act.] For footnote (3) substitute: The Bill received the Royal Assent on the 31st July, 1925. The title of the Act is: The Advertisements Regulations Act, 1925 (15 & 16 Geo. V. c. 52). Sect. 1 extends the powers of making bye-laws to advertisements which "disfigure or injuriously affect (a) the view of rural scenery from a highway or railway, or from any public place or water; or (b) the amenities of any village within the district of a rural district council; or (c) the amenities of any historic or public building or monument or of any place frequented by the public solely or chiefly on account of its beauty or historic interest." It also provides that "the expression 'advertisements' includes any structure or apparatus erected or intended only for the display of advertisements," and contains a saving for railways, etc. Sect. 2 relates to the delegation of powers by county councils to district councils.

Page 2204.

Rating advertising stations.] To footnote (6), add: See also *Lewisham B. C. v. Avey*, cited in Vol. I., Part I., Div. I., p. 389 (23).

Page 2220.

Road fund.] To footnote (7), add: See Treasury Regulations of Sep. 6, 1922, under this section (S. R. O. No. 1025, "Loc. Gov. 1922," pp. 290, 291).

Page 2232.

National Insurance Acts.] To Note on this page, add: £250 substituted for £160, in the exemption of employments otherwise than by way of manual labour, by the National Health Insurance Act, 1919 (9 & 10 Geo. V. c. 36), s. 1.

Unemployment insurance.] As to insuring persons employed on relief works carried out under the Act of 1920, see Addendum to p. 2350.

Page 2241.

Notice as to half holidays.] As footnote to sect. 1 (2), add: See Arts. 1 to 3 of H. O. Order of April 1, 1912, set out in Vol. II., Part V., p. 2544.

Page 2243.

Form of notice.] For footnote (3), read: Set out in 10 L. G. R. (Orders) 224-228, and summarised in Note to Schedule of Shops Regulations, 1912, in Vol. II., Part V., p. 2548.

Page 2244.

Inquiries.] As footnote to sect. 4 (2), add: See Art. 4 of H. O. Order of Apr. 1, 1912, set out in Vol. II., Part V., p. 2545.

Page 2246.

Composite shops.] To Note to sect. 4, add: The front of a shop was used for the sale of jewellery and tobacco, and the back for hairdressing. The day fixed for closing hairdressers' shops was held not to apply (*Macdonald v. Groundland*, 1923 S. C. (J.) 28).

Page 2250.

Mixed shops.] As footnote to sect. 10 (1), add: See Art. 5 of H. O. Order of Apr. 1, 1912, set out in Vol. II., Part V., p. 2545.

Page 2254.

Meaning of "shop."] To Note to sect. 19, add: A booth containing mechanical contrivances for games was held not to be a "shop" within the present section (*Dennis v. Hutchinson*; *Trafford v. Hutchinson*, L. R. 1922, 1 K. B. 693; 91 L. J. K. B. 584; 126 L. T. 669; 86 J. P. 85; 20 L. G. R. 199).

Page 2256.

Shops Act, 1920.] For end of footnote (3), read: until the 31st Dec., 1925, by the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.).

Page 2257.

Sunday closing.] As Note to Act of 1920, add: The closing hour on Sunday is 8 p.m. These Acts do not impliedly repeal the Sunday Observance Act, 1677 (29 Car. II. c. 7; *London C. C. v. Gainsborough*, L. R. 1923, 2 K. B. 301; 92 L. J. K. B. 597; 129 L. T. 633; 87 J. P. 102; 21 L. G. R. 312).

Auction marts.] Where auctioneers closed their doors at 8 p.m., and sold goods to about 200 people who had entered before that hour, it was held that an offence had been committed (*Salford Cattle Market, Ltd. v. Osborne* (1923, K. B. D.), 92 L. J. K. B. 1018; 129 L. T. 686; 87 J. P. 134; 21 L. G. R. 468).

Page 2262.

Duration.] To footnote (3), add: And until the 31st Dec., 1925, by the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part II.).

Page 2267.

Duration.] To footnote (11), add: The Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.), continued until the 31st December, 1925, ss. 5 (except (a)), 6, 7, 9, 12, 13 (except (4) (5) (6)), 14, 21, 22, and 24 (1) of the present Act, and the L. G. E. P. (No. 2) Act, 1916 (c. 55).

Page 2268.

Registration of war charities.] As Note to sect. 2, add: The fact that a charity has been registered as a trade union does not render unnecessary its registration under the present Act and under the Blind Persons Act, 1920 (*Barber v. Chudley*, 1923, K. B. D., 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 144).

Page 2269.

Blind persons.] To footnote (4), add: And M. H. Memo. and Circular, March 31, 1922, set out in 20 L. G. R. (Orders) 66-70.

Page 2273.

Extension of time.] To Note to sect. 3, add: By sect. 1 (3) of the Railway and Canal Commission (Consents) Act, 1922 (12 & 13 Geo. V. c. 47). "Where the consent of the Railway and Canal Commission is necessary to the acquisition of any land under sect. 3 of the principal Act, and an application is made to the Commission for their consent before the expiration of the period within which the power of acquisition must be exercised, and the Commission give their consent, the power of acquisition may be exercised if notices to treat are served within three months after the consent of the Commission is given, notwithstanding that the time within which the power must be exercised under the said section has elapsed."

Page 2277.

Consents.] To Note to sect. 6, add: By sect. 1 (1) (2) of the Railway and Canal Commission (Consents) Act, 1922 (12 & 13 Geo. V. c. 47), "(1) Where before the 31st day of August, 1922, an application has been made to the Railway and Canal Commission under sub-sect. (3) of sect. 6 of the Defence of the Realm (Acquisition of Land) Act, 1916 (hereinafter referred to as the principal Act) for the consent of the Commission to any highway being kept closed after that date, the highway may be kept closed until the application has been disposed of by the Commission, but not for more than six months after the said 31st day of August unless the Commission in any particular case allow a longer time; and where the Commission on any such application consent to the highway being kept closed for a limited period, the Commission may subsequently, on any application being made at any time before the expiration of such limited period, extend that period. (2) Where an application has before the 28th day of February, 1923, been made to the Railway and Canal Commission for their consent to the occupying department continuing in the possession of land, and the application is not disposed of by the Commission before the 31st day of August, 1923, the occupying department may continue in possession of the land until the application has been disposed of, but not for more than six months after the 31st day of August, 1923, unless the Commission in any particular case allow a longer time: Provided that this sub-section shall not apply to commons or common lands."

Page 2280.

Meaning of "erected."] To Note to sect. 13, add: A partly erected building was held to have been "erected" for the purpose of sub-sect. (1) (b) of the present section (*Minister of Munitions v. Chamberlayne*, cited in Vol. II., Part IV., Div. II., p. 2127 (7)).

Page 2282.

R. P. Orders.] To footnote (9), add: P. C. Order, June 20, 1922, 20 L. G. R. (Orders) 258. See also Orders cited in Vol. II., Part V., p. 2538.

Page 2287.

Registration expenses.] As Note to sect. 15, add: For scale fixed under the present section, see Treasury Order, Nov. 27, 1922, set out in 20 L. G. R. (Orders) 323.

Page 2298.

Electoral divisions.] To footnote (8), add: See H. O. Order under this section referred to in Vol. II., Part V., p. 2538.

Page 2299.

Maternity Orders, etc.] To footnote (11), add: Order, Aug. 9, 1918, and Circular, 16 L. G. R. (Orders) 595.

To footnote (12), add: M. H. Memoranda, May, July, 1922, set out in 20 L. G. R. (Orders) 127-131. The Order of 1909 as to London was rescinded by M. H. Order, Sep. 16, 1922, 20 L. G. R. (Orders) 251.

Page 2300.

Wales.] To Note to sect. 2, add: The functions of the Minister of Health under the present Act, "so far as concerns Wales and Monmouthshire," have been transferred to the Welsh Board of Health (see M. H. Circular, Sep. 30, 1920, 18 L. G. R. (Orders) 397).

To footnote (4), add: Circular, June 30, 1924, 22 L. G. R. (Orders) 172.

Page 2302.

Water charges.] To footnote (1), add: Set out in Vol. II., Part V., p. 2567.

Page 2304.

Duration.] For the last part of footnote (3), read: until the 31st December, 1925, by the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.).

Page 2311.

Consultative councils.] To Note to sect. 4, add: The Ministry of Health (Consultative Councils) Amendment Order, 1923 ("Loc. Gov." 320. Dated June 26), altered the constitution of these councils in relation to national health insurance approved societies.

Welsh Board of Health.] As Note to sect. 5, add: For the powers of the Minister of Health transferred to the Welsh Board of Health, see the Circular of the Minister of Health dated the 30th September, 1920, partly quoted in the Note to sect. 1 of the Public Health (Regulations as to Food) Act, 1907 (Vol. I., Part II., Div. II., p. 1023. The Circular is set out in full in 18 L. G. R. (Orders) 397).

Page 2316.

Board of Trade exceptions.] To Note to sect. 2, add: By the Ministry of Transport (Board of Trade Exception of Powers) (Amendment) Order, 1922 (20 L. G. R. (Orders) 167), the date of transfer of powers under the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), ss. 25, 31, and Port of London (Consolidation) Act, 1920 (10 & 11 Geo. V. c. clxxiii), s. 195, was altered to the 1st April, 1922.

Railway charges.] To footnote (19), add: For such an application, see *In re Railway Act*, 1921 (1925, C. A., 89 J. P. 90).

Page 2319.

Canals.] To footnote (8), add: and 15 Geo. V. c. 2 (Canals, Continuance of Charging Powers, Act, 1924).

Page 2325.

Grants for surveyors.] As Note to sect. 17, add: For a draft agreement under sub-sect. (2) of the present section, as to grants towards surveyors' salaries, see the Circular of the Minister of Transport of the 15th August, 1922, set out in "Loc. Gov.," pp. 396, 397.

Page 2335.

Valuation.] To Note to sect. 2, add: As to obtaining the advice of the district valuer when acquiring land in connection with schemes for which no state grant is payable, see M. H. Circular, Nov. 27, 1922 ("Loc. Gov. 1922," p. 9).

Page 2340.

Port sanitary authorities.] As Notes to sects. 3 and 7, add: By the Ministry of Health (Rats and Mice Destruction, Transfer of Powers) Order, 1922 (set out with Circular in 20 L. G. R. (Orders) 200-202), the Minister of Health was substituted for the Minister of Agriculture and Fisheries in these sections so far as they relate to the enforcement of the present Act "in a port sanitary district or in regard to vessels." See also M. H. Circular, Jan. 30, 1923, 21 L. G. R. (Orders) 24, 25.

Page 2342.

Ferries.] To Note to sect. 1, add: Where a bridge is substituted for a ferry, the public have a right of access to and over the bridge free of toll (*East Riding C. C. v. Selby Bridge Proprietors*, 1925, 22 L. G. R. 547; 60 L. J. Jo. 657).

Page 2346.

Agricultural councils.] As Note to sect. 5, add: As to agricultural councils, see the Regulations of the Ministry of Agriculture and Fisheries dated 24th September, 1920 (S. R. O. No. 1810), 4th April, 1921 (S. R. O. No. 619), 21st June, 1921 (S. R. O. No. 1063), and 18th November, 1921 (S. R. O. No. 1821).

Page 2350.

Unemployment insurance.] To Note to sect. 1, add: Unemployed persons may be employed on relief works under the present Act, and come within the unemployment insurance provisions of the Acts referred to in Vol. II., Part IV., Div. II., p. 2232 (*In re East & West Flegg R. D. C.*, 1924 W. N. 164).

Page 2354.

Duration.] For Note to sect. 7, read: The present Act is continued in force until the 31st December, 1925, by the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.).

Page 2355.

Law of property.] To initial Note, add: The Law of Property (Amendment) Act, 1924 (15 Geo. V. c. 5), contains eleven Schedules collecting repeals effected by the Act of 1922 (Sched. I.), amending that Act with regard to details relating to the enfranchisement of copyholds and the conversion of perpetually renewable leaseholds into long terms (Sched. II.), and containing amendments and provisions for facilitating the consolidations effected by the principal Act (Scheds. III. to XI.). As to the Act of 1925, see Addendum to p. 2359.

Page 2359.

Commons.] As Note to sect. 102, add: The Law of Property Act, 1925 (15 Geo. V. c. 20), which comes into operation (see s. 209) on the 1st January, 1926, reproduces (see ss. 193 and 194) the present section and sect. 103 in practically identical terms, except that proviso (a) to sect. 193 (1) ends: "And to any byelaw, regulation or order made thereunder or under any other statutory authority"; and that the following new sub-sect. (6) is added: "This section does not apply to any common or manorial waste which is for the time being held for Naval, Military, or Air Force purposes and in respect of which rights of common have been extinguished or cannot be exercised."

Page 2360.

Duration.] As Note to sect. 3, add: The present Act was continued in force until the 31st December, 1925, by the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.), and made permanent by sect. 1 of the Summer Time Act, 1925 (15 & 16 Vict. c. 64), sect. 2 of which substituted the first Saturday in October for the third Saturday in September.

Page 2362.

Record of oil.] As Note to sect. 3, add: The Oil in Navigable Waters (Records) Order, 1923, was made by the Board of Trade under the present section on the 1st January, 1923 (set out in 21 L. G. R. (Orders) 36).

Page 2363.

Proceedings.] As Note to sect. 7, add: On the 20th February, 1923, the Minister of Agriculture and Fisheries authorised, by a general direction under sub-sect. (4) of the present section, "the institution of proceedings by any local fisheries committee constituted under the Sea Fisheries Regulation Act, 1888 (51 & 52 Vict. c. 54), or by any board of conservators

constituted under the Salmon and Freshwater Fisheries Acts, 1861 to 1921, or any of those Acts, for an offence under the " present Act " committed within the district of the committee or board. Provided that this direction and authority shall not apply to any offence committed by any sanitary authority or joint board " (21 L. G. R. (Orders) 84). As to the Salmon and Freshwater Fisheries Acts, see Vol. I., Part I., Div. I., p. 67, and Addenda to that page.

Page 2371.

Jurisdiction of referee.] As note to sect. 21, add: As to the jurisdiction of referees under the present section, see *Rex v. Minister of Labour* (L. R. 1924, 2 K. B. 210; 93 L. J. K. B. 780; 131 L. T. 190; 88 J. P. 131; 22 L. G. R. 617).

Page 2374.

Amended enactments.] For footnote (1), in the two-volume issue of this work, read: *Ante*, pp. ccxiv-ccxvii. To initial Note on this page, add: A long Memorandum on the present Act was issued by the Ministry of Agriculture and Fisheries, and can be obtained from the Ministry.

Page 2381.

Interpretation.] As Note to sect. 22, add: Sub-sect. (6) of the present section was repealed by the Agricultural Holdings Act, 1923 (13 & 14 Geo. V. c. 9), s. 58, Sched. IV. For new definition of " holding," see sect. 57 (1) of that Act.

PART V.

Page 2425.

Duration.] As footnote to sect. 17 (5), add: By the proviso to sect. 1 (3) of the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1), " Nothing in this subsection shall be deemed to continue the Agricultural Rates Act, 1923," but by sect. 1 of the Agricultural Rates (Additional Grant) Continuance Act, 1925 (15 Geo. V. c. 10), the Act of 1923 is continued until the 31st March, 1926.

Page 2450.

Bovine tuberculosis.] To Note to Art. I., add: The present Order has been re-introduced in an amended form by the Tuberculosis Order, 1925. As to the amendments, see the Circular of the Ministry of Agriculture and Fisheries of the 15th July (23 L. G. R. (Orders) 319).

Page 2482.

Bread.] To Note to Art. 2, add: It was similarly continued until the 31st December, 1925, by the Expiring Laws Continuance Act, 1924 (15 Geo. V. c. 1, s. 1, Sched., Part I.).

Page 2495.

Motor vehicles.] To footnote (3), add: See M. T. Circular in " 1922 Loc. Gov.," pp. 367-370. To footnote (5a), add: " Made under Road Vehicles (Trade Licences) Regulations, 1922, *ibid.*, pp. 370-375. For a case under these Regulations, see *Lees v. Ravenhill* (1924, K. B. D., 132 L. T. 201; 88 J. P. 197; 23 L. G. R. 10; 41 T. L. R. 36), where a Ford lorry carrying a touring body which could take the place of the lorry body was held to be carrying a " load " in contravention thereof.

Trade licences.] To Note on this subject, add: By the Road Vehicles (Trade Licences) Regulations, 1922 (1922 Loc. Gov. 370), motor cars licensed thereunder may not carry more than two persons, in addition to the driver. Breach of this provision, without the owner's knowledge and contrary to his express instructions, by a servant, was held to render the owner liable to the penalty, *mens rea* not being necessary (*Griffiths v. Studebakers*, L. R. 1924, 1 K. B. 102; 93 L. J. K. B. 50; 130 L. T. 215; 87 J. P. 119; 21 L. G. R. 796).

Page 2505.

Relaxation of byelaws.] To footnote (4), add: And by the Act of 1924 to the 31st December, 1925—see Addendum to p. 1140.

Page 2511.

Markets.] To Note to Art. I., add: The Order of 1914 has been re-introduced (see Addendum to p. 2450).

Page 2520.

Misnomer, etc.] To footnote (15), add: But non-delivery of nomination papers within the proper time was held not covered by sect. 72, the provision as to this being "mandatory" (*Cutting v. Windsor*, 1924, K. B. D., 22 L. G. R. 345; 40 T. L. R. 395).

Page 2548.

Meat.] The Public Health (Meat) Regulations, 1924, were first issued in draft form, as set out in Part V., p. 2548. On the 20th December, 1924, the following order was issued bringing them into force as from the 1st April, 1925, with many modifications:—

PART I.—GENERAL.

ART. 1. These Regulations may be cited as the Public Health (Meat) Regulations, 1924, and shall come into operation on the 1st day of April, 1925.

Note.

Imported food.] The Public Health (Imported Food) Regulations, 1925, were made on the 23rd March, 1925 (23 L. G. R. (Orders) 257—274).

ART. 2.—(1) In these Regulations, unless the context otherwise requires—

"The Minister" means the Minister of Health;

"Local Authority" means the Common Council of the City of London, the council of a metropolitan borough, the council of a municipal borough or other urban district, the council of a rural district or the council of the Isles of Scilly;

"Medical Officer of Health" includes any person temporarily acting in that capacity;

"Inspector" means the medical officer of health or any other officer of a local authority, having under the Acts relating to public health or any local Act power to inspect and examine meat intended for the food of man;

"Meat" means the flesh of cattle, swine, sheep, or goats, including bacon and ham and edible offal and fat, which is sold or intended for sale for human consumption, and "animal" means any animal from which meat is derived;

"Slaughter-house" means such part of a slaughter-house, as defined in sect. 4 of the Public Health Act, 1875, as is used for the slaughtering of animals or the dressing or hanging of carcasses for human consumption.

"Stall" includes any stall barrow or vehicle from which meat is offered for sale in a street or other open space or in any market place;

"Room" includes a shop cellar passage or other space forming the whole or part of a building other than a slaughter-house as above defined;

"Vehicle" includes a railway or other van or waggon and a ship or barge but does not include any separate compartment thereof in which meat is not being conveyed.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

ART. 3. The local authority shall enforce and execute the provisions of these Regulations in their district:

Provided that a port sanitary authority shall also be an authority for enforcing and executing the provisions of Part VI within their district.

ART. 4. The medical officer of health, the sanitary inspector and any other officer of a local authority or port sanitary authority duly authorised by the authority in writing shall for the purpose of ascertaining whether these Regulations are being observed have power at all reasonable times to enter and inspect any slaughter-house, room or other place and any stall or vehicle to which these Regulations apply.

ART. 5. A person shall, if so required, give to any officer of a local authority acting in the execution of these Regulations, all reasonable assistance in his power, and shall, in relation to anything within his knowledge, furnish any such officer with all information he may reasonably require for the purposes of these Regulations.

ART. 6. No person who is for the time being suffering from an infectious disease to which the Infectious Disease (Notification) Act, 1889, applies shall take part in the slaughtering of animals intended for human consumption or the handling of meat.

PART II.—SLAUGHTER-HOUSES AND SLAUGHTERING.

ART. 7.—(1) This part of these Regulations shall not apply so as to interfere with the operation or effect of the Diseases of Animals Acts, 1894 to 1922, or of any Order, licence or act of the Minister of Agriculture and Fisheries, made, granted or done thereunder.

(2) Articles 8, 9, 10 and 11 of these Regulations shall not apply where the slaughter takes place in a slaughter-house under the management of a local authority.

Note.

Rural districts.] The Rural District Councils (Slaughter-houses) Order, 1924, follows the present Order.

ART. 8. A person shall not slaughter an animal for sale for human consumption unless he has not less than three hours before the time of slaughtering delivered or caused to be delivered to the local authority notice of the day and time and of the place on and at which the slaughtering will take place: Provided that—

(1) Where it is the regular practice in any slaughter-house to slaughter animals at fixed times on fixed days and written notice of this practice has been given to the local authority special notice under this Article shall not be required to be given in respect of any animal slaughtered in accordance with such practice;

(2) Where by reason of accidental injury, illness, or exposure to infection, it is necessary that an animal should be slaughtered without delay, the provisions of this Article shall be deemed to be satisfied if notice of the slaughter is given to the local authority as soon as reasonably possible, whether before or after the slaughtering takes place.

ART. 9. Where on the slaughter of an animal for sale for human consumption it appears that any part of the carcase or internal organs is or may be diseased or unsound the person by or on whose behalf the animal was slaughtered shall forthwith give notice of the fact to the local authority.

ART. 10. Except as hereinafter provided, the person by or on whose behalf an animal is slaughtered for sale for human consumption, shall not cause or permit the carcase of the animal, including the mesentery and internal organs other than the stomach, intestines and bladder, to be removed from the place of slaughter until such carcase with its organs has been inspected, or its removal has been authorised, by an inspector of the local authority: Provided that—

(1) This Article shall not apply in the case of a sheep or in the case of any animal in respect of whose slaughter special notice is not required to be given by reason of proviso (1) to Art. 8, unless some part of the carcase or organs appears to be diseased or unsound;

(2) The removal may in any case take place at the expiration of three hours from the time of slaughter or six hours from the delivery of any notice relating thereto under Art. 8 or 9 whichever time may be later, save that if such time falls between 7 p.m. on one day and 7 a.m. on the next day, the removal shall not take place before 7 a.m.;

(3) Where the animal was slaughtered by reason of accidental injury and the place of slaughter is unsuitable for the retention of the carcase, the carcase and organs may be removed to some convenient place, but the notice required to be given under Art. 8 shall be given to the local authority in whose district that place is situated and Art. 8 of this Article shall have effect as if that place were substituted for the place of slaughter.

ART. 11.—(1) The notices to be given to the local authority under Arts. 8 and 9 of these Regulations shall be given to such officer and delivered at such address as the local authority may direct and in the absence of any such direction shall be given to the medical officer of health and delivered at his office. The effect of any direction given under this paragraph shall be communicated to the occupier of every slaughter-house in the district and published in one or more local newspapers circulated within the district.

(2) Any such notice, other than a notice of regular slaughtering, may be given orally; and any such notice may be served by letter addressed to the proper officer and delivered at, or prepaid and posted to, the proper address, and in the case of a notice sent by post shall for the purposes of these Regulations be deemed to have been delivered at the time at which it would have been delivered in the ordinary course of the postal service.

ART. 12.—(1) No gut-scraping, tripe-cleaning, manufacture or preparation of articles of food for man or for animals, household washing or work of any nature, other than is involved in the slaughter and the dressing of carcasses, shall be carried on in any slaughter-house.

(2) No articles shall be stored in any slaughter-house except such implements, appliances, receptacles and other articles as are required for the slaughter of animals and processes directly connected therewith, including the dressing, hanging and storage of carcasses, the cleansing of of the slaughter-house and the removal of refuse.

ART. 13. No person shall blow or inflate with his breath, or in any other manner likely to cause infection or contamination, the carcase or any part of the carcase of any animal slaughtered for human consumption.

ART. 14. No person shall use a slaughter-house for the slaughter of any animal which previous to slaughter is not intended for human consumption.

PART III.—MEAT MARKING.

ART. 15—(1) Where a local authority show to the satisfaction of the Minister that they have made suitable arrangements (including the appointment or employment of competent inspectors) for the inspection of animals at the time of slaughter, the Minister may, on the application of the authority, and subject to such conditions, if any, as he may impose, authorise them to use for the purpose and in the manner specified in these Regulations a distinctive mark of a design approved by him and so devised as to indicate the identity of the local authority and of the inspector using the mark.

(2) An inspector of a local authority whose mark has been approved by the Minister shall not affix or impress the same to or on any part of the carcase of an animal slaughtered for the food of man unless he has inspected the whole carcase with the organs in position and such part has appeared to him to be free from disease, sound, wholesome and fit for the food of man.

(3) The local authority and their inspectors shall comply with any directions given by the Minister as to the use of such mark, and they shall not cause the mark to be affixed to or impressed on any carcase except at the request or with the consent of the person having possession of the carcase at the time of inspection.

(4) The Minister may at any time revoke his authorisation of the use of a mark or his approval of a mark adopted as aforesaid.

ART. 16. No local authority shall use or permit to be used a mark indicating that the carcase or any part of the carcase of an animal for human consumption has been inspected unless they have been authorised and such mark has been approved by the Minister and such authorisation and approval have not been revoked.

ART. 17. No person other than an inspector of a local authority authorised as aforesaid shall make use of a mark adopted and approved as aforesaid, and no person shall make use of any mark so resembling a mark adopted and approved as aforesaid as to be calculated to deceive.

ART. 18.—(1) The local authority may determine the charges (if any) to be made for the marking of carcasses either according to the number of carcasses marked or on such other basis as they may think fit, but the charge so determined shall not in any case exceed a sum calculated at the rate of one shilling for each carcase or part of a carcase marked.

(2) Any such charge shall be recoverable summarily as a civil debt from the person requesting or consenting to the marking.

PART IV.—STALLS.

ART. 19. A person selling meat or exposing or offering meat for sale from any stall—

(a) shall keep his name and address legibly painted or inscribed on such stall in some conspicuous position;

(b) shall cause such stall (if not placed in an enclosed and covered market place) to be suitably covered over and to be screened at the sides and back thereof in such a manner as to prevent mud, filth or other contaminating substance being splashed or blown from the ground upon any meat on the stall;

(c) shall cause every counter, slab, vessel or other article on or in which meat is placed for sale and all knives and other implements used in connection with the meat to be thoroughly cleansed after use and to be kept at all times in a cleanly condition;

(d) shall take all such steps as may be reasonably necessary to guard against the contamination of the meat by flies;

(e) shall not place or cause to be placed any meat on, or within eighteen inches of the ground or floor, unless the meat is placed in a closed cupboard or other adequately protected space not less than nine inches from the ground or floor;

(f) shall cause all trimmings, refuse and rubbish to be placed in properly covered receptacles kept for the purpose apart from any meat intended for sale.

PART V.—SHOPS, STORES, ETC.

ART. 20.—(1) The occupier of any room in which any meat is sold or exposed for sale or deposited for the purpose of sale or of preparation for sale or with a view to future sale, and any person who knowingly lets any room or suffers any room to be occupied for such purpose

shall cause the following provisions to be complied with :—(a) no urinal, water-closet, earth-closet, privy, ashpit or other like sanitary convenience shall be within such room or shall communicate directly therewith, or shall be otherwise so placed that offensive odours therefrom can penetrate to such room; (b) no cistern for supplying water to such room shall be in direct communication with or directly discharge into any such sanitary convenience; (c) no drain or pipe for carrying off faecal or sewage matter shall have any inlet or opening within such room unless it is efficiently trapped; (d) no such room shall be used as a sleeping place, and, so far as may be reasonably necessary to prevent risk of the infection or contamination of any such meat as aforesaid, no sleeping place shall communicate directly with such room. (e) Except in the case of a room used as a cold store, adequate means of ventilation shall be provided.

(2) The occupier of any such room shall not cause or suffer any refuse or filth whether solid or liquid to be deposited or to accumulate therein except so far as may be reasonably necessary for the proper carrying on of the trade or business.

(3) Such occupier shall cause the walls and ceiling of such room to be whitewashed, cleansed or purified as often as may be necessary to keep them in a proper state.

(4) Such occupier and every other person engaged in such room shall observe due cleanliness in regard to such room and all articles, apparatus and utensils therein.

(5) The occupier of any such room—(a) shall take all such steps as may be reasonably necessary to guard against the contamination of the meat therein by flies and shall cause the meat to be so placed as to prevent mud, filth or other contaminating substance being splashed or blown thereon; (b) shall not permit any gut-scraping, tripe-cleaning or household washing to be carried on therein; (c) shall cause every counter, slab, vessel or other article on or in which meat is placed for sale and all knives and other implements used in connection with the meat to be thoroughly cleansed after use and to be kept at all times in a cleanly condition; (d) shall cause all trimmings, refuse and rubbish to be placed in properly covered receptacles kept for the purpose apart from any meat intended for sale.

PART VI.—TRANSPORT AND HANDLING.

ART. 21.—(1) Every person who conveys or causes to be conveyed any meat in a vehicle—(a) shall cause to be kept clean the inside and covering of the vehicle, the receptacles in which the meat is placed, and such parts of any slings or other implements or apparatus used for loading or unloading as come into contact with the meat or its covering; and (b) if the vehicle is open at the top, back, or sides or if any other commodity is being conveyed therein, shall cause the meat to be adequately protected by means of a clean cloth or other suitable material; (c) shall not permit any live animal to be conveyed in the vehicle at the same time as meat.

(2) A person engaged in the handling or transport of meat,—(a) shall not permit any part of the meat to come into contact with the ground; and (b) shall take such other precautions as are reasonably necessary to prevent the exposure of the meat to contamination.

(3) Every person who employs a person to carry meat in or about a market or other place in which meat is sold by wholesale or in or about any place wholly or mainly used for the storage of meat before it is distributed to retailers, shall cause such person while so occupied to wear, and every person while so occupied shall wear, a clean and washable head covering and overall.

(4) This Article shall not apply to any meat which is packed in hampers or other strongly constructed and impervious cases or is adequately wrapped in jute or some other stout fabric.

THE RURAL DISTRICT COUNCILS (SLAUGHTER-HOUSES) ORDER, 1924.

ART. 1. [**Short Title and Commencement.**] This Order may be cited as the Rural District Councils (Slaughter-houses) Order, 1924, and shall come into operation on the first day of January, 1925.¹

ART. 2. [**Interpretation.**]—(1) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(2) In this Order, unless the context otherwise requires, “Special order” means any order of the Local Government Board, or of the Minister of Health, declaring any provision of the Public Health Acts, or any enactment repealed by those Acts, to be in force in any rural district, or in any contributory place therein; “The Minister” means the Minister of Health.

ART. 3. [**Provision and regulation of slaughter-houses.**] Rural district councils shall have the powers, duties and liabilities of urban authorities under the enactments relating to

(1) The present Order was made by the Minister of Health on the 20th December, 1924, under sect. 25 (5) of the Local Government Act, 1894 (Vol. II., Part IV., p. 2039).

For M. of H. Circular on Order, dated 12th June, 1925, see 23 L. G. R. (Orders) 287.

slaughter-houses mentioned in Part I and Part II of the Schedule to this Order, and those enactments shall apply to every rural district council and rural district in like manner as they apply to urban district councils and urban districts.

ART. 4. [**Construction of the applied enactments.**] In the construction of any enactment mentioned in the Schedule hereto, as applied to rural district councils and to rural districts by this Order, any reference to the time of the passing of the special Act, or to the date of the adoption of Part III. of the Public Health Acts Amendment Act, 1890, shall be construed as a reference to the commencement of this Order: Provided that where any such enactment is in force, immediately before the commencement of this Order, in a rural district, or any contributory place therein, by virtue of any special order, the date of the commencement of the special order shall, for the purposes of the application of the enactment to that rural district or contributory place, be deemed to be the date of the passing of the special Act, or of the adoption of Part III. of the Public Health Acts Amendment Act, 1890, as the case may be.

ART. 5. [**Expenses.**] Subject to the provisions of this Order and to the power of the Minister under any enactment to determine in any particular case expenses of a rural district council to be special expenses, the expenses incurred by a rural district council in the execution of any enactment mentioned in the Schedule to this Order shall be defrayed as general expenses.

ART. 6. [**Rescission of Orders.**](1) Any provision in any special order by virtue of which any enactment mentioned in the Schedule to this Order may be in force in any rural district or in any contributory place therein, and any provision in any such special order or in any other order of the Local Government Board, or of the Minister, determining that the expenses incurred or payable in the execution of any such enactment as aforesaid shall be special expenses, is hereby rescinded: Provided that nothing in this Article shall affect the operation of any provision in any order determining that the expenses incurred or payable in the execution of the first paragraph of section 169 of the Public Health Act, 1875, shall be special expenses.

(2) Section 38 of the Interpretation Act, 1889, as applied to this Order, shall have effect as if every provision in an order of the Local Government Board or of the Minister which is rescinded by this Article were a repealed enactment.

(3) Where section 31 of the Public Health Acts Amendment Act, 1890, is in force immediately before the commencement of this Order in a rural district or any contributory place therein, nothing in this Article shall affect the power of a court under that section to revoke a slaughter-house licence upon the conviction of the occupier of the slaughter-house of any offence mentioned in the section.

(4) Nothing in this Article shall affect the operation of any byelaw or regulation made, or any licence granted, under any enactment which immediately before the commencement of this Order is in force in a rural district or contributory place therein by virtue of any special order, or shall affect any existing registration of a slaughter-house under any such enactment as aforesaid.

ART. 7. [**Publication of this Order.**](1) After the publication by the Minister in the *London Gazette* of notice that this Order has been made, every rural district council to whom this Article applies shall forthwith cause a statement of the effect of this Order and of the place at which a copy of this Order may be inspected to be published once at least in such one or more local newspapers as may best be calculated to secure the publication of this Order in the whole of their district: Provided that two or more rural district councils may arrange for the publication in a local newspaper, jointly on behalf of such councils, of the statement aforesaid.

(2) Where, immediately before the commencement of this Order, the enactments mentioned in Part II of the Schedule hereto, are in force within the whole of a rural district, paragraph (1) of this Article shall not extend to the council of that rural district.

THE SCHEDULE.

PART I.—ENACTMENT RELATING TO THE PROVISION OF SLAUGHTER-HOUSES.

Enactment applied.	Subject-matter of applied enactment.
The first paragraph of section 169 of the Public Health Act, 1875 (38 & 39 Vict. c. 55).	Power to provide slaughter-houses, and the making of bye-laws with respect to the management and charges for the use of any slaughter-houses so provided.

PART II.—ENACTMENTS RELATING TO THE REGULATION OF SLAUGHTER-HOUSES.

Enactment applied.	Subject-matter of applied enactment.
The Public Health Act, 1875 (38 & 39 Vict. c. 55)— The second paragraph of section 169.	Incorporating with the Public Health Act, 1875, the provisions of the Towns Improvement Clauses Act, 1847, with respect to slaughter-houses. These provisions require all existing slaughter-houses to be registered within 3 months after the passing of the special Act, and prohibit the use of new slaughter-houses unless they are licensed; and empower— (1) The local authority to make byelaws for the regulation of slaughter-houses; (2) The justices to suspend or revoke the licence or registration of a slaughter-house upon a conviction of certain offences; and (3) Officers of the local authority to enter and inspect slaughter-houses, &c.
The third paragraph of section 169.	Saving for the rights, &c., of persons incorporated by any local Act passed before the Public Health Act, 1848, for the purpose of making and maintaining slaughter-houses.
Section 170 The Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59)—	Notice to be affixed to licensed or registered slaughter-houses.
Section 29	Licences for slaughter-houses to be granted for a limited period only.
Section 30	Upon a change of occupation of a registered or licensed slaughter-house, notice to be given to the local authority.
Section 31	Power of justices to revoke a slaughter-house licence upon the conviction of the occupier of certain offences.

Page 2565.

Powers of county councils.] To Note to sect. 12, add: The only provisions of the present Act repealed by the Housing Act, 1925, are the present section, and Sched. II. “so far as it amends sect. 5 of the Housing, Etc., Act, 1923,” sect. 5 of the Act of 1923 being repealed by the Act of 1925.

THE PUBLIC HEALTH ACT, 1925.

15 & 16 GEO. V. c. 71.

An Act to amend the Public Health Acts, 1875 to 1907, and the Baths and Wash-houses Acts, 1846 to 1899, in respect of matters for which provision is commonly made in local Acts and for other purposes relating to the public health.
[7th August, 1925.]

PART I.

PRELIMINARY.

Short title,
construction
and com-
mencement.

Sect. 1.—(1) This Act may be cited as the Public Health Act, 1925.

(2) Parts I. to VIII. of this Act and the Public Health Acts, 1875 to 1907,¹ may be cited together as the Public Health Acts, 1875 to 1925, and the Baths and Wash-houses Acts, 1846 to 1899,² and Part IX. of this Act may be cited together as the Baths and Washhouses Acts, 1846 to 1925.

(3) Parts I. to VIII. of this Act shall be construed as one with the Public Health Acts, 1875 to 1907, and Part IX. of this Act shall be construed as one with the Baths and Washhouses Acts, 1846 to 1899.³

(4) The expression “the commencement of this section,” when used in any provision in Parts II. to V. of this Act, means the date on which that section comes into operation within the district of the local authority by virtue of an adoption of that provision, or of an order of the Minister of Health.

(5) This Act shall come into operation on the expiration of one month after the passing thereof.

Extent of Act.

Sect. 2.—(1) This Act shall not apply to Scotland or Northern Ireland, or, save as expressly provided in this Act, to the administrative county of London.

(2) Parts II., III., IV. and V. of this Act are adoptive, and shall extend, in so far as they may be adopted, to any district for which they are adopted in accordance with the provisions of this Act: Provided that, where powers are conferred on a county council by any section in Part II. of this Act those powers may be exercised by the council without an adoption by them of the provisions of that section.

(3) Part VI. of this Act shall extend to any area in which Part VI. of the Public Health Acts Amendment Act, 1907,⁴ is in force at the commencement of this Act, and may be applied to any district by an order of the Minister of Health in the same manner as Part VI. of the said Act of 1907 may be applied.⁵

(4) Part IX. of this Act shall extend to England and Wales inclusive of the administrative county of London.⁶

Adoption by
urban
authorities of
Parts II. to V.

Sect. 3. Any urban authority may adopt all or any of the sections contained in Parts II., III., IV. and V. of this Act:⁶ Provided that, where the district contains, according to the last published census for the time being, a population of less than twenty thousand, the adoption by the council of that district of (a) those provisions in Parts II. and III. of this Act which are mentioned in the First Schedule to this Act;⁷ or (b) any provision in Part V. of this Act;⁸ shall not take effect until the consent of the Minister of Health has been obtained thereto, and such consent may be given by an order of the Minister and subject to such modifications, conditions or restrictions as may appear to him to be necessary or desirable.

Application of
Parts II. to V.
in rural
districts.

Sect. 4.—(1) A rural district council may adopt all or any of the provisions of Parts II., III. and IV. of this Act, except the sections in Parts II. and III. of this Act which are mentioned in the Second Schedule to this Act.⁹

(1) As to these Acts, see Vol. I., Part I., Div. I. p. 2.

(2) As to these Acts, see Vol. II., Part III., Div. IV., p. 1381.

(3) As to construing statutes “as one,” see pp. 3, 265, 770, 1963 (11).

(4) Vol. I., Part I., Div. III., p. 915.

(5) See s. 3. *ibid.*, p. 881.

(6) As to Parts of present Act, see Index under “PUBLIC HEALTH, Amendment Act of 1925.”

(7) Namely, Part II., ss. 21 (Prevention of water flowing on footpath) and 22 (For pre-

venting soil, etc., from being washed into streets), and Part III., s. 44 (Offensive trades or businesses).

(8) As to watercourses, streams, etc.

(9) Namely, Part II., ss. 17-19 (Naming of streets), 21 (Prevention of water flowing on footpath), 22 (Washing of soil into streets), 24 (Projections in streets) and 35 (Power to vary width of carriageway and footway upon making up private street), and Part III., ss. 39 (Notice of intention to reconstruct or alter drains) and 44 (Offensive trades or businesses).

(2) The Minister of Health may by order apply to any rural district, or contributory place therein, any provision in Parts II. to V. or Part VIII. of this Act, in the same manner as provisions of the Public Health Act, 1875, which apply to urban districts, may be applied to rural districts, or contributory places therein, and sect. 276 of that Act shall be extended accordingly.¹⁰

Sect. 4.

(3) Before any application is made to the Minister of Health for an order under this section, notice of the intended application, specifying the provisions of this Act in respect of which an order is desired, shall be inserted by the applicants for the order once at least in one or more of the newspapers circulating within the area to which the application relates in each of two successive weeks.

Sect. 5.—(1) The adoption by a local authority of all or any of the provisions of Parts II. to V. of this Act shall be by a resolution of the local authority passed in accordance with the provisions contained in the Third Schedule to this Act, and upon a resolution of adoption coming into operation the provisions of this Act to which it extends shall apply to the district of the local authority.

Mode of adoption by local authorities.

(2) A copy of a resolution passed by a local authority adopting any provision of this Act, certified as a true copy under the hand of the clerk to the local authority, shall be received as evidence in all legal proceedings of the resolution having been passed by the local authority.

Note.

The provisions of Sched. III. of the present Act are as follows :—

“ 1. A resolution of adoption must be passed at a meeting of the local authority.

“ 2. One month at least before the meeting of the local authority special notice of the meeting and of the intention to propose the resolution shall be given to every member of the local authority, and such notice shall also be inserted once at least in one or more of the newspapers circulating within the area of the local authority in each of two successive weeks.

“ 3. A resolution of adoption after being passed shall be published by advertisement in some one or more newspapers circulating within the area of the local authority by whom the resolution is passed, and may also be published otherwise in such manner as the local authority thinks sufficient for giving notice thereof to all persons interested.

“ 4. A copy of the resolution of adoption shall be sent to the Minister of Health.

“ 5. The resolution of adoption shall come into operation at such time, not less than one month after the first publication of the advertisement, as may be fixed by the local authority, or if the consent of the Minister of Health to the adoption is required, at such time as may be fixed by the Minister.”

Resolution of adoption.

Sect. 6. The Minister of Health may, by order made on the application of any local authority, make such amendments or adaptations of any local Act as may appear to him to be necessary for the purpose of bringing the provisions of that Act into conformity with the provisions of this Act, and any order so made shall operate as if enacted in this Act.

Amendment or adaptation of local Acts, &c.

Sect. 7.—(1) The provisions of Part I. of the Public Health Acts Amendment Act, 1907, which are specified in the Fourth Schedule to this Act,¹¹ shall, as amended by any subsequent enactment, apply for the purposes of this Act, with the substitution of references to this Act for the references therein to that Act.

(2) In this Act the expression “ local Act ” includes an Act for the confirmation of a provisional order and the order thereby confirmed.

(3) In this Act the expression “ statutory undertakers ” means any person authorised by Parliament to construct, work, or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water, or other public undertaking.¹²

Application of certain provisions of Part I. of 7 Edw. VII. c. 53, and interpretation.

(10) Vol. I., Part I., Div. I., p. 723.

(11) Namely, ss. 4 (Expenses of local authority), 5 (1) and (2) (Enquiries by Minister of Health), 6 (Legal proceedings, &c.), 7 (Appeals to quarter sessions, &c.), 9 (except the proviso) (Bye-laws), 10 (Compensation, how ascertained), 11 (Powers of Act cumulative),

12 (Crown rights), 13 (except so far as it relates to the expressions “ the commencement of this Part ” or “ the commencement of this section ”) (Interpretation).

(12) For list of exceptions in present Act, see Index, under “ PUBLIC HEALTH, Amendment Act of 1925, saving clauses.”

Sect. 8.
Appeals to petty
sessional court.

Sect. 8. Where any enactment in this Act provides for an appeal to a petty sessional court against a notice, determination, requirement, order or intended order of a local authority under this Act—

(1) Notice in writing of the appeal and of the grounds thereof shall be given by the appellant to the clerk to the local authority;

(2) The court may make such order in the matter as they consider reasonable, and may award costs to be recoverable as a civil debt;

(3) No proceeding shall be taken by the local authority, or work executed, until after the determination or abandonment of the appeal;

(4) Notice of the right of appeal shall be endorsed on the order of the local authority and on any notice communicating their determination, requirement or intended order.

Sect. 9. [Repeals.³]

Crown rights.

Sect. 10. Without prejudice to the generality of the provisions of sect. 12 of the Public Health Acts Amendment Act, 1907,⁴ nothing in this Act shall affect any privilege of the Postmaster-General under the Telegraph Act, 1869,⁵ or any works or apparatus belonging to him, or any power conferred on the Minister of Transport by the London Traffic Act, 1924.⁶

Saving for
culverts, &c.
of railway
companies, &c.

Sect. 11. Nothing in this Act shall prejudice or affect the powers of any railway company or the owners, trustees, or conservators, acting under powers conferred by Parliament, of any canal, inland navigation, dock, or harbour, under any enactment to culvert or cover in any stream or watercourse, or shall extend to any culvert or covering of a stream or watercourse constructed by a railway company or by any such body of persons, and used for the purposes of the railway, canal, inland navigation, dock, or harbour, unless the consent of such company or persons is obtained by the local authority.

Saving for
streams, &c.
vested in
London
County Council.

Sect. 12. The powers conferred by Part V. of this Act shall not, without the written consent of the London County Council, be exercised with respect to any stream, watercourse, ditch, or culvert which, by the Metropolis Management Act, 1855,⁷ is vested in that Council as a sewer.

PART II.

STREETS AND BUILDINGS.

Street Bins, Drinking Fountains, Fire Alarms, &c.

Street bins.

Sect. 13.—(1) The local authority may provide and maintain in or under any street, orderly bins or other receptacles, of such dimensions and in such position as the local authority may from time to time determine, for the collection and temporary deposit of street refuse and waste paper, or the storage of sand, cinders, grit or shingle.

(2) Nothing in this section shall be taken as empowering the local authority to hinder the reasonable use of the street by the public or any person entitled to use the same, or as empowering the local authority to exercise their powers under this section in such a way as to create a nuisance to any adjacent owner or occupier.

Public drinking
fountains,
seats, &c.
in streets.

Sect. 14. The local authority and any person with their consent and subject to such conditions as they may impose may, in proper and convenient situations in any street or public place, erect and maintain seats and drinking fountains for the use of the public and troughs for watering horses or cattle.⁸

Fire alarms.

Sect. 15.—(1) The local authority may erect or fix and maintain fire alarms, in such positions in any street or public place as they think proper, after consultation

(3) For subsect. (1) of present section, see Note to s. 85, *post*, p. cclxi. For subsect. (2), see Notes to ss. 74 and 87, *post*, pp. cclix, cclxii.

(4) Vol. I., Part I., Div. III., p. 885.

(5) See Vol. I., Part I., Div. I., p. 306.

(6) See *ante*, pp. ccxvii, ccxviii.

(7) See s. 250, quoted in Vol. I., Part I., Div. I., p. 34.

(8) As to the care of drinking fountains, and their misuse, see the cases cited in Vol. I., Part I., Div. I., pp. 152 (13) (14), 153 (21).

with the police authority for the police district in which the fire alarms are to be erected or fixed.⁹

Sect. 15.

(2) In this section the expression "police district" means any district for which there is a separate police force.

Sect. 16.—(1) The powers conferred on the local authority by the foregoing sections of this Part of this Act shall not be exercised in relation to any street which is a main road maintained by a county council, without the consent of the county council or so as to obstruct or render less convenient the access to or exit from any station or goods yard belonging to a railway company, or any premises belonging to other statutory undertakers and used for the purposes of their undertaking, nor shall the local authority place any street bin on any bridge carrying any street or road over a railway or under any bridge carrying a railway over any street or within ten feet of the abutments of any such bridge without the consent of the proprietors of such railway.¹⁰

Main roads and premises of statutory undertakers.

(2) This section shall extend to any area in which any of the foregoing sections in this Part of this Act may be in force.

Naming of Streets.

Sect. 17.—(1) Before any street is given a name, notice of the proposed name shall be sent to the urban authority by the person proposing to name the street.

Notice to urban authority before street is named.

(2) The urban authority, within one month after the receipt of such notice, may, by notice in writing served on the person by whom notice of the proposed name of the street was sent, object to the proposed name.

(3) It shall not be lawful to set up in any street an inscription of the name thereof—(a) until the expiration of one month after notice of the proposed name has been sent to the urban authority under this section; and (b) where the urban authority have objected to the proposed name, unless and until such objection has been withdrawn by the urban authority or overruled on appeal; and any person acting in contravention of this provision shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(4) Where the urban authority serve a notice of objection under this section, the person proposing to name the street may, within twenty-one days after the service of the notice, appeal against the objection to a petty sessional court.¹¹

Sect. 18.—(1) The urban authority by order may alter the name of any street, or part of a street, or may assign a name to any street, or part of a street, to which a name has not been given.

Alteration of name of street.

(2) Not less than one month before making an order under this section, the urban authority shall cause notice of the intended order to be posted at each end of the street, or part of the street, or in some conspicuous position in the street or part affected.

(3) Every such notice shall contain a statement that the intended order may be made by the urban authority on or at any time after the day named in the notice, and that an appeal will lie under this Act to a petty sessional court against the intended order at the instance of any person aggrieved.

(4) Any person aggrieved by the intended order of the local authority may, within twenty-one days after the posting of the notice, appeal to a petty sessional court.¹¹

(5) Upon the commencement of this section, sect. 21 of the Public Health Acts Amendment Act, 1907,¹² shall cease to have effect, as respects any area in which this section is in force.

Sect. 19.—(1) The urban authority shall cause the name of every street to be painted, or otherwise marked, in a conspicuous position on any house, building or erection in or near the street, and shall from time to time alter or renew such inscription of the name of any street, if and when the name of the street is altered or the inscription becomes illegible.

Indication of name of street.

(2) If any person destroys, pulls down or defaces any inscription of the name of a street which has lawfully been set up, or sets up in any street any name different

(9) As to dangerous fire alarm posts, see the case cited in Vol. I., Part I., Div. I., p. 774 (26), and as to false alarms, *ibid.*, p. 156.

(10) As to county councils, see s. 2 (2),

ante, p. ccxxxviii.

(11) As to such appeals, see s. 8, *ante*, p. ccxi.

(12) See Vol. I., Part I., Div. III., p. 891.

Sect. 19.

from the name lawfully given to the street, or places or affixes any notice or advertisement within twelve inches of any name of a street marked on a house, building, or erection in pursuance of this section, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(3) Upon the commencement of this section, so much of sect. 160 of the Public Health Act, 1875,¹ as incorporates with that Act the provisions of the Towns Improvement Clauses Act, 1847,² with respect to naming the streets, shall cease to have effect within any area in which this section is in force.

Surface Drainage of Courts, Streets, &c.

Courts, &c.
to be paved
and drained.

Sect. 20.—(1) Sect. 25 of the Public Health Acts Amendment Act, 1907 (which provides for the execution of works for the effectual drainage of the subsoil or surface of a yard, in connection with and exclusively belonging to a dwelling-house) shall extend to any court, yard or passage (not being a highway repairable by the inhabitants at large) which is used in common by the occupiers of two or more dwelling-houses, whether such dwelling-houses belong to the same or different owners.

(2) Where under the said section,³ as extended by this section, the local authority have executed works on the default of the owners of dwelling-houses and the dwelling-houses belong to different owners, the expenses incurred by the local authority in the execution of the works shall be apportioned between the owners in such shares as may be determined by the surveyor, or (in case of dispute) by a court of summary jurisdiction, and in default of payment any share so apportioned may be recovered summarily as a civil debt from the owner on whom it is apportioned.

(3) Upon the commencement of this section, any byelaws made by the local authority under sect. 23 of the Public Health Acts Amendment Act, 1890,⁴ with respect to the paving of yards and open spaces in connection with dwelling-houses, shall cease to have effect in any area in which this section comes into force.

Prevention of
water flowing
on footpath.

Sect. 21.—(1) The owner of any premises abutting on a street within an urban district shall, within twenty-eight days after the service of a notice in writing by the urban authority requiring him so to do, execute and thereafter maintain such down-pipes, channels or gutters as may be necessary to prevent, so far as is reasonably practicable, surface water from the premises flowing on to, or over, the footpath of the street, and if he fails to do so he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(2) The provisions of this section shall be in addition to and not in derogation of the provisions of sect. 74 of the Towns Improvement Clauses Act, 1847.⁵

For preventing
soil, &c. from
being washed
into streets.

Sect. 22.—(1) The urban authority may give notice to the owner or occupier of any lands abutting upon any street within their district which is repairable by the inhabitants at large, requiring him, within twenty-eight days after the service of the notice, so to fence off, channel or embank the lands as to prevent soil or refuse from such lands from falling upon, or being washed or carried into the street, or into any sewer or gully therein, in such quantities as will obstruct the highway or choke up such sewer or gully.⁶

(2) Any person to whom a notice under this section is addressed who shall fail, within twenty-eight days after the service of the notice, to execute the works therein specified shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

Obstructions, &c., to Persons using Streets.

Lopping of trees
overhanging
highways.

Sect. 23.—(1) Where any tree, hedge or shrub overhangs any street or footpath so as to obstruct or interfere with the light from any public lamp, or to endanger or obstruct the passage of vehicles or foot passengers or to obstruct the view of drivers of vehicles, the local authority may serve a notice on the owner of the tree, hedge or shrub, or on the occupier of the premises on which such tree, hedge or shrub is growing, requiring him to lop or cut the tree, hedge or shrub within fourteen

(1) Vol. I., Part I., Div. I., p. 406.

(2) See ss. 64, 65, Vol. II., Part IV., Div. I., pp. 1620, 1621.

(3) Vol. I., Part I., Div. III., p. 893.

(4) Vol. I., Part I., Div. II., p. 858.

(5) Vol. II., Part. IV., Div. I., p. 1625.

(6) See Index, under "RETAINING, Banks, Walls."

days so as to prevent such obstruction or interference, and in default of compliance the local authority may themselves carry out the requisition of their notice, doing no unnecessary damage, and may recover summarily as a civil debt the cost from the owner or occupier upon whom the notice was served.⁷

Sect. 23.

(2) The powers conferred on the local authority by this section shall, as respects any main road maintained by a county council, be exercisable by the county council instead of by the local authority, and any expenses incurred by a county council under this section shall be defrayed as expenses for general county purposes.^{7a}

(3) Any person aggrieved by any requirement of the local authority or county council under this section may appeal to a petty sessional court within fourteen days after the service of such notice.

Sect. 24. Any projection erected or placed against or in front of any house or building, which by reason of being insecurely fixed or of defective construction or otherwise, is a source of danger to persons lawfully using a street within an urban district, shall, for the purposes of sections 69 and 70 of the Towns Improvement Clauses Act, 1847,⁸ as incorporated with the Public Health Act, 1875, be deemed to be an obstruction to the safe or convenient passage along the street, and those sections, including the penal provisions thereof, shall apply accordingly.

Projections against or in front of houses or buildings,

Sect. 25.—(1) It shall not be lawful for any person to fix or place any overhead rail, beam, pipe, cable, wire or other similar apparatus over, along, or across any street, without the consent of the local authority, and any such consent shall be in writing under the hand of the clerk, and may contain such reasonable terms and conditions as the local authority think fit.

Restriction on placing rails, beams, &c. over streets.

(2) Any person acting in contravention of the provisions of this section, or of the terms and conditions (if any) of such consent, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(3) Nothing in this section shall extend to any works or apparatus belonging to any statutory undertakers.

(4) Upon the commencement of this section Part II. of the Public Health Acts Amendment Act, 1890,⁹ shall cease to have effect as respects any area in which this section is in force, but any byelaws made by the local authority under that Part of that Act shall nevertheless remain in force as respects that area until revoked by a resolution of the local authority.

Sect. 26.—(1) The local authority may make byelaws for the prevention of danger or obstruction to persons using any street or public place from posts, wires, tubes, aerials or any other apparatus, in connection with or for the purposes of wireless telegraphy or telephony installations, stretched or placed, whether before or after the commencement of this section, on or over any premises and liable to fall on to any street or public place. In this section the expression “public place” includes any public park or garden, and any ground to which the public have or are permitted to have access, whether on payment or otherwise.

Byelaws as to wires, &c. connected with wireless installations.

(2) Nothing in any byelaws made under this section shall extend to any apparatus belonging to any statutory undertakers.¹⁰

Bridges over or in Streets.

Sect. 27.—(1) The local authority may grant to the owner or occupier of any premises abutting upon any street a licence to construct and use a way by means of a bridge over that street for such period and on such terms and conditions as to the local authority may seem fit: Provided that—

Power to grant licences for bridges over streets.

(a) No fine, rent or other sum of money (except a reasonable sum in respect of legal or other expenses incurred) shall be payable for or in respect of the licence:

(b) The licence shall not authorise any interference with the convenience of persons using the street, or affect the rights of the owners of the property abutting on the street or the rights of any tramway, railway, dock, harbour or electricity undertakers acting under powers conferred by Parliament:

(c) It shall be a condition of every such licence that the owner of the premises, or if the licence is granted to the occupier, the occupier shall, at the request

(7) See Index, under “TREES, Lopping.”

(7a) See s. 2 (2), *ante*, p. ccxxxviii.

(8) Vol. II., Part IV., Div. I., pp. 1622,

(9) See ss. 13-15, Vol. I., Part I., Div. II., p. 848.

(10) Defined in s. 7 (3), *ante*, p. ccxxxix.

Sect. 27.

of the local authority and at his own expense, remove or alter such bridge in such manner as the local authority require, in the event of their considering such removal or alteration necessary or desirable in connection with the carrying out of improvements to the street at any time, and the decision of the local authority that such removal or alteration is necessary or desirable shall be final and conclusive, and this condition may be enforced by the local authority against the owner for the time being of the premises :

- (d) For the purposes of sect. 7 of the Telegraph Act, 1878,¹ any work authorised or required by a licence under this section shall be deemed to be work done in the execution of an undertaking authorised by an Act of Parliament, and for the purposes of the placing or maintenance of overground telegraphic lines under the powers conferred by the Telegraph Acts, 1863 to 1925,² a bridge constructed or used in accordance with a licence under this section shall be deemed to be part of any street or road which it crosses.

(2) If any person (except in the exercise of statutory powers) constructs a bridge over any street without such licence, or constructs or uses a bridge otherwise than in accordance with the terms and conditions of the licence, or fails to remove or alter a bridge when required so to do under this section, or fails to remove a bridge in accordance with a term or condition of the licence or within one month after the expiration of the licence, he shall be liable to a penalty not exceeding twenty pounds and to a daily penalty not exceeding five pounds.

Erection of
bridge forming
part of new
street.

Sect. 28.—(1) No person (except in the exercise of statutory powers) shall construct a bridge to carry a new street unless the bridge and its approaches are of such width and gradients as are approved by the local authority, and are constructed in accordance with specifications, plans and sections so approved.

(2) If any person acts in contravention of this section he shall be liable to a penalty not exceeding twenty pounds, and the local authority may remove, alter or pull down any work begun or done in contravention of this section, and may recover the expenses incurred by them in so doing from such person in a summary manner as a civil debt.

(3) The requirements of this section shall be in substitution for the requirements of any byelaws of the local authority applying to bridges and made before the commencement of this section.

New Streets.

Continuation of
existing street.

Sect. 29. A street may be deemed to be a new street for the purpose of the application of any byelaws of the local authority with respect to new streets, or of any provision in a local Act with respect to the width of new streets notwithstanding that it is a continuation of an existing street.³

Declaration of
street as a
new street.

Sect. 30.—(1) Where it appears to the local authority that the whole or any portion of an existing highway will be converted into a new street as a consequence of building operations which have been, or are likely to be, undertaken in the vicinity, the local authority may by order declare such highway, or such portion thereof as may be specified in the order, to be a new street for the purpose of the application thereto of their byelaws with respect to new streets or of any provision in a local Act with respect to the width of new streets.

(2) Not less than one month before making an order under this section, the local authority shall cause notice of the intended order to be posted at each end of the street, or part of the street, or in some conspicuous position in the street or part affected.

(3) Every such notice shall contain a statement that the intended order may be made by the local authority on or at any time after the day named in the notice, and that an appeal to quarter sessions will lie under this Act against the order at the instance of any person aggrieved.

(4) Upon an order under this section coming into operation any person who shall commence to erect a new building upon land abutting on or adjoining the highway, or portion of the highway, by the order declared to be a new street, shall, in relation to that land, be deemed to be laying out a new street within the meaning of the byelaws of the local authority with respect to new streets, or of any provision in a local Act with respect to the width of new streets.⁴

(1) See Vol. II., Part III., Div. II., p. 1291.

(2) See Vol. I., Part I., Div. I., pp. 306-311.

(3) See Vol. I., Part I., Div. I., pp. 376-383, and particularly *Allen's Case*, *ibid.*, p. 383 (60).

(4) This enactment gets over the difficulty created by the *Devonport* and other cases cited in Vol. I., Part I., Div. I., p. 379. But see ss 31, 32, *post*, p. ccxlv.

(5) Nothing in this section shall extend to a building (other than a dwelling-house) erected by a railway company in the exercise of their statutory powers and occupied or used for the purposes of their railway, or erected by the owners, trustees or conservators, acting under powers conferred by Parliament, of any canal, inland navigation, dock or harbour, and occupied or used for the purposes of the canal, inland navigation, dock or harbour.

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Sect. 31.—(1) Whenever application shall be made to the local authority to approve the plans of a new street, in pursuance of any byelaw or enactment requiring a plan to be submitted to the local authority, and such new street in the opinion of the local authority will form—(a) a main thoroughfare or a continuation of a main thoroughfare, or means of communication between main thoroughfares in their district; or (b) a continuation of a main approach, or means of communication between main approaches, to their district; the local authority may, as a condition of their approval, require that the new street shall be formed of such width as they may determine: Provided that, if such width exceeds by more than twenty feet the maximum width prescribed for a new street by any byelaw or enactment with respect to the width of new streets which may be in force in the area, the local authority shall make compensation for any loss or damage which may be sustained by reason of the street being required to be a width greater than twenty feet in excess of such maximum width.

Width of streets in certain cases.

(2) The amount of such compensation shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919,⁴ but in estimating the amount of any such compensation, the benefits accruing to the person to whom the same shall be payable by reason of the widening of the street, shall be fairly estimated and shall be set off against the compensation.

(3) Nothing in this section shall empower the local authority to require any person to defray any greater expense in the execution of any street works than would have been payable, if the street had been of no greater width than the width prescribed as aforesaid by any byelaw or enactment, and the additional expense incurred in the execution of street works by reason of the street being of such greater width, shall be certified by the surveyor, or in case of dispute shall be determined by a petty sessional court, and shall be borne by the local authority.

(4) The local authority shall determine in any case to which this section applies the proportion of the width of any such new street to be laid out as a carriageway, or as a footway or footways, and any such new street shall be formed accordingly.

Sect. 32.—(1) Where an owner proposes to lay out a new street upon land which adjoins or abuts on an existing highway, and buildings have been or are about to be erected on one side only of that highway, the local authority, in any case in which they are empowered to require such owner to widen the existing highway to the width prescribed for a new street by any byelaw or enactment with respect to the width of new streets (which width is in this section referred to as "the prescribed width") may, instead of requiring the existing highway to be widened to the prescribed width, by order permit such owner to widen the highway to such less width as may be specified in the order, so, however, that the distance between the centre line of the existing highway and the boundary (as extended) of the highway on the side adjoining the land of such owner shall not be less than one-half of the prescribed width.

Width of street where buildings erected on one side of street.

(2) Notwithstanding anything in sect. 7 of the Public Health Acts Amendment Act, 1907,⁵ as applied by this Act, an appeal shall not lie to a court of quarter sessions against the withholding or refusal by the local authority of an order under this section.

(3) Not less than twenty-one days before the local authority make an order under this section, notice of the proposed order shall be sent by the local authority to the owner of the land to which the order will relate, and to any owner of land which adjoins or abuts on the other side of the existing highway opposite the land to which the order will relate.

(4) If and when building shall commence on the land last mentioned, the owner of that land shall complete the widening of the existing highway to the prescribed width, and if he fails to do so, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings: Provided that this

(4) Vol. II., Part IV., Div. II., p. 2334.

(5) Vol. I., Part I., Div. III., p. 884.

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subsection shall not impose on any such owner an obligation to pull down any building erected before the date of the order of the local authority under this section.

Streets Improvements.

Power to
prescribe
improvement
line for
widening
streets.

Sect. 33.—(1) Where in the opinion of the local authority—(a) any street repairable by the inhabitants at large is narrow or inconvenient, or without any sufficiently regular boundary line; or (b) it is necessary or desirable that such street shall be widened; the local authority may prescribe in relation to either side of the street, or at or within a distance of fifteen yards from any street corner, the line to which the street shall be widened (in this section called “the improvement line”).

(2) Any improvement line which the local authority propose to prescribe shall be marked and shown on a plan (in this section called “the improvement plan”) to be signed by the clerk, and the plan shall be deposited at the offices of the local authority, and shall be open, during ordinary office hours, for a period of one month after its deposit, to inspection, free of charge, by any person interested.

(3) Upon the deposit of the improvement plan, the local authority shall give notice in writing of such deposit, and of the liabilities imposed by this section, to every occupier and owner of land interested, whose name and address can be reasonably ascertained by them, and where the name and address cannot after diligent inquiry be ascertained by them, by affixing the notice to the premises.

(4) The local authority shall consider any objection made to a proposed improvement line, and not less than six weeks after the date on which notice of the deposit of the improvement plan was given to owners and occupiers, the authority may by resolution prescribe an improvement line, and the line so prescribed shall be shown on a plan duly sealed and authenticated and shall be the improvement line for the purposes of this section.

(5) No new building, erection or excavation shall, after an improvement line has been prescribed, be placed or made nearer to the centre line of the street than the improvement line, except with the consent of the local authority, which consent may be given for such period and subject to such terms and conditions as they may deem expedient: Provided that the foregoing prohibition shall not affect any right of statutory undertakers to make any excavation for the purpose of laying, altering, maintaining, repairing or renewing any main, pipe, electric line, cable, duct or other work or apparatus.

(6) Any person whose property is injuriously affected by the prescribing of an improvement line shall be entitled to obtain compensation in respect of such injurious affection from the local authority: Provided that a person shall not be entitled to obtain compensation on account of any building erected, or contract made or other thing done after the date of the deposit under this section of the improvement plan, not being work done for the purpose of finishing a building begun or of carrying out a contract entered into before that date.

(7) The amount of such compensation shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919⁶: Provided that, in determining the amount of such compensation, the arbitrator may take into account and embody in his award any undertaking with regard to the exercise of their powers under this section in relation to the property affected, which the local authority have offered to give to the claimant, and the terms of any undertaking so embodied in the award shall be binding on and enforceable against the local authority.

(8) The local authority may purchase any land not occupied by buildings, lying between the improvement line and the boundary of the street, or any interest in such land, and the provisions of the Lands Clauses Acts, including the provisions with respect to the purchase and taking of lands otherwise than by agreement, except sects. 92 and 123 of the Lands Clauses Consolidation Act, 1845,⁷ shall extend to such land or interest in land.

(9) Any land purchased under the preceding subsection shall be added to the street, and until the land is so added, the occupier of the land from which it is severed, and other persons with his permission, shall be entitled to reasonable access across the land so purchased to and from the street, and shall have the same rights in regard to the laying, altering, maintaining, repairing and renewing

(6) Vol. II., Part IV., Div. II., p. 2334.

(7) Vol. II., Part IV., Div. I., pp. 1586 (re

taking part of house), 1595 (re time for compulsory purchase).

of drains, mains, pipes or electric lines in such land as if the same were part of the street.

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(10) In the assessment of compensation for injurious affection, or in respect of a purchase of land, under this section, the benefits accruing to the person to whom the same shall be payable, by reason of the widening or improvement of the street, shall be fairly estimated and shall be set off against the compensation.

(11) Any compensation for injurious affection payable by a local authority under the foregoing provisions of this section may be recovered summarily as a civil debt.

(12) If after an improvement line has been prescribed by the local authority, any person offends against the provisions of this section, he shall, without prejudice to any other proceedings which may be available against him, be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(13) Nothing in this section contained shall apply to or affect—(a) any property occupied or used by a railway company for the purposes of their railway without the consent of the company; or (b) any property vested in the owners, trustees or conservators, acting under powers conferred upon them by Parliament, of any canal, inland navigation, dock or harbour, and used for the purposes of the canal, inland navigation, dock or harbour, unless the consent of such persons is obtained by the local authority; or (c) any land specifically authorised by Parliament to be used for the manufacture or storage of gas, the generation of electricity, or as a pumping station or reservoir for water, unless the consent of the undertakers is obtained by the local authority: Provided that any consent required by this subsection shall not be unreasonably withheld, and any question whether or not such consent has been unreasonably withheld shall be determined by the Minister of Health.

Sect. 34.—(1) The powers conferred on the local authority by the last preceding section may be exercised by the county council as respects any main road maintained by the county council, and in relation to any main road so maintained the provisions of that section shall have effect with the substitution of the county council for the local authority: Provided that the county council shall consult the district council before the preparation by them of an improvement plan with respect to any main road maintained by the county council.

Extension to county councils of preceding section.

(2) The county council may contribute towards expenses incurred under the last preceding section by the local authority of any district within their area.

(3) Any expenses incurred by a county council under this section shall be defrayed as expenses for general county purposes, and money may be borrowed by a county council for the purposes of this section subject to and in accordance with the provisions of the Local Government Act, 1888.⁸

Private Street Works.

Sect. 35. Upon the exercise by an urban authority of the powers of sect. 150 of the Public Health Act, 1875,⁹ or of the Private Street Works Act, 1892,¹⁰ as the case may be, in relation to any street, the urban authority shall have power to require a variation of the relative widths of the carriageway and footway or footways of the street: Provided that no greater charge shall be imposed on a frontager by reason of any such variation than could have been imposed in respect of a carriageway or footway of the width prescribed for a new street of the same class by any byelaw or enactment with respect to the width of new streets which applied to the street when it was laid out, and any sum in excess of that charge shall be borne by the urban authority.¹¹

Power to vary width of carriageway and footway on making up private street.

PART III.

SANITARY PROVISIONS.

Sect. 36. Where any person has been convicted of causing a drain to be constructed in contravention of sect. 25 of the Public Health Act, 1875,¹² the court may, in addition to or in lieu of imposing a penalty under that section, order that

Reconstruction of drains.

(8) See s. 69, Vol. II., Part IV., Div. II., p. 1945. See also s. 2 (2), *ante*, p. ccxxxviii.

in the *Bristol Case*, cited *ibid.*, p. 326 (20), but see the *Maldon Case*, *ante*, p. cc for p. 326.

(9) Vol. I., Part I., Div. I., p. 311.

(12) Vol. I., Part I., Div. I., p. 92.

(10) Vol. I., Part I., Div. I., p. 336.

(11) This provision disposes of the decision

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the drain shall be laid, relaid, amended or remade by him, as the case may require, in accordance with the provisions of the said section, and if he does not comply with the order within the time limited by the order for the purpose, the local authority may cause the drain to be laid, relaid, amended or remade, as the case may require, and may recover in a summary manner as a civil debt from such person the expenses incurred by them in so doing.

Power of local authority to lay drains in private streets.

Sect. 37. The local authority may, if they think fit, by agreement with and at the expense of any person owning or occupying premises abutting on any street not being a highway repairable by the inhabitants at large, lay down, take up, or relay or renew in, across or along the street, such drains as may be requisite or proper for connecting the premises with any sewer which has been laid in the street, doing as little damage as may be and making compensation for any damage done by them.

Execution by local authority of drainage works.

Sect. 38.—(1) Where notice is given to the local authority under sect. 21 of the Public Health Act, 1875,³ by an owner or occupier of premises, of his intention to cause his drains to empty into the sewers of the authority, the local authority shall be entitled, if they think fit, in lieu of appointing under that section a person to superintend the making of the communication between the drain and the sewer, themselves to make the communication.

(2) Before any work is executed by the local authority under this section, the cost, or the estimated cost, of making the communication between the drain and the sewer, shall be paid to the local authority, or security for the payment shall be given to the satisfaction of the local authority.

(3) If any payment made to the local authority under the preceding subsection of this section exceeds the total expense incurred by the local authority in the execution of the work, the excess shall be repaid by the local authority.

(4) The local authority may recover summarily as a civil debt the total expense incurred by them in the execution of the work, in so far as such expense may not be covered by any payment made to the local authority under the foregoing provisions of this section.

(5) The local authority may by agreement with the owner or occupier of any premises, make, alter or enlarge any drain or sewer, or effect any connection between a drain and sewer, which the owner or occupier is required or desires to make, alter, enlarge or effect.

(6) Upon the commencement of this section, sect. 18 of the Public Health Acts Amendment Act, 1890,⁴ shall be repealed as respects any area in which this section is in force.

Notice of intention to reconstruct or alter drains.

Sect. 39.—(1) It shall not be lawful for any person, except in case of emergency, to reconstruct or alter the course of any drain which communicates with a sewer or with a cesspool or any other receptacle for drainage, without giving to the urban authority at least twenty-four hours previous notice in writing of his intention so to do.

(2) Where any such works are executed without notice in a case of emergency, it shall not be lawful for any person to cover over the drain without giving to the urban authority at least twenty-four hours' previous notice in writing of his intention so to do.

(3) Free access to the drain or the work of reconstruction or alteration, shall be afforded to the surveyor, or sanitary inspector, or any officer of the urban authority authorised in writing by the urban authority for the purpose of inspection.

(4) Any person who contravenes or fails to comply with the requirements of this section shall for each offence be liable to a penalty not exceeding five pounds.

(5) Nothing in this section shall extend to any drain constructed by or belonging to, or which may hereafter be constructed by or belong to, a railway company and situate under, across or along their railway.

(6) Nothing in this section shall extend to any drain which is vested in the owners, trustees or conservators, acting under powers conferred by Parliament, of any dock or harbour.

Power to require specially enlarged sewer in new street.

Sect. 40. If in any street not repairable by the inhabitants at large, the local authority shall require, for the purpose of main drainage or otherwise, a larger sewer to be made than could lawfully be required by them under any enactment

(3) Vol. I., Part I., Div. I., p. 85.

(4) Vol. I., Part I., Div. II., p. 850.

relating to private street works which applies to the street, the person by whom the sewer is made shall construct an enlarged sewer in accordance with the requirements of the local authority, and the additional cost thereof, as certified by the surveyor, or in the case of dispute as determined by a petty sessional court, shall be paid to such person by the local authority.

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Sect. 41.—(1) Every person who wilfully or negligently empties, turns or permits to enter, into any sewer, or any drain communicating with a sewer, any petroleum spirit or carbide of calcium, shall be liable to a penalty not exceeding ten pounds and to a daily penalty not exceeding five pounds.

Prevention of entry of petrol, &c. into sewer.

(2) In this section the expression "petroleum spirit" means—(a) any crude petroleum; (b) any oil made from petroleum, coal, shale, peat or other bituminous substances; and (c) any products of petroleum and mixtures containing petroleum; which, when tested in manner set forth in the First Schedule to the Petroleum Act, 1879,⁵ gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer.

Sect. 42. Where it appears to the local authority, on the report of the surveyor or the sanitary inspector, that the soil pipe in connection with a watercloset of a house is not properly ventilated, the watercloset shall not be deemed to be a sufficient watercloset for the purposes of sect. 36 of the Public Health Act, 1875.⁶

Ventilation of soil pipes.

Sect. 43.—(1) Sect. 9 (1) of the Housing of the Working Classes Act, 1885 (which relates to tents, vans, sheds and similar structures used for human habitation),⁷ shall extend to any tent, van, shed or similar structure, which is used for human habitation in such a way as to be a nuisance or injurious to health, or to cause a nuisance or give rise to conditions injurious to health.

Nuisance caused by occupation of tents, vans, &c.

(2) The powers of the court under sect. 96 of the Public Health Act, 1875,⁸ to make orders dealing with nuisances shall, in the case of a nuisance caused by or in connection with a tent, van, shed, or similar structure used for human habitation, include power to prohibit the use of the structure for human habitation at such places or within such area as may be specified in the order.

(3) On any proceedings for the recovery of a penalty for the contravention of byelaws made under sect. 9 (2) of the Housing of the Working Classes Act, 1885,⁹ the court, in addition to or instead of inflicting a penalty, may make an order prohibiting the use for human habitation of the tent, van, shed or other structure, in connection with which the contravention occurred, at such places or within such area as may be specified in the order.

Sect. 44.—(1) In the application to an urban district of any provisions of the Public Health Acts, 1875 to 1907,¹⁰ with respect to the establishment of an offensive trade, or with respect to an offensive trade established before or after a specified time, and of any byelaws made under those provisions, a trade shall be deemed to be established not only when it is established in the first instance, but also if and when—(a) it is transferred or extended from the premises on which it is for the time being carried on to other premises; or (b) it is resumed on any premises on which it was previously carried on, after it has been discontinued for more than six months; or (c) the premises on which it is carried on are enlarged; but a change in the ownership or occupation of the premises on which a trade is carried on, or the rebuilding of such premises when they have been wholly or partially pulled down or burnt down, without any extension of the area, shall not be deemed to be an establishment of the business for the purposes aforesaid.

Establishment of offensive trade or business.

(2) Any consent of the urban authority under sect. 112 of the Public Health Act, 1875,¹¹ to the establishment of an offensive trade, may be given so as to authorise the carrying on of the trade for a limited period specified in the consent, and for such extension thereof as may from time to time be granted by the local authority, and any person carrying on the trade after the expiration of the period so specified, or any such extension thereof, as the case may be, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(5) Vol. II., Part IV., Div. II., p. 1695.

(6) Vol. I., Part I., Div. I., p. 108.

(7) Vol. I., Part I., Div. I., p. 174.

(8) Vol. I., Part I., Div. I., p. 197.

(9) Vol. I., Part I., Div. I., p. 174.

(10) Act of 1875, ss. 112-115, Vol. I., Part I., Div. I., p. 215. Act of 1907, s. 51, Vol. I., Part I., Div. III., p. 907.

(11) Vol. I., Part I., Div. I., p. 215.

Sect. 45.

PART IV.

VERMINOUS PREMISES, &c.

Verminous
articles.

Sect. 45.—(1) If it appears to the local authority, on the certificate of the medical officer or sanitary inspector, that any articles in any premises used for human habitation in the district are infested with vermin, or by reason of their having been used by, or having been in contact with, any person infested with vermin, are likely to be so infested, the local authority at their expense may cause such articles to be cleansed, disinfected or destroyed, and if necessary for that purpose to be removed from the premises.

(2) Where a person sustains damage by reason of the exercise by the local authority of their powers under this section, and the condition of the article with respect to which those powers have been exercised is not attributable to his act or default, the local authority shall make reasonable compensation to that person.

Verminous
houses.

Sect. 46.—(1) If it appears to the local authority, on the certificate of the medical officer or sanitary inspector, that any premises used for human habitation in the district are infested with vermin, the local authority may give written notice to the occupier of the premises, or if the premises be vacant to the owner of the premises, requiring him within a period specified in the notice to cleanse the premises, and the notice may require, among other things, the removal of wall-paper or other covering on the walls, and the taking of such other steps as the local authority may require for the purpose of destroying or removing vermin: Provided that, where any work required by the notice is work for which the owner of the premises is under the tenancy responsible, the notice requiring the work to be performed may be given by the local authority to the owner of the premises.

(2) If the person on whom a notice under this section is served fails within the period specified in the notice to comply with the requirements thereof, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding ten shillings, and the local authority may, after the expiration of the said period, themselves carry out the work required by the notice, and recover the reasonable costs and expenses incurred by them in a summary manner from that person.

(3) If any person, upon whom a notice is served under this section, deems himself aggrieved by the requirements of the notice, he may within fourteen days after the service of the notice, appeal to a petty sessional court, and any order made by the court shall be binding and conclusive on all parties.

Powers of
officers of local
authority, &c.

Sect. 47. Sects. 102 and 103 of the Public Health Act, 1875 (which relate respectively to the power of entry by a local authority in case of nuisances, and the penalty for disobedience to an order for admission to premises),² shall apply and have effect as if references therein to nuisances included references to articles and premises infested, or suspected of being infested, with vermin, and as if references to that Act included references to this Part of this Act.

Cleansing of
verminous
persons.

Sect. 48.—(1) Upon the application of any person, the local authority may, if they think fit, take such measures as may, in their opinion, be necessary to free that person and his clothing from vermin.

(2) Where it appears to the local authority, on a report from the medical officer, that any person, or the clothing of any person, is infested with vermin and that person consents to be removed to a cleansing station, the local authority may cause him to be removed to such station, and, if he does not so consent, then a petty sessional court, if satisfied on the application of the local authority that it is necessary that he or his clothing should be cleansed, may make an order for his removal to a cleansing station and for his detention therein for such period and subject to such conditions as may be specified in the order.

(3) Where a person has been removed to a cleansing station in pursuance of the last preceding subsection, the local authority shall take such measures as may, in their opinion, be necessary to free him and his clothing from vermin.

(4) Any consent required to be given for the purposes of this section may, in the case of a person under the age of sixteen years, be given on his behalf by his parent or guardian.

(5) The cleansing of females under this section shall be effected only by a registered medical practitioner, or by a woman duly authorised by the medical officer.

(6) No charge shall be made by the local authority in respect of the cleansing of a person, or of his removal to or his maintenance in a cleansing station under this section; and such cleansing, removal and maintenance shall not be considered to be parochial relief or charitable allowance to the person cleansed, removed or maintained, or to the parent of such person, and neither he nor his parent shall by reason thereof be deprived of any right or privilege, or be subject to any disqualification or disability.

(7) Any person who wilfully disobeys or obstructs the execution of an order under this section shall be liable to a penalty not exceeding five pounds.

(8) Upon the commencement of this section, the local authority shall cease to be the local authority for the purpose of the Cleansing of Persons Act, 1897,³ and any buildings, appliances or attendants provided under that Act by the local authority shall be treated as having been provided by that authority under the Public Health Acts, 1875 to 1907.

(9) The powers conferred on the local authority by this section shall be in addition to, and not in derogation of, any power in relation to the cleansing of children that may be exercisable by them as local education authority.⁴

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Sect. 49.—(1) The local authority may provide such cleansing stations, apparatus and attendants, as may be necessary for the exercise of their powers under this Part of this Act, and may contract with any other local authority or person for the provision of such cleansing stations, apparatus or attendants.

(2) Any two or more local authorities may by agreement combine for any of the purposes of this Part of this Act, and the agreement may provide for the appointment of a joint committee, for the apportionment of expenses, and for any other matters which may be necessary for carrying the combination into effect.

Provision of cleansing stations, &c. and expenses.

Sect. 50. In this Part of this Act unless the context otherwise requires—

The expression “premises” includes any tent, van, shed or similar structure used for human habitation, and any boat used for the like purpose lying in any river, harbour, dock, canal or other water within the district and not within a port sanitary district;

The expression “vermin,” in its application to insects and parasites, includes their eggs, larvæ and pupæ, and the expression “verminous” shall be construed accordingly.

Definitions of “premises,” “vermin,” and “verminous.”

PART V.

WATERCOURSES, STREAMS, &C.

Sect. 51.—(1) If any watercourse or ditch, situated upon land laid out for building or on which any land laid out for building abuts, requires in the opinion of the urban authority to be wholly or partially filled up or covered over, the urban authority may by notice in writing require the owner of the land, before any building operations are begun or proceeded with, to execute such works as may in their opinion be necessary for effecting the objects aforesaid, or for substituting for the watercourse or ditch, a pipe, drain or culvert with all necessary gullies, pipes and means of conveying surface water through the same.

(2) Any person who fails to comply with a requirement of the urban authority under this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(3) Nothing in this section shall authorise an urban authority to require the execution of works upon the land of any person, other than the owner of the land laid out for building, without the consent of that person, or prejudicially to affect the rights of any person not being the owner of the land so laid out.

Power to require covering in of water-courses and ditches.

Sect. 52.—(1) It shall not be lawful within an urban district to culvert or cover over any stream or watercourse, except in accordance with plans and sections to be submitted to and approved by the urban authority, such approval not to be unreasonably withheld, and if the urban authority, within six weeks after such plans and sections have been submitted to them, shall have failed to notify their determination in writing to the person who submitted the same, the urban authority shall be deemed to have approved of the plans and sections.

Streams not to be culverted or covered over except in accordance with plans.

(3) Set out in Vol. I., Part I., Div. I., p. 237.

(4) See s. 87 of Act of 1921 set out on same page.

Sect. 52.

(2) No requirement of an urban authority in relation to plans and sections submitted under this section shall operate to compel any owner to receive upon his land, or to make provision for the passage of, a greater quantity of water than he would have been obliged to receive or to permit to pass but for this section.

(3) If, with the consent of the owner, the urban authority shall require the owner to make provision for the passage of a larger quantity of water than he is obliged to permit to pass at the time of the commencement of any work under this section, any additional cost occasioned by such requirement shall be borne by the urban authority.

(4) If any difference shall arise between an urban authority and an owner as to the expediency or necessity of the works required by the authority to be executed under this section, such difference may be determined by a petty sessional court on the application of either party.

(5) Any person who acts in contravention of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

Repair and
cleansing of
culverts.

Sect. 53. The owner or occupier of any culvert situate within an urban district shall from time to time repair, maintain and cleanse the culvert, and if any such owner or occupier fails to comply with the requirements of a notice given to him by the urban authority to repair, maintain or cleanse his culvert within a time specified in the notice, the urban authority may execute any necessary works of repair or maintenance, or may cleanse such culvert, and the expenses so incurred, as certified by the surveyor, may be recovered by the urban authority summarily as a civil debt from the owner or occupier.

Watercourse
choked up to be
a nuisance
under Public
Health Act,
1875.

Sect. 54.—(1) Any part of a watercourse which is situate within the district of an urban authority, and is so choked or silted up as to obstruct or impede the proper flow of water along the same, and thereby to cause, or render probable, an overflow of the watercourse on to land and property adjacent to the watercourse, or to hinder the usual effectual drainage of water through the same, shall be deemed to be a nuisance within the meaning of sect. 91 of the Public Health Act, 1875,⁵ and all the provisions of that Act relating to nuisances shall apply to every such watercourse, notwithstanding that the same may not be injurious to health: Provided that nothing in this section shall be deemed to impose any liability on any person other than the person by whose act or default the nuisance arises or continues.

(2) This section shall not extend to a part of a watercourse which is ordinarily navigated by vessels employed in the carriage of goods by water.

Power of local
authority to
defray cost of or
execute works.

Sect. 55. An urban authority may, if they think fit, contribute the whole or a portion of the expenses of the execution of works for the purposes mentioned in this Part of this Act, or may by agreement with owners or occupiers themselves execute any such works, and may borrow, subject to the provisions of the Public Health Acts, 1875 to 1907,⁶ the amount of any payment under this section.

PART VI.

RECREATION GROUNDS.

Further powers
as to parks and
pleasure
grounds.

Sect. 56.—(1) The following powers shall be added to the powers conferred upon the local authority by sect. 76 of the Public Health Acts Amendment Act, 1907 (in this section called "the principal section"),⁷ with respect to any public park or pleasure ground provided by them or under their management and control, namely, powers—

- (a) to provide, or contribute towards the expenses of, any concert or other entertainment given in the park or ground;
- (b) to enclose, for the purpose of such concerts and entertainments, any part of the park or ground not exceeding one acre or one-tenth of the area of the park or ground, whichever is the greater; and
- (c) to charge for admission to any such concerts or entertainments provided by themselves, or to let the part of the park or ground so enclosed to any

(5) Vol. I., Part I., Div. I., p. 173.

(7) Vol. I., Part I., Div. III., p. 915. See

(6) See Act of 1875, ss. 233-244, Vol. I., also s. 69 of present Act, *post*, p. ccvii.
Part I., Div. I., pp. 613-630.

person for the purpose of providing the same, and to authorise that person to charge for admission thereto :

Sect. 56.

Provided that the following restrictions shall have effect with respect to any concert or other entertainment provided by the local authority under this section,⁸ that is to say :—

- (i) No stage play shall be performed ; and
- (ii) The concert or other entertainment shall not include any performance in the nature of a variety entertainment ; and
- (iii) No cinematograph film, other than a film illustrative of questions relating to health or disease, shall be shown ; and
- (iv) No scenery, theatrical costumes or scenic or theatrical accessories shall be used.⁹

(2) Any part of the park or ground enclosed under subsect. (1) (e) of the principal section for the purposes of bands of music, may be used for any of the purposes of concerts or other entertainments.

(3) Any expenditure of the local authority, in the exercise of their powers to provide or contribute to a band under subsect. (1) of the principal section and any expenditure of the local authority in the exercise of their powers under subsect. (1) of this section, shall not when added together exceed in any one year an amount equal to that which would be produced by a rate of one penny in the pound on the property liable to be assessed for the purpose of the rate out of which the expenses of the park or ground are payable, as assessed for the time being for the purposes of that rate, or such higher rate not exceeding twopence in the pound as may be approved by the Minister of Health, and subsect. (3) of the principal section shall cease to have effect.

(4) In the foregoing provision of this section, the expression “ expenditure ” means net expenditure after allowing for the receipts arising from the exercise of the power to provide or contribute to a band, or of the powers conferred by subsect. (1) of this section.

(5) When any part of the park or ground has been set apart by the local authority for the purpose of cricket, football or any other game or recreation, under subsect. (1) (b) of the principal section, the local authority may charge reasonable sums for the use thereof for that purpose.

(6) Part VI. of the Public Health Acts Amendment Act, 1907,¹⁰ shall have effect as if the powers given to local authorities by this section were included amongst the powers given to local authorities by the principal section.

PART VII.

INFECTIOUS DISEASE AND HOSPITALS.

Sect. 57. Every person having the charge or control of premises in which is lying the body of a person who has died from any dangerous infectious disease shall take such steps as may be reasonably practicable to prevent persons coming into contact with the body unnecessarily, and if he fails to do so he shall be liable to a penalty not exceeding five pounds.¹¹

Contact with
body of person
dying of
infectious
disease.

Sect. 58.—(1) A justice of the peace may, on complaint made on oath by a medical officer of an urban or rural district, grant a warrant to such officer to enter any common lodging-house where, according to the reasonable belief of the officer, there is a person who is suffering, or has recently suffered, from a dangerous infectious disease, and to examine any person found in that house with a view to ascertaining whether he is suffering, or has recently suffered, from such disease.

Medical
examination
of inmates
of common
lodging-houses.

(2) Any person who obstructs a medical officer in the execution of his powers and duties under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds.

(8) And see proviso to sect. 87 (1), *post*, p. cclxii.

(9) These restrictions are applied to the entertainments referred to in ss. 70, 87, *post*, pp. cclviii, cclxii.

(10) *Namely*, ss. 76, 77, Vol. I., Part I., Div. III., pp. 915-917.

(11) As to meaning of “ contact,” see *Kitchen's Case*, cited in Vol. I., Part II., Div. I., p. 941 (34).

Sect. 59.
Closing of
common
lodging-house
on account
of infectious
disease therein.

Sect. 59.—(1) If, on the application of the local authority, a petty sessional court is satisfied that it is necessary in the interests of the public health that a common lodging-house should be closed on account of the existence, or recent existence, therein of dangerous infectious disease, the court may make an order directing the house to be closed until it is certified by the medical officer to be free from infection.

(2) If a lodger is received, or allowed to remain, in a common lodging-house in contravention of such order, the keeper of the lodging-house shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(3) The local authority shall make compensation to the keeper of a common lodging-house for any loss sustained by him by reason of the house being closed under this section.

Definition of
"dangerous
infectious
disease."

Sect. 60.—(1) In the foregoing provisions of this Part of this Act the expression "dangerous infectious disease" means any infectious disease named in sect. 6 of the Infectious Disease (Notification) Act, 1889.²

(2) The Minister of Health may by order declare any other infectious disease to be a dangerous infectious disease for the purpose of any of the foregoing provisions of this Part of this Act, either generally or as respects any particular area, and accordingly the expression "dangerous infectious disease" shall, as respects the purpose aforesaid and within the area to which the order extends, include any disease so declared, so long as the order may continue in force.

Amendment as
to enforcement
by county
councils of
regulations
under s. 130 of
38 & 39 Vict.
c. 55, 3 & 4
Geo. V. c. 23.

Sect. 61.—(1) For the removal of doubts it is hereby declared that where in accordance with sect. 2 of the Public Health (Prevention and Treatment of Disease) Act, 1913,³ a county council is declared by the Minister of Health to be an authority to execute and enforce regulations made under sect. 130 of the Public Health Act, 1875,⁴ such regulations may, with the consent of the council, authorise the council to provide or to arrange for the provision of suitable means for the proper isolation and treatment of persons suffering from any disease to which the regulations apply, and may for that purpose apply any of the provisions of the Public Health Acts, 1875 to 1907.

(2) Any regulations made under the said sect. 130 authorising a county council to provide or arrange for the provision of suitable means for the proper isolation and treatment of persons suffering from any disease, may direct that the county contributions, whether for general or special county purposes, which are liable to be assessed on the parishes in respect of any expenses incurred by the council in providing or maintaining any hospital or institution, or in providing for the cost of maintenance of patients in any hospital or institution, shall be assessed on such parishes in proportion to the use made of such hospitals and institutions by the inhabitants of the parishes, respectively, or in such other proportion as may be prescribed, and any precept for county contributions may include as a separate item any contributions, whether for general or special county purposes, which are to be so assessed in accordance with such regulations.

Removal to
hospital of
infectious
persons
suffering from
pulmonary
tuberculosis.

Sect. 62.—(1) Where it is proved to the satisfaction of a court of summary jurisdiction—(a) that any person suffering from pulmonary tuberculosis is in an infectious state; and (b) that the lodging or accommodation provided for that person is such that proper precautions to prevent the spread of infection cannot be taken, or that such precautions are not being taken; and (c) that serious risk of infection is thereby caused to other persons; and (d) that a suitable hospital or institution exists for the reception and accommodation of that person; the court, upon the application of the county council or of the local authority, may, with the consent of the superintending body of the hospital or institution, make an order for the removal of that person to that hospital or institution and for his detention and maintenance therein for such period not exceeding three months as the court think fit.

(2) Before making application for an order under this section, the county council or local authority shall give to the person to whom the application is to relate, or to some person having the care of that person, not less than three clear days' notice of the time and place at which the application will be made.

(2) Vol. I., Part II., Div. I., p. 932.
(3) Vol. I., Part II., Div. I., p. 952.

(4) Vol. I., Part I., Div. I., p. 248.

(3) Upon application being made for an order under this section the court may in any case in which they think it necessary to do so require the person to whom the application relates to be examined by such duly qualified medical practitioner as the court may direct.

Sect. 62.

(4) The cost of the removal of any person to a hospital or institution, and of his detention and maintenance therein in pursuance of an order made under this section, shall be borne by the county council or local authority upon whose application the order was made, and during any period for which a person is so detained the county council or local authority may and, if so required by the court, shall make towards the maintenance of any dependants of that person such contributions as the county council or local authority think fit, or as may be directed by the court, as the case may be.

(5) Where before the expiration of any period for which a person has been ordered to be detained under this section, the court is satisfied upon the application of the county council or local authority that the conditions which led the court to order his detention will again exist if he is not detained for a further period, the court may, subject to the like consent, order the detention of that person for a further period, not exceeding three months.

(6) Upon not less than three clear days' notice being given to the clerk of the county council or local authority upon whose application an order under this section was made, application for the rescission of the order may be made by or on behalf of the person to whom the order relates at any time after the expiration of six weeks from the date of the order, and upon the hearing of any such application the court may, if they think fit, rescind the order.

(7) An order under this section may be addressed to such constable or officer of the county council or local authority as the court may think expedient, and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

(8) Any expenses incurred under this section by a county council shall be defrayed as expenses for general county purposes, or, if the Minister of Health by order so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

Sect. 63.—(1) Any carriage provided under sect. 123 of the Public Health Act, 1875,⁵ and any ambulance provided under sect. 13 of the Isolation Hospitals Act, 1893,⁶ may be used for the conveyance of persons upon their discharge from a hospital or of sick persons not suffering from infectious disease, provided that suitable precautions are taken to prevent the communication of infectious disease to any person so conveyed.

Extended use of ambulances, &c.

(2) A reasonable charge may be made by the local authority or isolation hospital committee for the use of a carriage for any purpose authorised by this section.

(3) Sect. 123 of the Public Health Act, 1875,⁷ as amended by this section, shall extend to any joint board to whom the provisions of that section have been applied.

Sect. 64.—(1) The power of a local authority under sect. 131 of the Public Health Act, 1875 (which enables a local authority for the purpose of the provision of hospital accommodation for their district, among other things, to enter into agreements with persons having the management of any hospital),⁸ shall include a power to make reasonable subscriptions or donations to a voluntary hospital or institution, if the local authority are satisfied that by so doing they will maintain or extend or increase the efficiency of hospital accommodation for the sick inhabitants of their district.

Extension of 38 & 39 Vict. c. 55, s. 131.

(2) The expenditure under this section of a local authority shall not exceed in any one year, an amount equal to that which would be produced by a rate of one penny in the pound on the property liable to be assessed for the purpose of the rate out of which such expenditure is payable.

Sect. 65.—(1) Any local authority by whom a hospital is provided may provide dwelling-houses for officers or servants employed at that hospital by the local authority, and may defray any expenses in the execution of the power conferred by this section as expenses incurred by the local authority in the provision of the hospital are defrayed.

Power to provide houses for officers, &c., at a hospital.

(5) Vol. I., Part I., Div. I., p. 241.

(6) Vol. I., Part II., Div. I., p. 948.

(7) Vol. I., Part I., Div. I., p. 241.

(8) Vol. I., Part I., Div. I., p. 251.

Sect. 65.

(2) In this section "local authority" includes a joint hospital board constituted under the Public Health Act, 1875,⁹ or committee constituted under the Isolation Hospitals Acts, 1893 and 1901,¹⁰ or any joint committee of local authorities formed for the purpose of providing a hospital.

PART VIII.

MISCELLANEOUS.

Power of county councils and local authorities to assist in prevention of blindness.

Sect. 66.—(1) Without prejudice and in addition to any other power under any other Act, a county council or local authority shall have power, with the consent of the Minister of Health, to make such arrangements as they may think desirable for assisting in the prevention of blindness, and in particular for the treatment of persons ordinarily resident within their area suffering from any disease of or injury to the eyes.¹¹

(2) Any expenses incurred under this section by a county council shall be defrayed as expenses for general county purposes or, if the Minister of Health by order so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

(3) A council may exercise any of the powers conferred by this section (other than the power of raising a rate or of borrowing money) through a committee of the council, and may appoint as members of the committee persons specially qualified by training or experience in matters relating to the blind who are not members of the council, but not less than two-thirds of the members of the committee shall consist of members of the council, and a committee established under this section may, subject to any direction of the council, appoint such and so many sub-committees consisting either wholly or partly of members of the committee as the committee thinks fit.

(4) For the purposes of this section, a person who becomes an inmate of any hospital or institution after the commencement of this Act shall be deemed to continue to be ordinarily resident in the area in which he was ordinarily resident before he became an inmate of such hospital or institution.

Notices, lectures, &c., on questions as to health or disease.

Sect. 67.—(1) Any local authority or county council may arrange for the publication within their area of information on questions relating to health or disease, and for the delivery of lectures and the display of pictures in which such questions are dealt with, and may defray the whole or a portion of expenses incurred for any of the purposes of this section.

(2) The Minister of Health may, for the purposes of this section, make rules prescribing restrictions or conditions subject to which the powers conferred by this section may be exercised.

Power to provide parking places for vehicles.

Sect. 68.—(1) Where for the purpose of relieving or preventing congestion of traffic it appears to the local authority to be necessary to provide within their district suitable parking places for vehicles, the local authority may provide such parking places in accordance with the provisions of this section, and for that purpose may—
(a) acquire land suitable for use as a parking place; or (b) utilise any lands which may lawfully be appropriated for the purpose; or (c) by order authorise the use as a parking place of any part of a street within their district, not being a street within the London Traffic Area:

Provided that no such order shall—(i) authorise the use of any part of a street so as unreasonably to prevent access to any premises adjoining the street, or the use of the street by any person entitled to the use thereof, or so as to be a nuisance; or (ii) be made in respect of any part of a street without the consent of the authority or person responsible for the maintenance of the street.

(2) Where a local authority propose to make an order under this section authorising the use as a parking place of any land forming part of a street, or propose to acquire or utilise any land for the purposes of this section, the local authority shall cause notice of the proposal to be published in at least one newspaper circulating within their district, and shall also cause a copy of such notice to be posted for not less than fourteen days on the land to which the proposal relates, and every such

(9) See ss. 279-285, Vol. I., Part I., Div. I., pp. 725-729.

Div. I., p. 947.

(10) See Act of 1893, s. 10, Vol. I., Part II.,

(11) See Note to War Charities Act, 1916, s. 4, Vol. II., Part IV., Div. II., p. 2269.

notice shall—(a) specify the land to which the proposal relates; and (b) notify the date (which shall not be less than twenty-eight days) within which any objection to the proposal shall be sent in writing to the local authority; and (c) contain a notification of the right of appeal conferred by this section.

Sect. 68.

(3) Before carrying into effect any proposal of which notice is required by this section to be given, the local authority shall consider any objection to the proposal which is sent to them in writing within the time fixed in that behalf, and shall, after so considering it, give notice of their decision to the person by whom the objection was made, and if any person is aggrieved by any such decision he may, within twenty-one days after receiving notice thereof, appeal therefrom to a petty sessional court.

(4) The local authority may take all such steps as may be necessary to adapt for use as a parking place any land, not being part of a street, which they may acquire or utilise under this section, and may appoint with or without remuneration such officers and servants as may be necessary for the superintendence of parking places.

(5) The exercise by a local authority of their powers under this section with respect to the use as a parking place of any part of a street shall not render them subject to any liability in respect of loss of or damage to any vehicle or the fittings or contents of any vehicle parked in such parking place.

(6) A local authority may make regulations as to the use of parking places, and in particular as to the vehicles or class of vehicles which may be entitled to use any such parking place, as to the conditions upon which any such parking place may be used, and as to the charges to be paid to the local authority in connection with the use of any parking place not being part of a street, and a copy of any such regulations shall be exhibited on or near any parking place to which the regulations relate.

(7) While any vehicle is within a parking place it shall not be lawful for the driver or conductor of the vehicle, or for any person employed in connection therewith, to ply for hire or to accept passengers for hire, and if any person acts in contravention of this provision he shall be liable to a fine not exceeding forty shillings.

(8) Any order made under this section may be varied or revoked by any subsequent order made in like manner.

(9) In this section the expression “parking place” means a place where vehicles, or vehicles of any particular class or description, may wait.

Sect. 69.—(1) A county council, local authority or parish council may acquire by purchase, gift or lease, and may lay out, equip and maintain lands, not being lands forming part of any common, for the purpose of cricket, football or other games and recreations, and may either manage those lands themselves and charge persons for the use thereof or for admission thereto, or may let such lands, or any portion thereof, to any club or person for use for any of the purposes aforesaid.

Provision of grounds for cricket, football, and other games.

(2) A county council, local authority or parish council may contribute towards the expenses incurred under this section by any other council or authority.

(3) Any expenses incurred under this section by a county council shall be defrayed as expenses for general county purposes,² and any expenses so incurred by a parish council shall be defrayed as part of the expenses of the council under the Local Government Act, 1894.³

(4) The provisions of the Local Government Act, 1888,^{3a} shall apply with respect to the exercise by a county council of the powers conferred by this section; and the provisions of the Local Government Act, 1894,⁴ shall apply with respect to the exercise of the said powers by a parish council.

(5) In this section the expression “common” includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882,⁵ and any town or village green.

Sect. 70.—(1) Any offices provided by the local authority for the transaction of business may be used by the local authority for the purposes of concerts or other entertainments which may be provided either by the local authority or by any other person, and any such offices as aforesaid may be let by them for use for those purposes, or for the purpose of meetings, at such times and in such manner

Use of public offices for entertainments, &c.

(2) See L. G. Act, 1888, s. 68, Vol. II., p. 1944.

(3) See s. 11, Vol. II., Part IV., Div. I., p. 2010.

(4) See ss. 8, 9, Vol. II., Part IV., Div. I., pp. 2004, 2007.

(5) See Vol. II., Part III., Div. VI., p. 1466.

(3a) See s. 65, Vol. II., Part IV., Div. I.,

Sect. 70.

as will not interfere in any way with the transaction of the business of the local authority: Provided that the restrictions imposed by Part VI. of this Act with respect to the character of any concert or other entertainment provided by the local authority under the powers conferred by that Part shall apply with respect to any concert or other entertainment provided by the local authority under this section.⁶

(2) Any expenses incurred by the local authority in the exercise of the powers conferred by this section shall be defrayed out of the fund or rate out of which the expenses of the local authority in the maintenance of the offices are defrayed, and any receipts shall be carried to the credit of that fund or rate.

Power to
establish cold-
air stores, &c.

Sect. 71.—(1) Where a local authority have provided a public slaughter-house or market, they may, with the consent of the Minister of Health, provide a cold-air store or refrigerator, with all machinery, apparatus and appliances necessary for the proper working and use thereof, and for the storage and preservation of meat and other articles of food, and may make in respect of the use of any such cold-air store or refrigerator, such reasonable charges as they may determine.

(2) A local authority intending to apply for the consent of the Minister of Health under this section shall give notice of their intention by advertisement in some newspaper circulating in the district one month at least before the making of such application.

(3) The Minister shall consider any objection to the proposal of the local authority which may be made by any person appearing to him to be interested, and, in the event of any such objection being made and not withdrawn, shall cause a local enquiry to be held at which all persons interested shall be permitted to attend and make objections.

(4) The local authority shall cause to be given at least fourteen days' notice of the intention to hold such local enquiry by advertisement in some newspaper circulating in the district.

Precautions
against con-
tamination of
food intended
for sale.

Sect. 72.—(1) This section applies to any room, not being a room to which the Factory and Workshop Act, 1901,⁷ as amended by any subsequent enactment or any regulation made under the Public Health (Regulations as to Food) Act, 1907,⁸ applies, in which food is prepared for sale, or in which any food, other than food contained in receptacles so closed as to exclude all risk of contamination, is sold or is stored or kept with a view to future sale.

(2) The occupier of any room to which this section applies shall not permit the room to be used for the purpose of selling, preparing, storing, or keeping any food unless the following requirements are complied with, that is to say:—

(a) No sanitary convenience shall be in the room, or shall communicate directly therewith, or shall be so placed that offensive odours therefrom can penetrate to the room:

(b) No cistern for the supply of water to the room shall be in direct communication with or discharge directly into any sanitary convenience:

(c) No outlet for the ventilation of any drain shall be in the room, and if there is in the room any inlet or opening into any drain, that inlet or opening shall be efficiently trapped:

(d) The room shall not be used as a sleeping place, and no sleeping place shall communicate directly with the room in such manner as to cause unreasonable risk of contamination to food in the room:

(e) The room shall, except in the case of a room used as a cold store, be adequately ventilated.

(3) The occupier of any room to which this section applies shall—(a) cause the walls and ceiling of the room to be whitewashed, cleansed, or purified as often as may be necessary to keep them in a clean state: and (b) prevent any unnecessary accumulation or deposit of refuse or filth in the room.

(4) The occupier of any room to which this section applies and every person engaged in any such room shall take all such steps as may be reasonably necessary on his part to prevent risk of contamination to food in the room and to secure the cleanliness of the room and of all articles, apparatus, and utensils therein.

(5) The medical officer, sanitary inspector, and any other officer of a local authority duly authorised in writing by the authority in that behalf shall have

(6) See proviso to s. 56 (1). *ante*, p. ccliii.
(7) See definitions of "domestic factory" and "domestic workshop," in s. 115, Vol. II., Part IV., Div. II., p. 2155, and of "factory"

and "workshop" in s. 149, *ibid.*, p. 2163. The regulations as to the former will be found in s. 111, *ibid.*, p. 2153.

(8) Vol. I., Part II., Div. II., p. 1022.

power at all reasonable times to enter and inspect any room to which this section applies for the purpose of ascertaining whether the provisions of this section are complied with.

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(6) If any person acts in contravention of or fails to comply with any of the provisions of this section, or hinders or obstructs an officer of a local authority in the exercise of his powers or duties under this section, he shall be liable to a penalty not exceeding twenty shillings for the first offence or not exceeding five pounds for any subsequent offence and in either case to a daily penalty not exceeding twenty shillings.

(7) In this section the expression "food" includes every article used for food or drink by man other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food, and flavouring matters and condiments; "room" includes any shop, shed, store, out-building, or cellar; "sanitary convenience" includes urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience.

Sect. 73.—(1) It shall not be lawful for any collector of or dealer in rags or bones or similar articles, or any person carrying on the business of a rag and bone merchant, or any person acting on behalf of any such person, to sell or distribute within the district of the local authority from any cart, barrow or other vehicle used for the collection of rags, bones or similar articles, or in or from any shop or premises used for, or in connection with, the business of a rag and bone merchant any article of food or any balloon or other toy.

Rag and bone dealers not to sell food or toys.

(2) Every person who shall offend against this section shall be liable to a penalty not exceeding five pounds.

Sect. 74.—(1) Where a police constable in uniform is for the time being engaged in the regulation of traffic at any place in a street, not being a place within the London Traffic area, any person driving or propelling any vehicle who wilfully neglects or refuses to stop the vehicle or make it proceed or keep to a particular line of traffic when directed so to do by such police constable in the execution of his duty, shall be liable to a fine not exceeding five pounds.

Penalties for neglect of traffic directions and for dangerous driving, &c.

(2) If any person rides or drives so as to endanger the life or limb of any person or to the common danger of the passengers in any street, not being a street within the Metropolitan Police District, he may be arrested without warrant by any constable who witnesses the occurrence, and any person who so rides or drives as aforesaid shall be liable to a fine not exceeding five pounds.

(3) In this section the expression "street" includes a county bridge.

Note.

The present section takes the place of sect. 79 of the Public Health Acts Amendment Act, 1907,⁹ which is repealed by sect. 9 (2) and Sched. V., Part II., of the present Act.

Repeal.

Sect. 75.—(1) The local authority may make byelaws for regulating the conduct of persons waiting in streets to enter public vehicles, and the priority of entry into such vehicles, and may by such byelaws require queues or lines to be formed and kept by such persons.

Byelaws as to persons waiting to enter public vehicles.

(2) The local authority may erect and maintain, or permit other persons to erect and maintain, in any street such barriers and posts as appear to the local authority to be necessary for the purposes of securing compliance with any such byelaws: Provided that the powers of the local authority under this subsection shall not be exercised in the case of a main road maintained by a county council except with the consent of such county council.

(3) Nothing in subsect. (2) of this section shall be construed as empowering the local authority to hinder the reasonable use of the street by the public, or to obstruct the access to or exit from any station or goods yard belonging to a railway company or to or from any premises belonging to the owners, trustees, or conservators, acting under powers conferred by Parliament, of any canal, inland navigation, dock or harbour, and used for the purposes of the canal, inland navigation, dock or harbour, nor shall any barrier or post be erected on any bridge carrying any street over a railway or the approaches thereto.

(4) This section shall not extend to any street within the London Traffic Area.

Sect. 76. In any area within which the provisions of the Town Police Clauses Act, 1847,¹⁰ with respect to hackney carriages are in force, those provisions and

As to public vehicles taken at railway stations.

(9) Vol. I., Part I., Div. III., p. 918.

I., pp. 1661-1671.

(10) See ss. 37-68, Vol. II., Part IV., Div.

Sect. 76.

any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street :

Provided that—(a) the provisions of this section shall not apply to any vehicle belonging to or used by any railway company for the purpose of carrying passengers and their luggage to or from any of their railway stations or railway premises, or to the driver or conductor of such vehicle; (b) nothing in this section shall empower the local authority to fix the site of the stand or starting place of any hackney carriage in any railway station or railway premises, or in any yard belonging to a railway company, except with the consent of that company.

Rate of interest
on certain
expenses.

Sect. 77. The rate of interest on expenses recoverable by a local authority—(a) under sect. 213 or sect. 257 of the Public Health Act, 1875 (which relate to private improvement rates and the recovery of expenses from an owner of premises)¹; (b) under sect. 13 or sect. 14 of the Private Street Works Act, 1892 (which relate to charges on premises in respect of the expenses of street works and the recovery of such expenses)²; or (c) under any provision relating to the execution of street works in a local Act; shall, as regards expenses incurred after the commencement of this Act, be five per cent. or such other rate of interest as the Minister of Health may from time to time by order fix, and different rates of interest may be fixed for different purposes and in different cases.

Notices of
certain works
and objections
thereto.

Local inquiries
by inspectors.

Sect. 78.—(1) The time before which notice by advertisement is to be given by a local authority under sect. 32 or under sect. 53 of the Public Health Act, 1875,³ of intended sewerage works outside their district, or of an intended reservoir for water, shall be six weeks before the commencement of the work, instead of three months and two months, respectively, before such commencement.

(2) The time within which notice under sect. 33 or under sect. 53 of the Public Health Act, 1875,⁴ is to be served by a person objecting to any such intended work of sewerage or reservoir, shall be four weeks after the publication of the advertisement of the local authority giving notice of the intended work, instead of three months and two months, respectively, before the commencement of the work.

(3) In the provisions of sects. 34 and 53 of the Public Health Act, 1875,⁴ which relate to local inquiries into any such work or reservoir by an inspector of the Minister of Health, the words “in the locality” are hereby substituted for “on the spot.”

(4) The amendments of sects. 32 to 34 and sect. 53 of the Public Health Act, 1875, made by this section shall have effect as regards any work to which any of those sections is extended by any provision of the Public Health Acts, 1875 to 1907.

Amendment of
38 & 39 Vict.
c. 55. s. 234, as
to interest on
sinking fund.

Sect. 79. Where sums are set apart as a sinking fund for the purpose of paying off moneys borrowed by a local authority in the exercise of their powers under the Public Health Act, 1875, the interest received in any year from the investment of the sums so set apart shall, after the commencement of this Act, instead of being accumulated in accordance with the provisions of sect. 234 (4) of that Act,⁵ form part of the revenue for that year of the fund or rate out of which the sums were set apart, but the contribution to be made to the sinking fund out of such fund or rate shall in that year be increased by a sum equal to the interest that would have accrued to the sinking fund during that year if interest had been accumulated therein at such rate that the accumulations would with the sums set apart be sufficient to pay off the moneys borrowed within the period sanctioned.

Power to lay
gas and water
pipes in
private streets.

Sect. 80.—(1) If the local authority are authorised to supply gas or water, they may, on the application of the owner or occupier of any premises within their limits of supply abutting on any street laid out but not dedicated to public use, supply those premises with gas or water, as the case may be, and lay down, maintain and repair pipes in such street, and for the purposes of this section the Gasworks Clauses Act, 1847, and the Waterworks Clauses Act, 1847, shall apply as if sect. 7 of the former Act and sect. 29 of the latter Act had been excepted from incorporation with the Acts relating to the local authority.⁶

(2) The powers conferred by this section shall not extend to any street which is repairable by the owners, trustees or conservators acting under powers conferred by Parliament of any railway, canal, inland navigation, dock or harbour, and

(1) Vol. I., Part I., Div. I., pp. 594, 673.

(2) Vol. I., Part I., Div. I., pp. 349, 350.

(3) Vol. I., Part I., Div. I., pp. 106, 140.

(4) Vol. I., Part I., Div. I., pp. 107, 140.

(5) Vol. I., Part I., Div. I., p. 617.

(6) Vol. II., Part III., Div. I., pp. 1203, 1218.

used for the purposes of the railway, canal, inland navigation, dock or harbour, unless the consent of such persons is obtained by the local authority, but such consent shall not be unreasonably withheld, and upon an application made to the Minister of Health by the local authority or by the owners, trustees or conservators of the undertaking, the Minister may, if he thinks fit, determine whether a consent has unreasonably been withheld to the exercise by the local authority of their powers under this section.

Sect. 80.

Sect. 81. Any local authority, by whom notices requiring the execution of works have been served under sect. 150 of the Public Health Act, 1875,⁷ or any provision relating to street works in a local Act, may, if they think fit, at any time resolve to contribute the whole or a portion of the expenses of the works.

Contribution by local authority to street works under 38 & 39 Vict. c. 55, s. 150, or local Acts.

Sect. 82. Where, after the commencement of this Act, notices have been given under sect. 150 of the Public Health Act, 1875,⁷ by the urban authority, as respects any street, and that street is sewered, levelled, paved, flagged, metalled, channelled, and made good (all such works being done to the satisfaction of the urban authority) then, on the application in writing of the greater part in rateable value of the owners of the houses or land in such street, the urban authority shall, within three months after the time of such application, by notice put up in such street, declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large.⁸

Declaration of streets as highways repairable by inhabitants.

Sect. 83. For removing doubts, it is hereby declared that the purposes mentioned in sect. 154 of the Public Health Act, 1875 (which relates to the purchase of premises for the widening, opening, enlarging or otherwise improving any street, or for the making of any new street),⁹ include the improvement and development of frontages or of the lands abutting on or adjacent to any street.

Interpretation of 38 & 39 Vict. c. 55, s. 154.

Sect. 84.—(1) Every urban authority shall, within six months after the commencement of this Act, cause to be prepared a list of the streets within their district which are repairable by the inhabitants at large.

List of repairable streets.

(2) Any list prepared under this section shall be open to the inspection of any person, without payment, during the ordinary office hours of the urban authority.

PART IX.

BATHS AND WASHHOUSES.

Sect. 85.—(1) Any authority having power to carry into execution the Baths and Washhouses Acts, 1846 to 1899 (in this Part of this Act referred to as “the local authority”), may make charges for or in connection with the use of any bath, washhouse or bathing place provided by the authority at such rates as may be fixed by a scale authorised by the authority in accordance with the provisions of this section.¹⁰

Charges for use of baths and washhouses.

(2) Every scale for the purposes of this section shall be authorised by a resolution duly passed by the local authority, and the local authority shall at least one month before proceeding to consider any resolution for authorising such a scale, cause the proposed scale to be published in at least one newspaper circulating within the area of the authority, and in such other manner as the authority may consider necessary for bringing the proposed scale to the notice of persons interested.

Note.

By sect. 9 (1) of the present Act,¹¹ “as from the date on which a scale of charges is authorised by a local authority in accordance with the provisions of Part IX. of this Act, the enactments set out in Part I. of the Fifth Schedule to this Act shall cease to have effect so far as relates to the area of that authority to the extent mentioned in the third column of that Part of that Schedule.”

Repeals.

Schedule V., Part I., specifies the following enactments:—Baths and Washhouses Act, 1846 (9 & 10 Vict. c. 74), in sect. 34 the words from “and for determining” to “bathing places respectively.” Baths and Washhouses Act, 1847 (10 & 11 Vict. c. 61), sect. 7 and Schedule. Baths and Washhouses Act, 1878 (41 & 42 Vict. c. 14), in sect. 4 the words from “and make such” to end of section, sect. 14, and Sched.

(7) Vol. I., Part I., Div. I., p. 311.

(8) For other provisions on this subject, see Index, under “ADOPTION, Maintenance.”

(9) Vol. I., Part I., Div. I., p. 358.

(10) These Acts are set out in Vol. II., Part III., Div. IV., pp. 1381-1396.

(11) For subsect. (2), see Note to s. 87, post, p. cclxii.

Sect. 86.

Amendment of
s. 34 of Baths
and Wash-
houses Act,
1846.

Closing and use
when closed of
swimming
baths.

Sect. 86. Sect. 34 of the Baths and Washhouses Act, 1846,² shall, so far as it requires the byelaws made for the purposes of that Act by a local authority to make provision for the purposes specified in Schedule (A.) to that Act, cease to have effect.

Sect. 87.—(1) The local authority may, during any period between the first day of October and the last day of the following April, close any swimming bath provided by the authority, and may at any time while the swimming bath is closed, use the swimming bath for such purposes, or allow it to be used or let it for such purposes, and upon such terms and conditions as in their absolute discretion they think proper: Provided that the restrictions imposed by Part VI. of this Act with respect to the character of any concert or other entertainment provided by a local authority under the powers conferred by that Part shall apply with respect to any concert or other entertainment provided by the local authority under this section.³

(2) The power of the local authority to make byelaws under the Baths and Washhouses Act, 1846, shall include power to make byelaws for the regulation, management and use of the swimming bath when used for any purposes authorised by this section, and the local authority may appoint such officers and servants as are necessary for the management and superintendence of the bath when used by them for any of those purposes, and may pay reasonable salaries, wages and allowances to those officers and servants.

(3) The foregoing provisions of this section shall be substituted for sects. 5 to 8 of the Baths and Washhouses Act, 1878,⁴ but nothing in those provisions shall affect the operation of proviso (a) or (c) to sect. 2 of the Baths and Washhouses Act, 1896,⁵ or proviso (a) or (c) to sect. 2 of the Baths and Washhouses Act, 1899.⁶

(4) Nothing in this section shall authorise the use of a swimming bath for the public performance of stage plays, for public music, or public music and dancing, or other public entertainment of the like kind, or for cinematograph exhibitions, unless such licence as may be required for the use of a place for any such purpose shall have been obtained or any notice required by sect. 7 (2) of the Cinematograph Act, 1909,⁷ duly given, and any terms, conditions or restrictions attached to the grant of such licence or any regulations or conditions made or imposed under the said subsection (2) shall apply, notwithstanding anything contained in any byelaw made under this section.

Note.**Repeals.**

By sect. 9 (2) of the present Act,⁸ “the enactments set out in Part II. of the Fifth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that part of that Schedule.”

Schedule V., Part II. repeals, in relation to this subject, “as from the commencement of this Act,” the following enactments:—Baths and Washhouses Act, 1846 (9 & 10 Vict. c. 74), in sect. 34 the words from “and such byelaws” to “Schedule (A) to this Act,” and Schedule (A). Baths and Washhouses Act, 1878 (41 & 42 Vict. c. 14), sects. 5 to 8. Baths and Washhouses Act, 1896 (59 & 60 Vict. c. 59), proviso (b) to sect. 2; and in sect. 3 the words “with fourteen days’ previous notice.” Baths and Washhouses Act, 1899 (62 & 63 Vict. c. 29), proviso (b) to sect. 2.

See also sect. 86 of the present Act, and, for the other enactment repealed by sect. 9 (2) and Schedule V., Part II., the Note to sect. 74.

FIRST SCHEDULE,⁹ SECOND SCHEDULE,¹⁰ THIRD SCHEDULE,¹¹
FOURTH SCHEDULE,¹² FIFTH SCHEDULE.¹³

(2) Vol. II., Part III., Div. IV., p. 1388.
(3) See proviso to s. 56 (1), *ante*, p. ccliii.
(4) Vol. II., Part III., Div. IV., pp. 1393-1395.
(5) *Ibid.*, p. 1394.
(6) *Ibid.*, pp. 1393, 1394.
(7) Vol. I., Part I., Div. II., p. 873.
(8) For subsect. (1), see Note to s. 85, *ante*, p. cclxi.

(9) See footnote (7), *ante*, p. ccxxxviii.
(10) See footnote (9), *ante*, p. ccxxxviii.
(11) See Note to s. 5, *ante*, p. ccxxxix.
(12) See footnote (11), *ante*, p. ccxxxix.
(13) For Part I. of present Schedule, see Note to s. 85, *ante*, p. cclxi. For Part II., see Notes to ss. 74 and 87, *ante*, p. cclix, and *supra*.

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1907—7 Edw. VII. c. 32 (P. H., Regulations as to Food) -	1022	1920—10 & 11 Geo. V. c. 28 (Gas Regulation) -	410
1907—7 Edw. VII. c. 53 (P. H., Am.) -	881	1921—11 & 12 Geo. V. c. 12 (P. H., Tuberculosis) -	955
1908—8 Edw. VII. c. 6 (P. H.)	432	1921—11 & 12 Geo. V. c. 19 (Housing) -	1044 (13)
1908—8 Edw. VII. c. 43 (Admission of Press) -	810	1921—11 & 12 Geo. V. c. 23 (P. H., Officers) -	529
1909—9 Edw. VII. c. 30 (Cinematograph) -	872	1921—11 & 12 Geo. V. c. 27 (Health Resorts) -	571
1909—9 Edw. VII. c. 44 (Housing and Town Planning) -	1094	1921—11 & 12 Geo. V. c. 67 (Loc. Auth. Financial Provisions) -	622
1911—1 & 2 Geo. V. c. 6 (Perjury)	705	1922—12 & 13 Geo. V. c. 14 (Audit) -	636
1911—1 & 2 Geo. V. c. 11 (Poultry) -	1039	1922—12 & 13 Geo. V. c. 29 (Sale of Tea) -	991
1913—3 & 4 Geo. V. c. 23 (P. H., Disease) -	952	1922—12 & 13 Geo. V. c. 35 (Celluloid and Cinematograph Film) -	875
1914—4 & 5 Geo. V. c. 31 (Housing) -	1129	1922—12 & 13 Geo. V. c. 54 (Milk and Dairies, Am.) -	1036
1914—4 & 5 Geo. V. c. 52 (Housing, No. 2) -	1129	1922—12 & 13 Geo. V. c. 58 (Ecc. Tithe Rentcharge, Rates)	583
1915—5 & 6 Geo. V. c. 66 (Milk and Dairies, Consol.) -	1024	1922—12 & 13 Geo. V. c. 59 (L. G. Officers Superannuation) -	518
1916—6 & 7 Geo. V. c. 25 (Gas, Calorific Power) -	409	1923—13 & 14 Geo. V. c. 7 (Rent and Mortgage Interest, Continuance) -	1173
1916—6 & 7 Geo. V. c. 64 (Prevention of Corruption) -	546	1923—13 & 14 Geo. V. c. 13 (Rent Restriction, Notice of Increase) -	1160
1916—6 & 7 Geo. V. c. 69 (Public Authorities, Loans) -	616	1923—13 & 14 Geo. V. c. 24 (Housing, etc.) -	1175
1917—7 & 8 Geo. V. c. 21 (Venereal Disease) -	953	1923—13 & 14 Geo. V. c. 32 (Rent and Mortgage Interest) -	1156
1919—9 & 10 Geo. V. c. 23 (Anthrax) -	954	1925—15 Geo. V. c. 14 (Housing)	ccix for p. 1044
1919—9 & 10 Geo. V. c. 31 (Statement of Rates) -	1168	1925—15 Geo. V. c. 16 (Town Planning) -	ccix for p. 1045
1919—9 & 10 Geo. V. c. 35 (Housing and Town Planning)	1131	1925—15 & 16 Geo. V. c. 71 (Public Health) -	ccxxxviii
1919—9 & 10 Geo. V. c. 99 (Housing, Additional Powers) -	1152		
1920—10 & 11 Geo. V. c. 17 (Rent and Mortgage Interest) -	1156		
1920—10 & 11 Geo. V. c. 22 (Ecc. Tithe Rentcharge, Rates)	582		

PART I.

THE PRINCIPAL PUBLIC HEALTH ACTS.

DIVISION I.

THE PUBLIC HEALTH ACT, 1875.

38 & 39 VICT. c. 55.

An Act for consolidating and amending the Acts relating to Public Health in England.

[11th August, 1875.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

Sect. 1. This Act may be cited as The Public Health Act, 1875.

Short title.

Note.

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Contents of Division	1	Citation of Acts	1
Arrangement of Sections	1	Consolidation of Sanitary Acts	3

Contents of Division.

In addition to the present Act, this Division contains, set out separately, the Public Health Acts Amendment Act, 1890,¹ and the Public Health Acts Amendment Act, 1907.² The Private Street Works Act, 1892, and its annotations, will be found in the Note to sect. 150 of the present Act. Many of the shorter Public Health Acts will also be found in the Notes to the present Act.³

**Principal
Public Health
Acts.**

Arrangement of Sections.

For the arrangement of the sections and Schedules of the present Act, with their subjects, see the Note to sect. 3.⁴

**Contents of
Act.**

Citation of Acts.

Sect. 35 of the Interpretation Act, 1889,⁵ enacts that any Act may be cited either by its short title, with or without reference to the chapter, or by the regnal year, and (if there were more sessions than one in the regnal year) the session of Parliament, in which the Act was passed, and the chapter, and that any enactment may be cited by the section or subsection of the Act in which it is contained; and also contains provisions with regard to the particular editions of the statutes to which such citations are to be taken to refer, and to the commencement and termination of the clauses cited.

**General
Rules.**

Sect. 1 of the Short Titles Act, 1896,⁶ enacts that "each of the Acts mentioned in the first Schedule to this Act may without prejudice to any other mode of citation, be cited by the short title therein mentioned in that behalf." Sect. 2 of the same Act⁷ enacts as follows:—"(1) Each of the groups of Acts mentioned in the second Schedule to this Act may, without prejudice to any other mode of citation,⁸ be cited by the collective title therein mentioned in that behalf. (2) If it is provided that any Act passed after this Act may, as to the

Short titles..

(1) *Post*, Part I., Div. II.

(2) *Post*, Part I., Div. III.

(3) See Preface, and *post*, p. 2, opposite the marginal note "Public Health Acts."

(4) *Post*, p. 6.

(5) *Post*, Vol. II., p. 1970.

(6) 59 & 60 Vict. c. 14, s. 1.

(7) *Ibid.*, s. 2.

(8) See s. 35 of the Interpretation Act above mentioned.

Sect. 1, n.

whole or any part thereof, be cited with any of the groups of Acts mentioned in the second Schedule to this Act, or with any group of Acts to which a collective title has been given by any Act passed before this Act, that group shall be construed as including that Act or part, and, if the collective title of the group states the first and last years of the group, the year in which that Act is passed shall be substituted for the last year of the group, and so on as often as a subsequent Act or part is added to the group"; and by sect. 3 of the same Act,¹ "notwithstanding the repeal of an enactment giving a short title to an Act, the Act may, without prejudice to any other mode of citation, continue to be cited by that short title."

In the Scottish Court of Justiciary the fact that the Short Titles Act, 1896, gave an Act of 1848² the short title of "The Excise Act, 1848," was held material in construing a certain penalty clause.³

Public Health Acts.

The Acts which are grouped, in Sched. II. of the Act of 1896,⁴ under the collective title of "The Public Health Acts," are the following:—The Public Health Act, 1875; Public Health (Water) Act, 1878;⁵ Public Health (Interments) Act, 1879;⁶ Public Health (Fruit Pickers' Lodgings) Act, 1882;⁷ Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883;⁸ Public Health (Confirmation of Bye-laws) Act, 1884;⁹ Public Health (Officers) Act, 1884;¹⁰ Public Health (Ships, etc.) Act, 1885;¹¹ Public Health (Members and Officers) Act, 1885;¹² Housing of the Working Classes Act, 1885, ss. 7-10;¹³ Public Health (Buildings in Streets) Act, 1888;¹⁴ Public Health Act, 1889;¹⁵ Public Health (Rating of Orchards) Act, 1890;¹⁶ Public Health Acts Amendment Act, 1890;¹⁷ and the Private Street Works Act, 1892.¹⁸

The Acts since added to the above group by direct enactment are the following:—The Public Health Acts Amendment Act, 1907,¹⁹ and the Public Health Act, 1908.²⁰

The Public Health (Ports) Act, 1896,²¹ contains a provision that it is to be "construed as one" with the present Act, but no express provision that it is to be cited therewith. The Public Health (Officers) Act, 1921,²² "shall, except so far as it relates to the administrative county of London, be read as one with the Public Health Acts."

Though the repealed Public Health Act, 1889, was included in the above list, the Act which repealed it, the Public Health Act, 1896,²³ does not contain any provision that it is to be either cited, read, or construed with the other Public Health Acts; nor do the Allotments Rating Exemption Act, 1891²⁴ (which is a similar Act to the above-mentioned Public Health (Rating of Orchards) Act, 1890), the Public Health and Local Government Conferences Act, 1885,²⁵ the Public Health Act, 1904,²⁶ the Public Health (Regulations as to Food) Act, 1907,²⁷ the Public Health (Prevention and Treatment of Disease) Act, 1913;²⁸ or the Public Health (Tuberculosis) Act, 1921.²⁹ The similar Irish Acts are expressly incorporated with the Irish Public Health Acts.³⁰

The Notification of Births (Extension) Act, 1915,³¹ refers to "the Public

(1) 59 & 60 Vict. c. 14, s. 3.

(2) 11 & 12 Vict. c. 118, s. 3.

(3) *McLean v. Johnston*, 1913 S. C. (J.) 1; 50 Sc. L. R. 16; 4 Glen's Loc. Gov. Case Law 121.

(4) 59 & 60 Vict. c. 14, Sched. II.

(5) *Post*, Vol. II., p. 1267.

(6) *Post*, Vol. II., p. 1635.

(7) Quoted in Note to s. 314 of present Act, *post*.

(8) Quoted in Note to s. 16 of present Act, *post*, p. 63.

(9) Quoted in Note to s. 184 of present Act, *post*.

(10) Quoted in Note to s. 193 of present Act, *post*.

(11) Sects. 1 and 3 and the Schedule of this Act are quoted in Note to s. 110 of present Act, *post*.

(12) Quoted in Note to s. 193 of present Act, *post*.

(13) Sect. 7 of this Act is quoted in Note to s. 299 of present Act, *post*; sect. 8 in Note to s. 90, *post*, p. 171; and sects. 9 and 10 in Note to s. 91, *post*, p. 174.

(14) Quoted in Note to s. 156 of present Act, *post*.

(15) 52 & 53 Vict. c. 64, now repealed by P. H. Act, 1896, s. 6, and Sched., as to

which see footnote (23), *infra*.

(16) Quoted in Note to s. 211 of present Act, *post*.

(17) Set out *post*, Part I., Div. II.

(18) Set out and annotated at end of Note to s. 150 of present Act, *post*.

(19) See s. 2 (3), *post*, Part I., Div. III.

(20) See s. 2 (2), quoted in Note to s. 166 of present Act, *post*.

(21) See s. 2, quoted in Note to s. 287 of present Act, *post*.

(22) 11 & 12 Geo. V. c. 23, s. 9. This Act is quoted in Note to s. 189 of present Act, *post*.

(23) For sects. 1, 3-8, and Sched., see Note to s. 130 of present Act, *post*; and for sect. 2, see Note to s. 134, *post*.

(24) Quoted in Note to s. 211 of present Act, *post*.

(25) Quoted in Note to s. 247 of present Act, *post*.

(26) Quoted in Note to s. 130 of present Act, *post*.

(27) Set out *post*, Part II., Div. II.

(28) Set out *post*, Part II., Div. I.

(29) Set out *post*, Part II., Div. I.

(30) See Note to s. 2, *post*, p. 4.

(31) See s. 2 (1), *post*, Vol. II., p. 2208.

Health Acts, 1875 to 1907," and the Ferries (Acquisition by Local Authorities) Act, 1919,¹ refers to "the Public Health Acts, 1875 to 1908."

The Acts relating to "Infectious Diseases," "Food and Drugs," and "Housing and Town Planning," which respectively form Divisions I., II., and III. of Part II. of this work, are not included in the "Public Health Acts"; nor does the expression include the Local Government Acts, 1888 and 1894.

All the Acts in the group which may be cited as the "Public Health Acts"—except the Housing of the Working Classes Act, 1885, and the Public Health (Rating of Orchards) Act, 1890—and the Public Health (Ports) Act, 1896, which, as already mentioned, is not in that group, contain express provisions that they shall be "construed as one with" the Public Health Act, 1875, or with the Public Health Acts. The exception of the Acts of 1885 and 1890 is not of practical importance in view of the scope of the enactments which they contain.

As to the effect on the interpretation of statutes of the enactment that two or more Acts are to be "construed as one," Farwell, L.J., quoting Lord Selborne in an earlier case,² said³ that the effect of such a provision was that the court "must construe every part of each of them as if it had been contained in one Act, unless there is some manifest discrepancy, making it necessary to hold that the later Act has to some extent modified something found in the earlier Act."

Consolidation of the Sanitary Acts.

The circular letters of the Local Government Board, dated the 30th of September, 1875, and addressed to urban and rural sanitary authorities, pointed out amongst other things that the present Act consolidated and repealed so far as regards England, exclusive of the metropolis, nineteen of the Sanitary Acts (namely those mentioned in Part I. of the fifth Schedule to the Act), the remaining Sanitary Acts, namely, the Bakehouse Regulation Act, the Artizans' and Labourers' Dwellings Act, the Baths and Washhouses Acts, and the Labouring Classes' Lodging Houses Acts being excepted,⁴ and the duties of sanitary authorities under them being in no way affected; that advantage was taken of the opportunity to introduce certain amendments of the law, the object of many of which was to clear up doubtful points of construction, and to harmonise the provisions of the various Acts which were consolidated, whilst the effect of others was to extend the powers and obligations of sanitary authorities with respect to sewerage, water supply, gas, the abatement of nuisances, and other matters connected with sanitary administration and town government.

The sections of the repealed Acts which correspond to those of the present Act are noted under the marginal notes to the sections of the present Act, and an explanation of these abbreviated notes is given in the Note to sect. 6.

As to the rules for construing "consolidation,"⁵ as distinguished from "codifying"⁶ statutes, see the cases cited below.

Where an Act uses words from older Acts which have been judicially interpreted, the rule of construction is thus laid down by Lord Coleridge, C.J.⁷: "Whatever may have been the intention of the Legislature, . . . where cases have been decided on particular forms of words in courts, and Acts of Parliament use those forms of words which have received judicial construction, in the absence of anything in the Acts showing that the Legislature did not mean to use the words in the sense attributed to them by the courts, the presumption is that Parliament did so use them."

(1) See s. 1 (7), *post*, Vol. II., p. 2342.

(2) *Canada Southern Ry. Co. v. International Bridge Co.* (1883), L. R. 8 A. C. 723, at p. 727.

(3) *In re Kedwell and Flint & Co.*, L. R. 1911, 1 K. B. 797, at p. 803; 80 L. J. K. B. 707; 104 L. T. 151; 55 Sol. J. & W. R. 311. See also *per* Warrington, J., in *London C.C. v. Port of London Authority* (K. B. D.), L. R. 1914, 2 Ch. 362, at pp. 373, 375; *Rex (Barking U.D.C.) v. Essex J.J.* (1916, C. A.), 80 J. P. 345; 14 L. G. R. 719; *Arlidge v. Scrase*, L. R. 1915, 3 K. B., at p. 333 (further as to this case, see Note to H. T. P. Act, 1909, s. 36, *post*, Part II., Div. III.), and cases cited in footnote (11), *post*, Vol. II., p. 1963.

(4) See footnotes to s. 4, *post*, pp. 8, 9.

(5) *Reg. v. Prince* (1875), L. R. 2 C. C. R. 154, at p. 161; 44 L. J. M. C. 122; 32 L. T.

700; 13 Cox C. C. 138; *Mitchell v. Simpson* (1890), L. R. 25 Q. B. D. 183, at p. 190; 59 L. J. Q. B. 355; 63 L. T. 405; 55 J. P. 36; *Rex v. Abrahams*, L. R. 1904, 2 K. B. 859, at p. 863; 73 L. J. K. B. 972; 91 L. T. 493; 68 J. P. 546; *Higgs and Hill, Ltd. v. Stepney B.C.* (K. B. D.), L. R. 1914, 1 K. B. 505, at p. 510; 83 L. J. K. B. 294; 110 L. T. 377; 78 J. P. 134; 12 L. G. R. 395; and *Wallace v. Dixon*, footnote (8), *post*, Vol. II., p. 1963.

(6) *In re Budgett; Cooper v. Adams* (Ch. D.), L. R. 1894, 2 Ch. 557, at p. 561; 63 L. J. Ch. 847; 71 L. T. 72; *Wernham v. Regem* (K. B. D.), L. R. 1914, 1 K. B. 468, at pp. 482, 483; 83 L. J. K. B. 395; 110 L. T. 111; 78 J. P. 74.

(7) *In Barlow v. Teal* (1885, Q. B. D.), L. R. 25 Q. B. D., at p. 405; 54 L. J. Q. B. 400; 53 L. T. 52.

Sect. 1, n.

Construction
of Acts
"as one."

Circulars of
Local
Government
Board.

Repealed
Acts.

Rules of
construction.

Sect. 1, n.

For other "canons of construction," see the numerous cases cited in the Note to sect. 1 of the Interpretation Act, 1889.⁷

Extent of Act.

Sect. 2. This Act shall not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the metropolis.

Note.*England.***Meaning of England.**

By a section of an Act of 1746,⁸ which has not been repealed,⁹ and relates to the duties on houses, windows, and lights, it is enacted that "in all cases where the Kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any Act of Parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the dominion of Wales and Town of Berwick-upon-Tweed."⁸ Monmouthshire, however, is frequently expressly "deemed to form part of Wales."¹⁰

*Scotland.***Scottish Public Health Acts.**

The principal Acts relating to the public health in Scotland are the Local Government (Scotland) Acts, 1889 to 1908,¹¹ the Public Health (Scotland) Acts, 1897 to 1911,¹² the Housing (Scotland) Acts, 1890 to 1921,¹³ and the Burgh Police (Scotland) Acts, 1892 to 1911.¹⁴

*Ireland.***Irish Public Health Acts.**

The principal Acts relating to the public health in Ireland are the Public Health (Ireland) Acts, 1878 to 1919,¹⁵ the Housing of the Working Classes (Ireland) Acts, 1890 to 1921,¹⁶ and the Local Government (Ireland) Acts, 1898 to 1919.¹⁷

*Metropolis.***Metropolis Management Acts.**

The Metropolis Management Act, 1855,¹⁸ may be regarded as the starting-point of the legislation as to local government in London. The area with which that Act dealt, in that Act called the "metropolis," consisted of the city of London and a number of parishes and places enumerated in Schedules A, B, and C, to the Act.¹⁹ The Act established for each of the parishes and places in Schedules A and B an elective vestry. The vestries of the parishes in Schedule A were incorporated and given powers of government more or less similar to those conferred on urban sanitary authorities by the present Act. The vestries of the parishes and places in Schedule B were not incorporated; and those parishes and places were grouped into a number of districts, for each of which a district board of works was established, with powers practically identical with those given to the vestries of the parishes in Schedule A. Some of the districts formed by the Act of 1855 were afterwards dissolved; and (save in one case where certain of the parishes comprised in a dissolved district were formed into a new district) the parishes in the dissolved districts were put in all respects in the position of the parishes in Schedule A. Subject to these alterations, the elective vestries and district boards, established by the Act of 1855, continued in existence, but altered in some respects in constitution, more particularly by the Local Government Act, 1894,²⁰ until the London Government Act, 1899, came into force. The internal government of the city of London, which was and is extremely complicated, resting partly on statute, partly on numerous charters, and partly on custom, was left substantially untouched by the Act of 1855. The places enumerated in

(7) *Post*, Vol. II., pp. 1962, 1963.

(8) 20 Geo. II. c. 42, s. 3 (Baskett's Ed., p. 905).

(9) The whole Act (except s. 3) was repealed by 43 Geo. III. c. 161, s. 84.

(10) See, e.g., Ministry of Health Act, 1919, s. 11 (3), *post*, Vol. II., p. 2313.

(11) 52 & 53 Vict. c. 50 to 8 Edw. VII. c. 62.

(12) 60 & 61 Vict. c. 38 to 1 & 2 Geo. V. c. 30.

(13) The Act of 1890, *post*, Part II., Div. III., applies to England, Scotland, and Ireland. The Acts of 1919 (9 & 10 Geo. V. c. 60) and 1921 (11 & 12 Geo. V. c. 33) only apply to Scotland. See also the Housing (Additional Powers) Act, 1919, *post*, Part II., Div. III., which applies to all three countries.

(14) 55 & 56 Vict. c. 55 to 1 & 2 Geo. V. c. 51.

(15) 41 & 42 Vict. c. 52 to 9 & 10 Geo. V. c. 16.

(16) The Act of 1890, *post*, Part II., Div. III., applies to England, Scotland, and Ireland. The Act of 1919 (9 & 10 Geo. V. c. 45) only applies to Ireland. See also the Housing (Additional Powers) Act, 1919, *post*, Part II., Div. III., which applies to all three countries. The Act of 1921 (11 & 12 Geo. V. c. 19) applies to England and Ireland, but not to Scotland.

(17) 61 & 62 Vict. c. 37 to 9 & 10 Geo. V. c. 19.

(18) 18 & 19 Vict. c. 120.

(19) See the Note to s. 4, *post*, p. 10.

(20) See ss. 31, 48 (4), *post*, Vol. II., pp. 2050, 2083, and 79 (10), not set out.

Schedule C to the Act of 1855 were small places of exceptional character. Their government was and is, in certain respects, anomalous. **Sect. 2, n.**

The Act of 1855 further established the Metropolitan Board of Works as an authority with jurisdiction in certain respects over the whole of the metropolis. It provided for future alteration in the area of the "metropolis;" but this provision was never acted upon and the section is now repealed. It has been amended by the Acts mentioned below.³

The Local Government Act, 1888,¹⁰ which established county councils, and gave the name of "administrative county" to the area for which a county council was to be elected, constituted the area forming the metropolis under the Metropolis Management Act an administrative county, under the name of "the administrative county of London;" it established the London County Council as the county council for that administrative county, and it abolished the Metropolitan Board of Works and transferred their functions to the London County Council. The Act, however, left the vestries and district boards substantially unaffected. **Local Government Act, 1888.**

Under the London Government Act, 1899,¹¹ the administrative county of London was slightly altered in area,¹² and as so altered, was (exclusive of the City of London) divided into twenty-eight "metropolitan boroughs,"¹³ for each of which a borough council was established. And to these councils, subject to some exceptions, the functions of the existing vestries and district boards, of existing burial boards and boards of commissioners under the Baths and Washhouses Acts and the Public Libraries Acts, and of the overseers of the poor, were transferred. Woolwich, the government of which had been of exceptional character, was placed under one of the metropolitan borough councils and assimilated as regards government to the rest of London.¹⁴ **London Government Act, 1899.**

The expression "metropolis" is defined by sect. 4 of the present Act, but practically, in view of the changes in the area of the administrative county of London effected under the Act of 1899, the metropolitan area excluded from the operation of the present Act is no longer the "metropolis" as so defined, but the administrative county of London with its present boundaries. **Meaning of "Metropolis."**

Provisions expressly relating to the metropolis were contained in sects. 108, 115, 291, 336, and in Schedule V., Part III. of the present Act, which re-enacted a clause of the Public Health Act, 1872,¹⁵ transferring to the Local Government Board the powers of the Board of Trade under the Metropolis Water Acts; but sects. 108, 115, and 291 were repealed so far as they relate to the metropolis by the Public Health (London) Act, 1891.¹ The last mentioned Act repealed the Nuisances Removal Acts and certain other of the Sanitary Acts which had remained in force in the metropolis,² and, together with the Metropolis Management Acts³ and the London Building Acts, 1894—1909,⁴ and so much of the Metropolitan Paving Act of 1817⁵ as is not superseded, deals with the same subjects as the present Act in relation to the county of London. Provisions, which relate to sanitary matters and are of more or less general application in the county, are contained in the special Acts promoted from time to time by the London County Council.⁶ **Other London Acts.**

The City of London Sewers Acts, 1848 and 1851,⁷ provide for the "sanatory" improvement of the City of London and the liberties thereof, and for the better cleansing, sewerage, paving, and lighting the same. The functions of the Commissioners of Sewers under those Acts and the Public Health (London) Act, 1891, have now been transferred to the Common Council of the City.⁸ The City of London (Various Powers) Act, 1900,⁹ relates to water closets and **The City of London.**

(10) *Post*, Vol. II., p. 1889.

(11) 62 & 63 Vict. c. 14.

(12) *Ibid.*, ss. 18, 20.

(13) See *post*, p. 10.

(14) 62 & 63 Vict. c. 14, s. 19. See also 54 & 55 Vict. c. 76, ss. 99, 102, Sched. II.

(15) 35 & 36 Vict. c. 79, s. 35.

(1) 54 & 55 Vict. c. 76.

(2) See Sched. V., Part I. of present Act, *post*.

(3) 18 & 19 Vict. c. 120; 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102; 41 & 42 Vict. c. 32; 48 & 49 Vict. c. 33; 50 & 51 Vict. c. 17; 53 & 54 Vict. cc. 54, 66; and 56 & 57 Vict. c. 55. For works on the London Acts, see Woolrych's "Metropolis Management Acts," Glen and Bethune's

"London Building Acts," Macmorran and Naldrett's "Public Health (London) Act, 1891," and Lord Halsbury's "Laws of England," title "Metropolis."

(4) 57 & 58 Vict. c. ccxiii; 61 & 62 Vict. c. cxxxvii.; 5 Edw. VII. c. ccix; 8 Edw. VII. c. cvii. (Part III.); 9 Edw. VII. c. cxxx. (Part IV.).

(5) 57 Geo. III. c. xxix.

(6) These Acts are printed in "Knight's Local Government Reports (Statutes)," published monthly.

(7) 11 & 12 Vict. c. clxiii.; 14 & 15 Vict. c. xci.

(8) 60 & 61 Vict. c. cxxxiii. s. 10.

(9) 63 & 64 Vict. c. ccxxviii. ss. 54, 63-67.

Sect. 2, n. byelaws, and the City of London (Public Health) Act, 1902,¹⁰ to the removal of house refuse and the demolition of buildings in the city.

Division of Act into parts.

Sect. 3. This Act is divided into parts, as follows :

Part I.—Preliminary.

Part II.—Authorities for Execution of Act.

Part III.—Sanitary Provisions.

Part IV.—Local Government Provisions.

Part V.—General Provisions.

Part VI.—Rating and Borrowing Powers, etc.

Part VII.—Legal Proceedings.

Part VIII.—Alteration of Areas and Union of Districts.

Part IX.—Local Government Board.

Part X.—Miscellaneous and Temporary Provisions.

Part XI.—Saving Clauses and Repeal of Acts.

Note.

Arrangement of sections.

The arrangement of the sections and Schedules of the present Act is as follows :—

Part I. (Preliminary), sect. 1 (Short Title), sect. 2 (Extent of Act), sect. 3 (Division of Act into Parts), and sect. 4 (Definitions).

Part II. (Authorities for Execution of Act), sects. 5-12 (Constitution of Districts and Authorities).

Part III. (Sanitary Provisions), sects. 13-26 (Regulations as to Sewers and Drains), sects. 27-31 (Disposal of Sewage), sects. 32-34 (As to Sewage Works without District), sects. 35-41 (Privies, Water Closets, etc.), sects. 42-47 (Regulations as to Scavenging and Cleansing Streets and Houses), sects. 48-50 (Offensive Ditches and Collections of Matter), sects. 51-67 (Powers of Local Authority in relation to Supply of Water), sects. 68-70 (Provisions for Protection of Water), sects. 71-75 (Occupation of Cellar Dwellings), sects. 76-89 (Common Lodging Houses), sect. 90 (Bye-laws as to Houses let in Lodgings), sects. 91-111 (Nuisances), sects. 112-115 (Offensive Trades), sects. 116-119 (Unsound Meat, etc.), sects. 120-130 (Provisions against Infection), sects. 131-133 (Hospitals), sects. 134-140 (Prevention of Epidemic Diseases), sects. 141-143 (Mortuaries, etc.).

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Part VII. (Legal Proceedings), sects. 251-265 (Prosecution of Offences and Recovery of Penalties, etc.), sects. 266, 267 (Notices), sects. 268, 269 (Appeal).

Part VIII. (Alteration of Areas and Union of Districts), sects. 270-278 (Alteration of Areas), sects. 279-286 (Union of Districts), sects. 287-292 (Port Sanitary Authority).

Part IX. (Local Government Board),¹¹ sects. 293-296 (Inquiries by Board),¹¹ sects. 297, 298 (Provisional Orders by Board),¹¹ sects. 299-302 (Power of Board¹¹ to enforce performance of Duty by Defaulting Local Authority), sects. 303, 304 (Powers of Board¹¹ in relation to Local Acts, etc.).

Part X. (Miscellaneous and Temporary Provisions), sects. 305-317 (Miscellaneous), sects. 318-325 (Temporary Provisions).

Part XI. (Saving Clauses and Repeal of Acts), sects. 326-341 (Saving Clauses), sect. 342 (Oxford), sect. 343 (Repeal of Acts).

Schedule I. (Rules as to Meetings and Proceedings), Part I. (Rules Applicable to Local Boards); Part II. (Rules Applicable to Committees of Local Authorities, other than Councils of Boroughs, and to Joint Boards).

(10) 2 Edw. VII. c. cxvi. ss. 4, 5.

1919, *post*, Vol. II., p. 2305.

(11) Now Minister of Health. See Act of

Schedule II., Part I., Rules for Election of Local Boards; Part II., Proceedings in case of Lapse of Local Board. **Sect. 3, n.**

Schedule III., Rules 1-8. Rules as to Resolutions of Owners and Ratepayers.

Schedule IV. (Forms). A. (Notice requiring Abatement of Nuisance), B. (Summons), C. (Order for Abatement or Prohibition of Nuisance), D. (Order for Abatement of Nuisance by Local Authority), E. (Order to permit Execution of Works by Owner), F. (Order of Justice for Admission of Officer of Local Authority), G. (Notice requiring Owner to sewer, etc., Private Street), H. (Mortgage of Rates), I. (Transfer of Mortgage), K. (Rentcharge), L. (Register of Owners), M. (Appointment by Proxy), N. (Voting Papers at Elections of Members of Local Boards), O. (Voting Paper for Poll taken under Schedule III.).

Schedule V., Part I., Repealed Acts (Sanitary Acts); Part II., Repealed Acts, Public Health Supplemental Acts; Part III., Re-enacted Provisions.

In two cases, one arising under the Lands Clauses Consolidation Act, 1845,¹² and the other under the Factors Acts,¹³ the House of Lords considered that the heading of a portion of a statute might be referred to, to determine the sense of any doubtful expression in a section ranged under such heading. And in a case arising under the Workmen's Compensation Act, 1897,¹⁴ Lord Macnaghten observed: "It has been held that you cannot resort to the title of an Act for the purpose of construing its provisions. Still, as was said by a very sound and careful judge, 'the title of an Act of Parliament is no part of the law, but it may tend to show the object of the legislature.' Those were the words of Wightman, J.,¹⁵ and Chitty, J., observed¹⁶ that the title of an Act may be referred to for the purpose of ascertaining generally the scope of the Act."¹ But the scope of an Act may not be restricted by reference to its title (short or long), or its preamble, if its terms are unambiguous.² See also the Note to sect. 1 of the Interpretation Act, 1889.³

Headings and titles.

The effect of the headings of the Parts into which the Rivers Pollution Prevention Act, 1876, is divided, was discussed in the case cited below.⁴

Sect. 4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them; that is to say,

Definitions.

"Borough" means any place for the time being subject to the [Municipal Corporations Act, 1882] and any Act amending the same:⁵

"The Metropolis" means the City of London and all parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855:

"Local Government District" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and "local board" means any board so constituted:⁶

"Improvement Act district" means any area for the time being subject to the jurisdiction of any improvement commissioners as hereinafter defined:

(12) *Hammersmith and City Ry. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; 21 L. T. 238.

(13) *Inglis v. Robertson*, L. R. 1898 A. C. 616, at p. 624; 67 L. J. P. C. 108; 79 L. T. 224.

(14) 60 & 61 Vict. c. 37.

(15) In *Johnson v. Upham* (1859), 2 E. & E. at p. 263.

(16) In *East and West India Docks v. Shaw Savill and Albion Co.* (1888), L. R. 39 Ch. D., at p. 531; 57 L. J. Ch., at p. 1040; 60 L. T., at p. 144.

(1) *Fenton v. Thorley & Co., Ltd.*, L. R. 1903 A. C., at p. 447; 72 L. J. K. B., at p. 789; 89 L. T., at pp. 315, 316; see also *Fielding v. Morley Cpn.* (C. A.), L. R. 1899, 1 Ch., at pp. 3, 4; affirmed H. L., L. R. 1900 A. C. 133.

(2) *Sage v. Eichholz*, cited in Note to s. 193, *post*.

(3) Footnote (24), *post*, Vol. II., p. 1963.

(4) *Yorkshire (W.R.) Rivers Bd. v. Linthwaite U.D.C.*, footnote (12), *post*, Vol. II., p. 1963.

(5) The Act mentioned in this definition clause, the Municipal Corporations Act, 1835 (5 & 6 Will. IV. c. 76), was, with the Acts

amending that Act, repealed by the Act of 1882; see the Note to s. 198 of the present Act, *post*. The expressions "borough," "municipal borough," and "parliamentary borough" are defined in the Interpretation Act, 1889, s. 15, *post*, Vol. II., p. 1966.

(6) The "Local Government Acts" referred to in this definition clause were the Public Health Act, 1848 (11 & 12 Vict. c. 63), the Local Government Act, 1858 (21 & 22 Vict. c. 98), the Local Government Act (1858) Amendment Act, 1861 (24 & 25 Vict. c. 61), and the Local Government Act Amendment Act, 1863 (26 & 27 Vict. c. 17). These Acts were all repealed by the present Act; see sect. 343 and Sched. V., Part I., *post*. The constitution under them of district and local boards has been dealt with in "Glen's District Councillor's Guide," Ch. I., §§ 14, 16. The boards constituted under the Act of 1848 were called "local boards of health." The provisions in the present Act, see ss. 271, 272, *post*, for the formation of local government districts and local boards, now called "county districts" and "district councils," have been practically superseded by the Local Government Act, 1888, s. 57, *post*, Vol. II., p. 1930.

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- "Improvement Commissioners" means any commissioners trustees or other persons invested by any local Act with powers of town government and rating :
- "Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :
- "Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :
- "Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union :
- "Person" includes any body of persons, whether corporate or unincorporate :
- "Local authority" means urban sanitary authority and rural sanitary authority :⁷
- "Surveyor" includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act :⁸
- "Lands" and "Premises" include messuages buildings lands easements and hereditaments of any tenure :
- "Owner" means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent :
- "Rackrent" means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent :
- "Street" includes any highway [(not being a turnpike road)], and any public bridge (not being a county bridge), and any road lane footway square court alley or passage whether a thoroughfare or not :
- "House" includes schools, also factories and other buildings in which [more than twenty] persons are employed [at one time] :
- "Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed :
- "Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act :
- "Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle horses or animals of any description for sale :
- "Water company" means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit :
- "Waterworks" includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company :
- "Bakehouse Regulation Act" means. . .⁹

(7) Urban sanitary authorities are described in ss. 5 and 6 of the present Act, *post*, and rural sanitary authorities in s. 9, *post*.

(8) Urban district councils are required by s. 189 of the present Act, *post*, to appoint surveyors. Rural district councils appoint officers under s. 190, *post*. As to the duties, &c., of such officers, see the Notes to those sections.

(9) The Act mentioned in this definition clause, the Bakehouse Regulation Act, 1863 (26 & 27 Vict. c. 40), was repealed by the Factory and Workshop Act, 1878 (41 Vict. c. 16), s. 107. The latter Act was itself repealed by the Act of 1901, which makes other provisions as to the sanitary condition of bakehouses; see ss. 97-102, *post*, Vol. II., p. 2149.

- “ Artizans and Labourers Dwellings Act ” means . . .¹²

“ Baths and Wash-houses Acts ” means . . .¹³

“ Labouring Classes Lodging Houses Acts ” means . . .¹

“ Sanitary Acts ” means all the above mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act :

“ Sanitary purposes ” means any object or purposes of the Sanitary Acts :

“ Court of quarter sessions ” means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises :²

“ Court of summary jurisdiction ” means any justice or justices of the peace, stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to :²

“ Summary Jurisdiction Acts ” means the [Summary Jurisdiction Act, 1848], and any Act amending the same.²
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Meaning of Terms.

Definitions of general application are given by the Interpretation Act, 1889.³ An alphabetical list of the terms defined by that Act is given at the commencement of that Act. General definitions.

“ Means,” in an interpretation clause, limits the interpretations to those expressed.⁴ But the words “ shall include ” mean “ shall have the following meanings in addition to the popular meaning.”⁵ Interpretation of definition.

A statutory definition, preceded by the word “ includes ” only, is not “ exhaustive.”⁶ The meaning of the expression “ shall apply to ” was considered in the case cited below.⁷

For other general rules as to the interpretation of expressions in statutes, such as those conveyed by the phrases *ejusdem generis*,⁸ and *noscitur a sociis*;⁹ and as to whether definition clauses exclude the “ natural meaning ” of the words defined,¹⁰ see the cases cited below and in the Note to sect. 1 of the Interpretation Act, 1889.¹¹

(12) The Act mentioned in this definition clause, the Artizans and Labourers Dwellings Act, 1868 (31 & 32 Vict. c. 130), and several amending Acts, were repealed by the Housing Act of 1890. Any property acquired by local authorities under the repealed Acts, and vested in them at the commencement of the Act of 1890, were deemed to have been acquired under Part II. or Part III. of that Act; see s. 102, *post*, Part II., Div. III.

(13) The Acts of 1846 and 1847, the Acts mentioned in this definition clause, are set out with the amending Acts of 1878 and 1882; see *post*, Vol. II., pp. 1381 *et seq.* As to their adoption by urban district councils, see s. 10 of the present Act, *post*.

(1) The Acts mentioned in this definition clause, namely, the Labouring Classes Lodging Houses Act, 1851 (14 & 15 Vict. c. 34), the Labouring Classes Dwelling Houses Act, 1866 (29 & 30 Vict. c. 28), and the Labouring Classes Dwelling Houses Act, 1867 (30 & 31 Vict. c. 28), were repealed by the Housing Act of 1890. Their adoption before such repeal was deemed to be an adoption of Part III. of the Act of 1890; see s. 102 of that Act, *post*, Part II., Div. III.

(2) See also the definitions of “ court of quarter sessions,” “ court of summary jurisdiction,” and “ Summary Jurisdiction Acts ” in Interpretation Act, 1889, s. 13 (7-11), *post*, Vol. II., p. 1966. As to the Summary Juris-

diction Acts, see s. 251 of the present Act and Note, *post*.

(3) *Post*, Vol. II., p. 1961.

(4) *Reg. v. Kershaw* (1856), 6 E. & B. 999; 26 L. J. M. C. 19; 20 J. P. 741; *s.c. nom. Kershaw v. Harrop*, 2 Jur. (N.S.) 1139; *Doe d. Edney v. Benham* (1845), 7 Q. B. 976; *Reg. v. Cambridgeshire JJ.* (1838), 7 A. & E., at pp. 490, 491. The expression “ means and includes ” probably has the same meaning as the word “ means ” by itself; see *per Lord Watson in Dilworth v. Commissioner of Stamps*, L. R. 1899 A. C., at p. 106.

(5) *Per Brett, M.R., in Portsmouth Cpn v. Smith* (1883), L. R. 13 Q. B. D., at p. 195; 53 L. J. Q. B., at p. 95; 50 L. T., at p. 310; 48 J. P. 404; affirmed in H. L. on another point.

(6) See *per Lawrence, C.J., in Williams v. Morgan*, 85 J. P., at p. 192, col. ii.

(7) *Regent’s Canal Company v. London C.C.*, cited in present Note under definition of “ owner.”

(8) *Cheshire Lines Committee v. Heaton Norris U.D.C.*, cited in Note to P. H. Am. Act, 1907, s. 30, *post*, Part I., Div. III.

(9) *Metropolitan Water Board v. Avery* (H. L.), 12 L. G. R., at p. 99.

(10) *Per Lord Selborne in Robinson v. Barton Eccles Loc. Bd.* (1883), L. R. 8 A. C. 798, at p. 801.

(11) *Post*, Vol. II., p. 1961.

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enactments.
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metropolis.
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Definition of
parish.
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parish.

With regard to the interpretation of terms used in incorporated enactments, see sect. 316 and the Note to that section.

In the Notes, on the definitions in the present section, which follow, the definitions have been quoted in full in italics at the commencement of each such Note, in order to obviate the necessity of turning back to the section when reading the Notes.

The Metropolis.

“ ‘The Metropolis’ means the City of London and all parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855.”

The metropolis as defined by the present section constitutes the administrative county of London under the Local Government Act, 1888.¹ Subject to certain alterations made under the London Government Act, 1899,² it consists of the City of London and the metropolitan boroughs of Battersea, Bermondsey, Bethnal Green, Camberwell, Chelsea, Deptford, Finsbury, Fulham, Greenwich, Hackney, Hammersmith, Hampstead, Holborn, Islington, Kensington (Royal Borough), Lambeth, Lewisham, Paddington, Poplar, St. Marylebone, St. Pancras, Shore-ditch, Southwark, Stepney, Stoke Newington, Wandsworth, Westminster (city), and Woolwich. The councils of these boroughs are the sanitary authorities under the Acts mentioned in the Note to sect. 2.³

The “parishes and places mentioned in Schedules A, B, and C, to the Metropolis Management Act, 1855,” were respectively as follows:

Parishes formerly under select vestries—Chelsea, Islington (St. Mary), Kensington (St. Mary Abbot), Mile End Old Town (Hamlet), Paddington, St. George Hanover Square, St. George-in-the-East, St. James and St. John Clerkenwell, St. James Westminster, St. John Hampstead, St. Luke (Middlesex), St. Martin-in-the-Fields, St. Marylebone, St. Matthew Bethnal Green, St. Pancras, and Shore-ditch (St. Leonard), formerly in the county of Middlesex; Bermondsey, Camberwell, Lambeth, Rotherhithe, St. George the Martyr Southwark, and St. Mary Newington, formerly in the County of Surrey; and Woolwich, formerly in the County of Kent.

Districts formerly under Boards of Works—Fulham (subsequently divided and placed under the Vestries of Fulham and Hammersmith³), Hackney (subsequently divided and placed under the Vestries of Hackney and St. Mary Stoke Newington⁴), Holborn, Limehouse, Poplar, St. Giles, Strand, Westminster (subsequently placed under a select vestry, when the parishes of St. Margaret and St. John the Evangelist were united into a single parish⁵), and Whitechapel, formerly in the County of Middlesex; Lewisham, St. Olave, St. Saviours, and Wandsworth (subsequently divided into the Wandsworth District and the parish of St. Mary, Battersea, exclusive of the hamlet of Penge, which parish was placed under a select vestry⁶), formerly in the County of Surrey; Greenwich, formerly partly in the County of Surrey and partly in the County of Kent; and Plumstead (subsequently divided and placed under the Plumstead Vestry and the Lee District Board⁷), formerly in the County of Kent.

Other places—The Close of the Collegiate Church of St. Peter Westminster (better known as “Westminster Abbey”), the Charterhouse, Inner Temple, Middle Temple, Lincoln’s Inn, Gray’s Inn (all formerly extra-parochial), and the parishes of Staple Inn and Furnival’s Inn, all formerly in the County of Middlesex.

With regard to the local government of the metropolis, see the Note to sect. 2.⁸

Parish.

“ ‘Parish’ means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.”

The same definition is given by the Interpretation Act, 1889,⁹ and applies to the Local Government Act, 1894.¹⁰ In the Local Government Act, 1888, the term means “a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary authority, or other area, means each such part.”¹¹

(1) See s. 40 (1), *post*, Vol. II., p. 1924.

(2) *Ante*, p. 5. For a full treatise on this subject, see Jenkin’s “London Government Act, 1899,” published by Messrs. Charles Knight & Co.

(3) 48 & 49 Vict. c. 33.

(4) 56 & 57 Vict. c. 55.

(5) 50 & 51 Vict. c. 17.

(6) *Ibid.* Penge was made a separate urban district in the County of Kent under L. G. Act, 1899, s. 20.

(7) 56 & 57 Vict. c. 55.

(8) *Ante*, p. 4.

(9) See s. 5, *post*, Vol. II., p. 1964.

(10) See s. 75, *post*, Vol. II., p. 2106.

(11) See s. 100, *post*, Vol. II., p. 1953.

The word "parish" was said to be derived from the Saxon *Preost scyre*, or Priestshire, the precinct of which one priest had the care; but the derivation now accepted is the French *paroisse*, from the Latin *parochia* or *paræchia*, and the Greek *παροικία*, a neighbourhood.

A place may now be in one parish for ecclesiastical and another for civil purposes,⁵ and a "parish" in the Highway Acts is a place which formerly maintained its own highways, and was not necessarily coincident with the poor law parish.⁶

The statute of Elizabeth by which the office of overseer of the poor was established, and by virtue of which overseers are still appointed, directed that they should be appointed for "every parish."⁷ An Act of Charles II.,⁸ originally a temporary Act, but subsequently made permanent,⁹ after reciting that the inhabitants of the northern counties and many other counties in England and Wales could not reap the benefit of the statute of Elizabeth by reason of the largeness of the parishes, directed that overseers should in such cases be appointed for townships or villages as though they were parishes. A practice having grown up of appointing separate overseers for towns corporate and franchises which were not coterminous with the parishes in which they were situate, an Act of 1819 confirmed such separation (except where it had taken place within sixty years before the passing of the Act), and prohibited such separation in any other case.¹⁰ The Poor Law Amendment Act, 1844,¹¹ enacted that, after the passing of that Act, it should not be lawful to appoint separate overseers for any township or village or other place for which before the passing of the Act separate overseers had not been lawfully appointed.

The actual boundary of any place which is a "parish" within the meaning of the present Act, will generally only be ascertainable by evidence of reputation, for the boundaries of parishes depend upon ancient and immemorial custom; they were not limited by Act of Parliament or set forth by special commissioners, except in certain cases where they have been set out by Tithe Commissioners,¹² or by Inclosure Commissioners,¹³ but "as the circumstances of times and places and persons did happen to make them greater or lesser."¹⁴

In order to preserve the evidence by reputation of parish boundaries, perambulations are very generally made from time to time in Rogation week; and it has been held that the parishioners may justify going upon a man's land for this purpose;¹⁵ while the Legislature has recognised the custom by authorising the payment out of the poor rate of expenses properly incurred in perambulations not oftener than once in three years, as well as the cost of setting up and maintaining parish boundary stones.¹⁶

Where a highway or a non-tidal river forms the boundary between two parishes, the presumption is that the half of the highway or river on either side of the *medium filum* is part of the parish on that side, that is, that the centre line of the highway or river forms the boundary line.¹⁷

The Extra-Parochial Places Act, 1857, rendered places, which were separately entered as extra-parochial in the report of the Registrar-General on the then last census, parishes for certain specified purposes, and authorised the appointment of overseers for other places reputed to be extra-parochial;¹⁸ it also authorised the quarter sessions of the county, or recorder of the borough, as the case might be, or where there was a local Act in force, the Poor Law Board, to make orders with the consent of the inhabitants for the annexation of extra-parochial places to parishes.¹⁹ The Poor Law Amendment Act, 1868, however, compulsorily annexed

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Overseers.

Boundary of parish.

Extra-parochial places.

(5) *Reg. v. Watson* (1868), L. R. 3 Q. B. 762; 37 L. J. M. C. 153; 18 L. T. 556.

(6) 5 & 6 Will. IV. c. 50, s. 5; 25 & 26 Vict. c. 61, s. 3.

(7) 43 Eliz. c. 2, s. 1.

(8) 14 Car. II. c. 12, ss. 21, 22.

(9) 12 Anne, st. 1, c. 18.

(10) 59 Geo. III. c. 95, s. 1.

(11) 7 & 8 Vict. c. 101, s. 22.

(12) 1 Vict. c. 69, ss. 2, 3; 2 & 3 Vict. c. 62, ss. 34-36; 3 & 4 Vict. c. 15, s. 28. As to the effect of which, see *Reg. v. Madeley* (1850), 15 Q. B. 43; 19 L. J. M. C. 187; 4 New Sess. Cas. 169.

(13) 41 Geo. III. c. 109, s. 3; 8 & 9 Vict. c. 118, s. 39; 12 & 13 Vict. c. 83, ss. 1, 9; 15 & 16 Vict. c. 79, s. 28. See *Rex v. St. Mary in Bury St. Edmunds* (1821), 4 B. & Ald. 462; *Rex v. Washbrook Inhabitants*

(1825), 4 B. & C. 732; 7 D. & R. 221.

(14) 1 Stillingfleet's Ecclesiastical Cases 348; 3 Burn's Eccl. Law, 9th edit., tit. Parish 74.

(15) *Goodday v. Michell* (1596), Cro. Eliz. 441; Owen 71; Co. Ent. 650 b, 651 b; *Taylor v. Devey* (1837), 7 A. & E. 409; 2 N. & P. 469; 7 L. J. M. C. 11; 1 Jur. 892.

(16) 7 & 8 Vict. c. 101, s. 60.

(17) *Reg. v. Strand Bd. of Works* (1863), 4 B. & S. 526; 33 L. J. M. C. 33; 9 L. T. 374; affirmed in Ex Ch., 5 B. & S. 408; 11 L. T. 183; *Rex v. Landulph* (1834), 1 Moody & Rob. 393; *Reg. v. Musson, post*, p. 12; *McCannon v. Sinclair* (1859), 2 E. & E. 53; 28 L. J. M. C. 247; 5 Jur. (N.S.) 1302; *Bridgwater Trustees v. Bootle-cum-Linacre, post*, p. 12.

(18) 20 Vict. c. 19, s. 1.

(19) *Ibid.*, ss. 4, 7.

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to the adjoining parishes with which they had the longest common boundaries, all places which were or were reputed to be extra-parochial, and which had not up to that time been parochialised, whether or not they had been separately entered as extra-parochial in the above-mentioned report.⁹

It is said that portions of Windsor Castle, Exeter Castle Yard, Lundy Island, and certain other islands and lighthouses are still extra-parochial. Extra-parochial places may still be created for Army ecclesiastical purposes under the Army Chaplains Act, 1868.¹⁰ As to the origin of extra-parochial places, see the work mentioned below.¹¹

Accretions
from the sea.

The Poor Law Act of 1868 also enacts that "every accretion from the sea, whether natural or artificial, and the part of the seashore to the low-water mark, and the bank of every river to the middle of the stream, which on the said 25th day of December next shall not be included within the boundaries of or annexed to and incorporated with any parish, shall for the same purposes [*i.e.* all civil parochial purposes] be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins in proportion to the extent of the common boundary."¹² A portion of a pier carried out on piles beyond low-water mark is not an accretion from the sea, nor an extra-parochial place, within this enactment.¹³

But a declaration was granted that land reclaimed from the sea by artificial works and used as a railway station was such an accretion, and could be rated.¹⁴

As to the title of an adjoining owner to accretions,¹⁵ and to sandhills under the jurisdiction of Commissioners of Sewers as sea defence works,¹⁶ see the cases cited below.

High and low
water marks.

It may be observed that, where the seashore forms the boundary of a parish, the portion of the shore between the high-water mark of ordinary spring tides and the high-water mark of medium tides was, before the above-mentioned Act, within the limits of the parish; but the portion of the shore below the high-water mark of medium tides had been held to be an extra-parochial place within the meaning of sect. 6 of the Nuisances Removal Act, 1855.¹ It had also been held that there was no *prima facie* presumption that the portion between high and low-water marks formed part of the parish.² And that where a parish extended up a tidal river, but there was nothing to show whether it did or did not extend beyond the line of ordinary or medium high-water mark, land between that high-water mark and the low-water mark could not be assumed to be within the parish, as there was no distinction in this respect between land on the seashore and land on the shore of a tidal river.³

Alteration
of parishes.

Alterations of parish boundaries have been authorised by the following enactments:—The Poor Law Amendment Act, 1867, empowered the Poor Law Board to make provisional orders for readjusting the boundaries of parishes, or for dividing parishes in cases where several parts of a parish were separated from one another or intermixed with an adjoining parish, or where a parish was of great extent in area.⁴ The Divided Parishes and Poor Law Amendment Act, 1876, empowered the Local Government Board by order, or, if one-tenth of the ratepayers objected, by provisional order, to constitute separate parishes out of a parish which was so divided as to have its parts or any of them isolated in some parish or parishes or otherwise detached, or to amalgamate some of the parts with the parish or parishes in which they were locally situate or to which they might be annexed.⁵ Under the same Act,⁶ separate overseers are to be appointed for any parish constituted under these provisions, notwithstanding the

(9) 31 & 32 Vict. c. 122, s. 27.

(10) 31 & 32 Vict. c. 83, s. 4.

(11) "English Local Government, the Parish and County," by S. & B. Webb, 1906 Ed., p. 10.

(12) 31 & 32 Vict. c. 122, s. 27. As to the necessity for proving boundary, see *Fearon v. Warrenpoint U.D.C.* (1910, K. B. D., Ir.), 44 Ir. L. T. 265; 1 Glen's Loc. Gov. Case Law 91.

(13) *Blackpool Pier Co. v. Fylde Union* (1877), 46 L. J. M. C. 189; 36 L. T. 251. But see *Leith Harbour Comrs. v. Leith Cpn.*, 1911 S. C. (S.) 1139; 2 Glen's Loc. Gov. Case Law 219; *Christie v. Leven Magistrates*, 1912 S. C. (S.) 678.

(14) *Barwick v. South Eastern Ry. Co.* (C. A.), L. R. 1921, 1 K. B. 187; 90 L. J. K. B. 377; 124 L. T. 71; 85 J. P. 65;

18 L. G. R. 757.

(15) *A.G. for Ireland v. McCarthy*, 1911 Ir. K. B. 260; 2 Glen's Loc. Gov. Case Law 7-10.

(16) *Nesbitt v. Mablethorpe U.D.C.* (C. A.), L. R. 1918, 2 K. B. 1; 87 L. J. K. B. 705; 118 L. T. 805; 82 J. P. 161; 16 L. G. R. 313.

(1) *Reg. v. Gee* (1860), 1 E. & E. 1068; 28 L. J. Q. B. 298.

(2) *Reg. v. Musson* (1858), 8 E. & B. 900; 27 L. J. M. C. 100; 4 Jur. (N.S.) 111.

(3) *Bridgwater Trustees v. Bootle-cum-Linacre Highway Surveyors* (1866), L. R. 2 Q. B. 4; 7 B. & S. 348; 36 L. J. Q. B. 41; 15 L. T. 351.

(4) 30 & 31 Vict. c. 106, s. 3.

(5) 39 & 40 Vict. c. 61, ss. 1, 2.

(6) *Ibid.*, s. 6.

above-mentioned prohibition in the Poor Law Amendment Act, 1844.¹¹ The Divided Parishes and Poor Law Amendment Act, 1882, which does not apply to the metropolis, enacts that "where any part of a parish is isolated or detached from the other part or parts of the parish, and is wholly surrounded by another parish, such part shall, from and after the 25th day of March, 1883, be amalgamated with the last-mentioned parish," as though an order for the purpose had been made under the Act of 1876; "and such part shall be deemed to be within the same county as the parish with which it is amalgamated."¹² This last provision was, however, subject to the right of the ratepayers of such an isolated or detached portion of a parish to apply in certain cases to the Local Government Board to constitute it a separate parish.¹³

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Without prejudice to the above-mentioned powers of the Local Government Board (now the Ministry of Health), county councils (and county borough councils) may make orders, subject to confirmation by the Minister, for the alteration or definition of the boundaries of parishes under sect. 57 of the Local Government Act, 1888.¹⁴ Under the Local Government Act, 1894,¹⁵ the county councils were required to make such orders as they might deem most suitable with a view to providing that the whole of every parish should be, in the same administrative county, and in the same county district. Such orders were to be made within two years from the passing of that Act or such further period as the Local Government Board might allow, and on default of any council to make the requisite orders their powers were transferred to the Local Government Board. Subject to such orders, parishes partly within and partly without a rural district, or partly in different urban districts, were made several separate parishes as though they had been divided under the above-mentioned Divided Parishes Acts.¹⁶

Union, Guardians.

" 'Union' means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians."

Definition of union.

" 'Guardians' means any persons or body of persons by whom the relief of the poor is administered in any union."

Definition of guardians.

The Interpretation Act, 1889, defines "board of guardians" and "poor law union."¹

Meaning of union.

The public Act referred to is the Poor Law Amendment Act, 1834, in which "the word 'union' shall be construed to include any number of parishes united for any purpose whatever under the provisions of this Act, or incorporated under the [Poor Relief Act, 1782,²] or incorporated for the relief or maintenance of the poor under any local Act."³ The unions under the Act of 1782, which were called Gilbert's unions or incorporations, having all been dissolved by the Local Government Board or their predecessors,⁴ the Act was repealed by the Statute Law Revision Act, 1871.

Gilbert's unions.

The Poor Law Amendment Act, 1834, authorised the Poor Law Commissioners (now the Ministry of Health⁵) to form and from time to time alter unions of parishes for the administration of the laws relating to the relief of the poor⁶ by boards of guardians, partly consisting of the justices of the peace residing in the unions and partly of persons elected by the owners and ratepayers of the several parishes⁷ (now consisting entirely of persons elected under the Local Government Act, 1894⁸); or instead of a union of parishes being formed, a single parish might be placed under a board of guardians constituted in like manner;⁹ and it will be observed that the term "union" is defined by the present section so as to include such a single parish for which there is a separate board of guardians. County councils may in certain cases alter poor law unions under the Local Government Acts, 1888 and 1894.¹⁰

Formation of unions.

(11) See s. 22, *ante*, p. 11.
(12) 45 & 46 Vict. c. 58, s. 2.
(13) *Ibid.*, s. 4.
(14) *Post*, Vol. II., p. 1930.
(15) See s. 36 (1, 13), *post*, Vol. II., p. 2060.
(16) *Ibid.*, ss. 1, 36 (2); see also the Note to the latter section.
(1) See s. 16, *post*, Vol. II., p. 1967.
(2) 22 Geo. III. c. 83.
(3) 4 & 5 Wm. IV. c. 76, s. 109.
(4) Under 4 & 5 Wm. IV. c. 76, s. 32; and

31 & 32 Vict. c. 110, s. 4.
(5) See Act of 1919, *post*, Vol. II., p. 2305.
(6) 4 & 5 Wm. IV. c. 76, ss. 26, 32; 7 & 8 Vict. c. 101, s. 66.
(7) 4 & 5 Wm. IV. c. 76, s. 38; 7 & 8 Vict. c. 101, ss. 14, 15.
(8) See ss. 20, 24, *post*, Vol. II., pp. 2025, 2038.
(9) 4 & 5 Wm. IV. c. 76, s. 39.
(10) See Act of 1894, ss. 36 (6), 60 (1), *post*, Vol. II., pp. 2060, 2095.

**Sect. 4, n.
Local Acts.**

Boards of guardians were originally constituted by local Acts for Birmingham, Brighton, Bristol, Chichester, Exeter, Norwich, Oswestry, Oxford, and Stoke Damerel.

In the following places the guardians were originally "incorporations" constituted under local Acts, viz., Bury St. Edmunds, East and West Flegg, Farehoe, Kingston-on-Hull, Plymouth, and Southampton; and in the parish of Liverpool the select vestry had similar functions.

**Definition of
person.**

" 'Person' includes any body of persons, whether corporate or unincorporate."

**Meaning of
person.**

The Interpretation Act, 1889, gives a similar definition, and enacts that in Acts passed after 1850 words importing the masculine gender shall include females, and words in the singular shall include the plural, and words in the plural shall include the singular, unless the contrary intention appears.¹¹

Companies.

A body corporate is not a "person" within the meaning of an Act requiring the person to have a personal qualification.¹² Such a body may be indicted for misfeasance, such as obstructing a highway, or prosecuted summarily, for instance, under the Sale of Food and Drugs Acts;¹³ but they cannot be "committed for trial," e.g. for an election offence,¹⁴ or indicted for treason, offences against the person, etc.,¹⁵ or convicted as "a rogue and vagabond."¹⁶ They cannot generally, unless authorised by statute, act as common informers;¹ but they may render themselves liable to actions for malicious prosecution or libel.²

**Person
aggrieved.**

As to the meaning of "person aggrieved," see the Notes to sects. 253, 269 of the present Act, *post*.

Lands and Premises.

**Definition of
lands and
premises.**

" 'Lands' and 'premises' include messuages buildings lands easements and hereditaments of any tenure."

**Meaning of
land.**

By the Interpretation Act, 1889, in Acts passed since 1850, "land" includes messuages, tenements, and hereditaments, houses, and buildings of any tenure, unless the contrary intention appears.³

Easements.

A right to the supply of water to a mill and mill pond through a goit was held to be an easement, and therefore "land" within the definition in the present Act, so as to have rendered it unlawful for a local authority to interfere with the flow of the water in the course of constructing a sewer outside their district under the bed of the goit without having given notice to the mill-owner in pursuance of sect. 32.⁴

A right of fishing was held to be within the term "land," according to the interpretation clause of the Public Health Act, 1848, which gave a similar definition omitting the word "easements."⁵ But, *per* Turner, L.J., "although I agree that it is difficult to suppose that the Legislature could intend to protect land which might be of little value and not to extend the same protection to a fishery, the value of which might be ten times as great, there is so much ambiguity arising from the context of the section that the question cannot, I think, be represented otherwise than as open to very serious doubt."

**Copyhold
land.**

A difficulty arose in a case where it was sought to vest copyhold estate for poor law and charitable purposes in churchwardens and overseers as a quasi-corporation.⁶ The Vice-Chancellor, in that case, declaring that the estate did not so vest, said that "a corporation cannot hold lands by copy of court roll, as the consequence would be to deprive the lord as well of suit and service as of his fines."⁷

(11) See ss. 1, 2 (1), 19, and cases cited *post*, Vol. II., pp. 1961, 1963, 1968.

(12) *Pharmaceutical Soc. v. London and Provincial Supply Association*, cited in Note to S. F. D. Act, 1875, s. 6, *post*, Part II., Div. II.

(13) See *Pearks, Ltd., v. Ward* and other cases cited, *post*, Part II., Div. II.

(14) *Rex v. Daily Mirror Newspaper, Ltd.*, 1922 W. N. 137; 16 Cr. App. R. 131; 38 T. L. R. 531.

(15) *Reg. v. Great North of England Ry. Co.* (1846), 9 Q. B. 315; 16 L. J. M. C. 16; 10 Jur. 755.

(16) *Hawke v. Hulton & Co.* (K. B. D.),

L. R. 1909, 2 K. B. 93; 78 L. J. K. B. 633; 100 L. T. 905; 73 J. P. 295. See also *Rex v. Ascanio Puck & Co.*, cited in Note to s. 117, *post*.

(1) See Note to s. 253, *post*.

(2) See Note to s. 265, *post*.

(3) See s. 3, *post*, Vol. II., p. 1963.

(4) *Cleckheaton U.D.C. v. Firth* (1898), 62 J. P. 536.

(5) *Oldaker v. Hunt* (1854), 6 De G. M. & G. 376; 1 Jur. (N.S.) 785.

(6) Under 59 Geo. III. c. 12, s. 17.

(7) *A.G. v. Lewin* (1837), 1 Cooper 51; 8 Sim. 366; 6 L. J. Ch. 204.

Mines and minerals were held by the House of Lords to be included in the term "lands" in sect. 6 of the Waterworks Clauses Act, 1847,⁸ which requires compensation to be made to the owners and occupiers of lands taken, used, or injuriously affected under the Act.⁹

A railway tunnel¹⁰ and a public lavatory,¹¹ under a street, have been held to be "hereditaments," so as to be chargeable with land-tax. And the sale of subsoil to an electric railway company to make a tunnel through it was held to be a sale of land and not of an easement within the meaning of the Settled Land Act, 1882.¹²

"The strict legal meaning of the word 'premises' is simply 'that which comes before,' the '*praemissa*' of the document or deed which includes that word. . . . The word 'premises' in its strict and primary meaning does not mean 'land.'"¹³ In the case in which this observation was made it was held that, for the purposes of sect. 79 of the East London Waterworks Act, 1853,¹⁴ in which there was no definition of "premises," the word did not include land on which it was merely proposed to conduct building operations. In another case,¹⁵ where the present definition was incorporated, the word "premises" was held to include bare land.

As to what can be "premises" abutting on a street, see the Note to sect. 150, *post*.

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Mines.

Tunnels.

Meaning of
premises.

Owner.

"'Owner' means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent."

Definition of
owner.

The word "owner" in this definition is used in connection with lands or premises which are either actually let at a rackrent or capable of being so let, and the expression "rackrent" is separately defined.¹⁶

Meaning of
owner.

The definitions of "owner" and "rackrent" in the present Act are practically identical with those in the Public Health (London) Act, 1891.¹⁷ In the Metropolis Management Act, 1855,¹⁸ the definition of "owner" is practically the same, but "rackrent" is left undefined.

It is a well-established doctrine that the present definition does not include persons in whom property is vested if that property has been permanently placed *extra commercium*, as it is called, an expression which may be explained as meaning—to use advisedly somewhat vague language—deprived of any substantial value from a commercial point of view. Property in this position is regarded as having no "owner" within the definition, so that it is unaffected by burdens or obligations imposed, by a statute containing such a definition, on "owners" of property.

Extra
commercium.

But if the lands or premises are let at a rackrent, or are capable of being so let if all parties interested in them concur, the person who does or who would receive the rackrent is none the less the statutory "owner," because the rent is, in the existing circumstances, applicable to some charitable purpose, or because for some other reason he cannot personally enjoy the rents and profits, or the beneficial use of the property.

Thus, a person may be the statutory owner of land as freeholder of the soil of a *private road*, since it may, with the consent of the parties interested in it, be closed to the public and utilised for other purposes than those of a road.¹⁹ But the person to whom the freehold in the soil of a *public road* belongs is not the "owner" of the surface land, since it has been irrevocably dedicated to the

Highway.

(8) 10 & 11 Vict. c. 17, s. 6.

(9) *Holliday v. Wakefield Cpn.*, L. R. 1891 A. C. 81; 60 L. J. Q. B. 361; 64 L. T. 1; 55 J. P. 325.

(10) *Metropolitan Ry. Co. v. Fowler*, L. R. 1893 A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 57 J. P. 567.

(11) *Westminster Cpn. v. Johnson*, cited in Note to s. 39, *post*.

(12) *In re Pearson's Will* (1900), 83 L. T. 626.

(13) *Per Ridley, J.*, in *Metropolitan Water Bd. v. Paine*, L. R. 1907, 1 K. B., at p. 297.

(14) 16 & 17 Vict. c. clxvi., s. 79, but see

now 7 Edw. VII., c. clxxi., s. 17, and *per* Avory, J., in *Metropolitan Water Bd. v. Johnson & Co.*, L. R. 1913, 3 K. B., at pp. 908, 909.

(15) *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.*, cited in Note to P. H. Am. Act, 1890, s. 19, *post*, Part I., Div. II.

(16) See the Note on that definition, *post*, p. 22.

(17) 54 & 55 Vict. c. 76, s. 141.

(18) 18 & 19 Vict. c. 120, s. 250.

(19) *Pound v. Plumstead Bd. of Works* (1871), L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. 461; 36 J. P. 488.

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use of the public, and cannot be let for private use, unless and until the rights of the public over it are abolished by statute or otherwise in due course of law.²

Though a highway in a rural district is not vested in the rural district council, it is "property" for certain purposes.³

Parapets of railway bridge.

The House of Lords held that the parapet walls of a railway bridge were not land of which the railway company were owners within the provisions of the Metropolis Management Acts (which give a similar definition of owner to the present Act,⁴ and under which the owners of land adjoining a new street are liable to contribute to the cost of paving the street); Lord Watson pointing out that the parapets were not erected for the purposes of the railway, but under compulsion of a statutory enactment made in the interest and for the benefit of such members of the public as might use the road over the bridge, and saying that it was an established proposition that the person vested with land which had been placed *extra commercium* or was "subject in perpetuity to the burden of a public right, which deprived him of its beneficial use," was not an owner of the land within the meaning of the above-mentioned provisions.⁵

Canal bridge.

A bridge was made by a canal company to take a highway over their canal, and subsequently an owner made an enlarged bridge in its place under an agreement which was lost. It was held that the company were "owners" of the bridge for the purposes of the dangerous structure provisions of the London Building Act, 1894.⁶

Church.

The commissioners for building additional churches, to whom the site of a church had been conveyed, were held not to be liable to paving expenses under the Metropolitan Acts as owners of the land;⁷ nor were the Ecclesiastical Commissioners as owners of the unconsecrated portion of land that had been conveyed to them for building a new church.⁸ So also the incumbent, in whom the freehold of a church erected under the Church Building Acts was vested, was held not to be liable for the expenses of dealing with the church as a dangerous structure under the Metropolitan Building Act, 1855,⁹ which defined "owner" as including the person in receipt of the rents or profits of any land or tenement, or in occupation of it, other than a tenant from year to year, or for any less term, or a tenant at will.¹⁰ A perpetual curate, however, in whom the site of a church about to be built was vested, obtained the compensation which was payable to the "owner or other person immediately interested in the house" under a local Act on the building line being prescribed and the church being set back.¹¹

Burial ground.

As to whether an incumbent in whom the freehold of a consecrated burial ground is vested, and who makes a profit out of the fees paid in respect thereof, is an "owner" of the ground, see the rating case cited below.¹²

Thames Conservators.

The Thames Conservators were held not to be liable as "owners" of the foreshore of the river Thames (which was vested in them by the Thames Conservancy Act, 1857¹³), to abate a nuisance under the Public Health (London) Act, 1891,¹⁴ which defines "owner" in a similar manner to that in which the present Act defines the word.¹⁵ But another Conservancy Board were held liable to pay paving expenses under the Metropolitan Acts as owners of a retaining bank between their navigation cut and a new street, as it did not appear that the strip was incapable of being put to a beneficial use.¹⁶

(2) *Macey v. James Exors.* (1917, K. B. D.), 86 L. J. K. B. 1257; 81 J. P. 213; 15 L. G. R. 479; following *Plumstead Bd. of Works v. British Land Co.* (1875), L. R. 10 Q. B. 203; 44 L. J. Q. B. 38, 43; 32 L. T. 94; 39 J. P. 376; see also *Hampstead Vestry v. Cotton*, cited in Note to s. 157 (under heading "New Streets"), *post*.

(3) See *Croydon R.D.C. v. Sutton Water Co.*, cited at end of Note to s. 173, *post*.

(4) 18 & 19 Vict. c. 120, s. 250.

(5) *Great Eastern Ry. Co. v. Hackney Bd. of Works* (1883), L. R. 8 A. C. 687 at p. 693; 52 L. J. M. C. 105; 49 L. T. 509; 48 J. P. 52; distinguished in *Williams v. Wandsworth Dist. Bd. of Works*, and other cases cited in Note to s. 150 (under heading "Fronting, adjoining, etc."), *post*.

(6) *Regents Canal Co. v. London C.C.* (1909, C. A.), 73 J. P. 276; 7 L. G. R. 630.

(7) *Angell v. Paddington Vestry* (1868), L. R. 3 Q. B. 714; 9 B. & S. 496; 37 L. J. M. C. 171; 16 W. R. 1167.

(8) *Plumstead Bd. of Works v. Ecclesi-*

astical Comrs., L. R. 1891, 2 Q. B. 361; 64 L. T. 830; 55 J. P. 791.

(9) 18 & 19 Vict. c. 122, s. 3.

(10) *Reg. v. Lee* (1879), L. R. 4 Q. B. D. 75; 48 L. J. M. C. 22; 39 L. T. 605; 43 J. P. 302. See also *Caiger v. Islington Vestry*, *post*, p. 17; *Hornsey Loc. Bd. v. Brewis*, cited in Note to s. 151, *post*.

(11) *Folkestone Cpn. v. Woodward* (1872), L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. 574.

(12) *Winstanley v. North Manchester Overseers*, L. R. 1910 A. C. 7; 79 L. J. K. B. 95; 101 L. T. 616; 74 J. P. 49; 8 L. G. R. 75.

(13) 20 & 21 Vict. c. cxlvii., s. 50.

(14) 54 & 55 Vict. c. 76, s. 141.

(15) *Thames Conservators v. London P.S.A.*, L. R. 1891, 1 Q. B. 647; 63 L. J. M. C. 121; 69 L. T. 803; 58 J. P. 335.

(16) *Hackney Cpn. v. Lee Conservancy Bd.*, (C. A.), L. R. 1904, 2 K. B. 541; 73 L. J. K. B. 766; 91 L. T. 13; 68 J. P. 485; 2 L. G. R. 1144.

In a case in which the ground in the centre of a square had been leased for a term of years, and the local authority merely took an assignment of the lease under the repealed Metropolitan Open Spaces Act, 1881,⁴ and covenanted that the land should be held and used as a public pleasure ground, and that, if they failed so to use it they would reassign the lease, the Court held that the ground was not placed *extra commercium*, but was capable of being let at a rackrent, and that the local authority were liable, as the "owners" of it, to contribute to the cost of paving the footway of a road on which it abutted.⁵ Another local authority, who had acquired the fee simple of a piece of land, and held it by virtue of the repealed Open Spaces Acts, 1877 and 1881,⁶ "in trust for the perpetual use thereof by the public for exercise and recreation," and "for no other purpose," were held by the Divisional Court to be liable to paving expenses as "owners," on the ground that the land, on which the local authority had, under the London Open Spaces Act, 1893,⁷ erected a refreshment-stall let to a caterer, a band-stand, seats let to a contractor, and a cloak-room where fees were taken, was not struck with the incapacity to be used beneficially.⁸ This decision was expressly overruled by the Court of Appeal in a later case, in which the London County Council were held not to be the "owners," for the like purpose, of Tooting Beck Common, although they derived small annual profits from letting the herbage and buildings erected for purposes subsidiary to the use of the land as a public recreation ground under a statutory scheme; the expenses of the management and regulation of the common far exceeding such profits.⁹ But land purchased under sect. 164 of the present Act by a district council for the purpose of making it into a public recreation ground is not, according to a decision of the Divisional Court, thereby rendered *extra commercium* so as to be exempt from a share of the expenses of making up an adjoining private street.¹⁰

Sect. 4, n.
Public
pleasure
ground.

One of three trustees to whom land at Wakefield had been conveyed under the School Sites Act, 1841, to hold for the purposes of that Act, and upon trust to permit the land and the buildings to be erected on it to be for ever appropriated and used as a school for the education of poor persons, etc., and for no other purpose whatsoever, was held to be liable as "owner" to pay street improvement expenses under sect. 69 of the Public Health Act, 1848. The School Sites Act, after enabling persons to convey land for the purposes above mentioned, contained a proviso that upon the land ceasing to be used for those purposes it should revert to the grantor as fully to all intents and purposes as if the Act had not passed. *Per Blackburn, J.*: "though the premises are and must be held as schools, and cannot be let for any purpose, yet, if they were let, the rent would come to the appellant."¹¹ The trustees of a leasehold chapel, which was registered as a place of religious worship belonging to the Church of England, and included vestries, caretakers' rooms, and lecture and school rooms, were held liable to pay street improvement expenses under the Metropolis Management Acts (in which the definition of "owner" is similar to that in the present Act); for, as they held at a rent less than a rackrent, they were "owners" of a house or land, and there was nothing to prevent money being received for the use of the premises, and nothing (except a covenant *inter partes*, which could be waived by the lessor) to bind the lessees to continue its use as a chapel.¹² In a subsequent case, in which the facts were similar, Lord Coleridge, C.J., in the Divisional Court, expressed disapproval of the foregoing decision, but the Court of Appeal followed it.¹³

Trustee.

The Wakefield case¹⁴ was followed by the Court of Appeal in one in which the school site had been conveyed under a section of the Act of 1841, which did not contain a similar provision for the land reverting on ceasing to be used as a school, but it was considered that other provisions, under which the premises might be sold or exchanged or transferred to a school board at a nominal rent

(4) 44 & 45 Vict. c. 34, s. 5. See now O. S. Act, 1906, *post*, Vol. II., p. 1476.

(5) *St. Mary, Islington, Vestry v. Cobbett*, L. R. 1895, 1 Q. B. 369; 64 L. J. M. C. 36; 71 L. T. 573.

(6) 40 & 41 Vict. c. 35, s. 1; 44 & 45 Vict. c. 34, s. 5. See now O. S. Act, 1906, *post*, Vol. II., p. 1476.

(7) 56 & 57 Vict. c. lxxxi.

(8) *Fulham Vestry v. Minter*, L. R. 1901, 1 Q. B. 501; 70 L. J. K. B. 348; 65 J. P. 180.

(9) *London C.C. v. Wandsworth B.C.*, L. R. 1903, 1 K. B. 797; 72 L. J. K. B. 399; 88 L. T. 783; 67 J. P. 215; 1 L. G. R. 462.

(10) *Herne Bay U.D.C. v. Payne & Wood*, L. R. 1907, 2 K. B. 130; 76 L. J. K. B. 685; 96 L. T. 666; 71 J. P. 282; *s.c. nom.* *Herne Bay U.D.C. v. Farley*, 5 L. G. R. 631.

(11) *Bowditch v. Wakefield Loc. Bd.* (1871), L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 25 L. T. 88; 36 J. P. 197. See also *A.G. v. Shadwell*, *post*, Vol. II., p. 2015.

(12) *Caiger v. Islington Vestry* (1881), 50 L. J. M. C. 59; 44 L. T. 605; 45 J. P. 570.

(13) *Wright v. Ingle*, *post*, p. 30.

(14) *Bowditch v. Wakefield Loc. Bd.*, *supra*.

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or otherwise, had the same effect of preventing the premises from being stamped with an incapacity to be let.⁴

So also the trustees under a will, in whom the legal estate in certain premises was vested, and who were the persons for the time being to receive the rackrents of the premises, if they were let at a rackrent, were held by Stirling, J., to be the "owners," and to have acted rightly, between the years 1861 and 1869, in paying drainage expenses under sect. 49 of the Public Health Act, 1848, out of capital, the capital so applied being treated as a charge on the premises as between the tenant for life and the remainderman.⁵

Land subject to covenant.

A railway company's Act provided that for the protection of the owners of certain lands the company should plant a strip of ground adjoining a new street with trees and shrubs, and otherwise maintain it in a manner which rendered it incapable for the time being of yielding a rent. It was held that, as the burden on the strip of ground was imposed for the benefit of individuals, who might release it without further legislation, the ground was not so struck with sterility as to prevent the company from being liable to contribute as adjoining owners to the cost of paving the street.⁶

Land allotted under Inclosure Act.

The Wakefield case above cited⁷ was followed by Stirling, J., in a case in which he held that the lord of a manor to whom certain portions of the waste had been allotted under an Inclosure Act, and in whom the soil was beneficially vested subject to certain trusts created by the Act in favour of the cottagers in the manor, was liable as "owner" to street improvement expenses under sect. 150 of the present Act.⁸

Land held under Cemetery Act.

A cemetery company, established under a special Act for purposes of profit, were held by the Divisional Court to be liable as "owners" of the consecrated part of their cemetery, to similar expenses under the Metropolitan Acts, although their Act prohibited them from selling or disposing of any land which had been consecrated or set apart or used for the burial of the dead, for they were in a position, under their Act, to let for burial purposes the whole or any portion of their land at a capitalised rent or rackrent to be paid in one sum, or at a rent from year to year.⁹

Sub-lessor.

It is possible for the terms of the definition of "owner" in the present Act to be satisfied by more than one person, for if A. lets premises to B. at a rackrent, that is, a rent not less than two-thirds of the net annual value, and B. sub-lets them to C. at the same or even at a different rackrent, A. and B. may each be said to be receiving the rackrent on his own account. The definition in the Nuisances Removal Act, 1855, referred to the person receiving the rents of the property "from the occupier of such property"; and when proceedings were taken under that Act against the agent of the lessor of a house in respect of a nuisance caused by the defective construction of a privy, and it appeared that the whole house was leased at a rackrent for a term of years, but that the lessor had sub-let (also at a rackrent) the part of the house in which the privy was contained to a yearly tenant, and only occupied the remainder of the house himself, the court held that the lessor's agent was not the "owner" because he did not receive the rent paid by the occupier of the premises on which the nuisance arose, Blackburn, J., saying that "the object was, on the one hand, that a structural improvement should be thrown upon the owner, and that the local authority should not be bound to proceed against temporary occupiers who might also not be worth powder and shot; but, on the other hand, inasmuch as it might often be very difficult indeed to ascertain who were the real owners, and the collectors of rent might easily be found, this definition of 'owner' was given, though sometimes, as in the present instance, the definition would throw the burden on a person not intended."¹⁰

(4) *Hornsey U.D.C. v. Smith*, L. R. 1897, 1 Ch. 843; 66 L. J. Ch. 476; 76 L. T. 431.

(5) *Re Barney, Harrison v. Barney*, L. R. 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180. See also *Re Lever, Cordwell v. Lever*, cited in Note to s. 257 (under heading "charge on premises"), *post*; and *Mansel v. Norton* (1883, C. A.), L. R. 22 Ch. D. 769; 52 L. J. Ch. 357; 48 L. T. 654.

(6) *Hampstead B.C. v. Midland Ry. Co.*, (C. A.) L. R. 1905, 1 K. B. 538; 74 L. J. K. B. 341; 92 L. T. 252; 69 J. P. 133; 3 L. G. R. 455; distinguished (*re* power to disregard enactment in special Act introduced

for benefit of individual) in *Corbett v. S. E. & Chatham Rys. Managing Committee* (C. A.), L. R. 1906, 2 Ch. 12; 75 L. J. Ch. 489; 94 L. T. 748.

(7) *Bowditch v. Wakefield Loc. Bd.*, *ante*, p. 17.

(8) *Re Christchurch Inclosure Act; Meyrick v. A.G.*, L. R. 1894, 3 Ch. 209; 63 L. J. Ch. 657; 71 L. T. 122; 53 J. P. 556.

(9) *Camberwell Vestry v. London Cemetery Co.*, L. R. 1894, 1 Q. B. 669.

(10) *Cook v. Montagu* (1872), L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 26 L. T. 471.

The present Act does not refer to the receipt of the rent "from the occupier," but it refers to "*the rackrent*," which appears to mean the largest rackrent, when the amounts paid by the lessee and the sub-lessee are different.

Thus, the Public Health (Ireland) Act, 1878,² contains definitions of "owner" and "rackrent" similar to those in the present Act; and under that Act a person, who was a tenant of certain premises from year to year at a rackrent, and let them to weekly tenants at a profit, was held to be the "owner" of the premises.³

In a case under the Metropolis Management Acts, a lessee who sub-let the premises, and paid over to the lessor all the rent which he received from the sub-tenant, was held not to be the "owner"; but Mathew, J., said that, if he paid over less rent than he received, the result might be different, for then he would be the only person in receipt of the full rackrent.⁴

In the case of premises which had been leased at a rent less than a rackrent, and then sub-let at the same rent, the assignee of the sub-lessee, who was also the occupier, was held to be the "owner" within the meaning of the Public Health (London) Act, 1891,⁵ which also contains a similar definition of "owner," and the assignee of the lessee was not the "owner," because he could not let the premises to any one during the continuance of the sub-lease. *Per* Kennedy, J., in delivering the judgment of the Court: "The words of the section, in our judgment, in the case of there being no one who in fact receives rackrent from the actual occupier, designate as 'owner' the person who *rebus sic stantibus*, that is to say, with the interests in the premises as they then are, would, if they were let to an occupier at a rackrent, receive that rackrent."⁶

The landlords of a house in London let it, subject to a covenant by the tenant not to sub-let without their consent. The tenant did sub-let the top floor, and upon the landlords being required, under the Public Health (London) Act, 1891,⁷ to provide a supply of water sufficient for the needs of that floor, it was held that they were not the statutory owners of that floor considered by itself, and that, as the water supply was sufficient for the house considered as a whole, they were not liable to provide a further supply for the top floor.⁸

A similar question arose under the Metropolitan Building Act, 1855,⁹ which defined "owner" as the "person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement other than as tenant from year to year, or for any less term, or as a tenant at will." In that case the lessee for twenty-one years of Bethsada Chapel, Bermondsey, who occupied the chapel by using it on Sundays, keeping it shut on other days, and was therefore an occupier with a greater interest than from year to year, was held to be the "owner," Crompton, J., saying that, where there was both a first owner in receipt of the rents and profits, and a second statutable owner by virtue of occupation for a longer term than from year to year, such last owner was the party liable for the expenses under the provisions of the Act relating to dangerous structures, for no other person could come in and pull down or repair the structure in obedience to the order made under those provisions.¹⁰

In an action tried before Lopes, L.J., for the recovery of the estimated expenses of private street works under a local Act, which was similar to the Private Street Works Act, 1892, it appeared that the defendant, who was a second mortgagee in possession, after applying the rents of the premises towards payment of the rates, taxes, repairs, and interest on the first mortgage, had nothing left towards payment of the interest on his own second mortgage. The judge held that, as he received the rents, he was liable, notwithstanding the manner in which such rents were disposed of after they were received, and he expressed the opinion that the intention of the Legislature was that the person who received the rent *from the occupier* of the premises at the date when the expenses were estimated and apportioned should be deemed the owner; for cases would readily be conceived where it would be extremely difficult to find the real owner, and accordingly it

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Sub-lessor—
continued.Second
mortgagee.

(2) 41 & 42 Vict. c. 52, s. 2.

(3) *Bowen v. James* (1882), 10 L. R. Ir. 26; followed in *Rice v. White* (K. B. D., I.), 1904 Ir. K. B. 8.(4) *Walford v. Hackney Bd. of Works* (1894), 43 W. R. 110; 11 T. L. R. 17.

(5) 54 & 55 Vict. c. 76, s. 141.

(6) *Truman Hanbury & Co. v. Kerslake*, L. R. 1894, 2 Q. B. 774; 63 L. J. M. C. 222;

58 J. P. 766.

(7) 54 & 55 Vict. c. 76, s. 48.

(8) *Field & Sons v. Southwark B.C.* (1907, K. B. D.), 96 L. T. 646; 71 J. P. 240; 5 L. G. R. 567.

(9) 18 & 19 Vict. c. 122, s. 3.

(10) *Mourilyan v. Labalmondiere* (1859), 1 E. & E. 533; 30 L. J. M. C. 95; 7 Jur. (N. S.) 627; 3 L. T. 668; 25 J. P. 340.

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Lessee
under
building
lease.

was considered desirable to render the person who actually received the rents liable, and to affect him, whoever he might be, with the liability.²

The definition of "owner" in the Metropolitan Building Act, 1855,³ was held not to be applicable to the owner in fee of land leased for eighty-one years at a peppercorn rent for the first year, £6 for the second, and £12 for each succeeding year. *Per* Crompton, J.: "My notion is that the definition points to a person who either receives himself, or by his tenant, the whole or part of the rents and profits, and I do not think that a peppercorn reserved as rent can fairly be said to be part of the rents and profits."⁴ And in giving a similar decision in a case in which a lessee for ninety-nine years had become insolvent, but was the person who had the power to let the premises and receive the profits, Lush, J., said: "In what sense is the word 'owner' used? It is used in the popular sense, and means the person who employed the builder to build the house for him. . . . The person is called the owner, who has the immediate right of letting them, and who would, if there was an occupier, be entitled to have the rent from him."⁵

Under a local Act, giving a similar definition of "owner" to that given by the present Act, a lessee under a building lease for 999 years, at a ground rent of £26, was held in an action tried before Watkin Williams, J., to be the owner liable to street improvement expenses, although no buildings had yet been erected on the land.⁶ This decision seems questionable, for the lessee presumably could not at the time have sub-let the premises at a greater rent than that which he was paying, and if not the ground rent represented the annual value *rebus sic stantibus*.

Builder
under build-
ing agree-
ment.

The freeholder of certain land entered into an agreement with a builder for the erection of houses and for laying out an adjoining garden for the exclusive use of the inhabitants of the houses. The agreement provided that he should lease the houses to the builder as they were erected, and should lease the garden with the last house: the builder having no interest in any of the land until a lease of it was granted, but only a right of entry to perform the agreement. When some of the houses had been erected and the garden had been laid out, the freeholder died and the devisee under his will sold the reversions of those houses. In these circumstances the devisee was held liable to contribute, under the Metropolis Management Acts, to the expenses of paving a new street as "owner" of the garden, which abutted on the street, whether the rent paid to her was a rackrent or not, and even though she might only be a trustee for the inhabitants of the houses.⁷ This was followed in another metropolitan case, in which a builder was held not to be the "owner" liable to an apportioned share of paving expenses. He had made an agreement with the owner in fee that he should enter on the land in question and build houses thereon, and that he should be granted a lease of each house when erected, and in the meantime pay the owner £200 a year (which was found as a fact by the magistrate not to be a rackrent): the agreement expressly declared that it was not intended to operate as an actual demise until the leases should be granted; and no houses had yet been built.⁸

On the other hand, the definition of "owner" in the London Building Act, 1894,⁹ which is similar to that given by the Metropolitan Building Act, 1855,¹⁰ and applies the term to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of any land or tenement otherwise than as a tenant from year to year or for any less term or as a tenant at will, had been held to include a person who had entered on land and erected buildings on it under an agreement for a lease, although no lease had been executed, and the agreement was expressed not to operate as a demise, but only to give a right to enter upon the premises for the purpose of performing the agreement.¹¹

(2) *Tottenham Loc. Bd. v. Williamson* (1893), 62 L. J. Q. B. 322; 69 L. T. 51; 57 J. P. 614. See also *Blackburn Cpn. v. Micklethwaite*, cited in Note to s. 257 (under heading "loans for private improvements"), *post*; and *Maguire v. Leigh-on-Sea U.D.C.*, cited in Note to s. 150 (under ss. 6 and 13 of P.S.W. Act, 1892), *post*.

(3) See s. 3, quoted *ante*, p. 19.

(4) *Evelyn v. Whichcord* (1858), 27 L. J. M. C. 211; E. B. & E. 126; 22 J. P. 658. See also *Cowen v. Phillips* (1863), 33 Beav. 18; 9 Jur. (N. s.) 657; 8 L. T. 622; *Hunt v. Harris*, 19 C. B. (N. s.) 13; 34 L. J. C. P. 249; 11 Jur. (N. s.) 485; 12 L. T. 421; *Fillingham v. Wood*, L. R. 1891, 1 Ch. 51; 60

L. J. Ch. 232; 64 L. T. 46.

(5) *Caudwell or Canwell v. Hanson* (1871), L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 25 L. T. 595.

(6) *St. Helen's Cpn. v. Riley* (1883), 47 J. P. 471.

(7) *Lady Holland v. Kensington Vestry* (1867), L. R. 2 C. P. 565; 36 L. J. M. C. 105; 17 L. T. 73. See also *Poplar Bd. of Works v. Love* (1874), 29 L. T. 915; 35 J. P. 246.

(8) *Driscoll v. Battersea B.C.*, L. R. 1903, 1 K. B. 881; 72 L. J. K. B. 564; 88 L. T. 795; 67 J. P. 264; 1 L. G. R. 511.

(9) 57 & 58 Vict. c. ccxiii., s. 5 (29).

(10) See s. 3, quoted *ante*, p. 19.

(11) *List v. Tharp*, L. R. 1897, 1 Ch. 260;

Where a factory consisted of four houses, two of which were owned by one person and two by another, it was held that the service of a fire escape notice on one of these owners only was not sufficient.⁶

It was held⁷ that the vendors of property, who were to be entitled to the rents and to bear the outgoings up to the date of completion, were "owners" within the definition up to that date. That this was so could hardly be doubted, but there might be cases in which the question whether on a given date the vendor or purchaser was the "owner" would be one of some difficulty.

An agent employed to collect the rents of certain premises was held to be the "owner" of the premises within the meaning of a definition similar to that given by the present Act, and therefore liable to be called upon to pay the expenses of private improvements, even when he had no money belonging to his principal in his hands.⁸ And this case was followed under the present Act when an application for an order against an agent or rent collector to abate a nuisance had been dismissed by the justices, the court remitting the matter to the justices for rehearing.⁹ Before the rehearing the agent had resigned his agency, and the application was again dismissed; but the court held that, as he was the "owner" when the proceedings were commenced, the justices ought to have made the order so as to give the council the right to enter the premises and abate the nuisance themselves.¹⁰

The fact, however, that the rent is actually received from the occupier by an agent or rent collector does not prevent the person on whose behalf the rent is so received from being treated as the "owner." *Per* A. L. Smith, J., the definition "only extended the meaning of the word owner so as to include an agent in case the owner was abroad."¹¹

But a person who had been appointed by the court in the course of an action as receiver of the rents and profits of certain property was an officer of the court, and not the agent of the beneficial owner, and was held not to be the "owner" liable to pay street improvement expenses under sect. 150.¹²

A person was held to be "owner" of premises for the purposes of the Public Health Act, 1848, while he was in fact receiving the rent from the occupier, and being *bonâ fide* treated as owner by the occupier, although it turned out afterwards that another person, who had never interfered with the person receiving the rent, was the real owner. And a notice to execute works of paving, etc., under sect. 69 of that Act served upon the first-mentioned person, was held to have been served on the "owner," so as to enable the local board subsequently to recover the expenses from the real owner.¹³

A person entitled to the benefit of a covenant against the erection of buildings, to which certain land was subject, having no interest in a legal sense in the land itself, was held by the Court of Appeal not to be an "owner" of such land within the meaning of sect. 257 of the present Act, and the urban authority were therefore held not to be entitled to enforce a charge upon the land for the expenses of private improvements by selling the land free from the covenant.¹⁴

In a case in which a local authority sought to recover private street works expenses in respect of a piece of vacant land, the defendants were executors who had not received any rent or profit from the land, and could not by the exercise of reasonable diligence have done so, and had never taken possession except as executors. It was held that they were owners as executors only, and could not be made personally liable *de bonis propriis*. The expenses were declared to be

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Divided ownership.

Vendor and purchaser.

Agent.

Owner without title.

Covenantee.

Executors.

66 L. J. Ch. 175; 76 L. T. 45; s.c. *nom. List v. Sharp*, 61 J. P. 248. See also *Crosby v. Alhambra Co.*, L. R. 1907, 1 Ch. 295; 76 L. J. Ch. 176; *Wix v. Rutson*, *infra*, and other cases, cited in Note to s. 257 (under heading "tenants' covenants"), *post*.

(6) *London C.C. v. Leyson*, *post*, Vol. II., p. 2147.

(7) In *Wix v. Rutson*, L. R. 1899, 1 Q. B. 474; 68 L. J. Q. B. 298; 80 L. T. 168.

(8) *St. Helens Cpn. v. Kirkham* (1889), L. R. 16 Q. B. D. 403; 34 W. R. 440; 50 J. P. 647.

(9) *Broadbent v. Shepherd* (No. 1) (1900), 83 L. T. 504; 65 J. P. 70; 49 W. R. 205.

(10) *Broadbent v. Shepherd* (No. 2), L. R. 1901, 2 K. B. 274; 70 L. J. K. B. 628; 84 L. T. 844; 65 J. P. 499.

(11) *Lyon v. Greenhow*, 8 T. L. R. 457,

at p. 458. The observation quoted in the text is omitted from the report of this case in 1892 Loc. Gov. Chron. 497, and would appear to be wrong if it means that an agent can only be treated as "owner" when the real owner is abroad.

(12) *Bacup Cpn. v. Smith* (1890), L. R. 44 Ch. D. 395; 59 L. J. Ch. 518; 63 L. T. 195. See also *Metropolitan Water Bd. v. Brooks* (C. A.), L. R. 1911, 1 K. B. 299, and *post*, Vol. II., p. 1234; *Nokes v. Strong* (K. B. D.), L. R. 1909, 2 K. B. 625; 78 L. J. K. B. 1041; 101 L. T. 318; 73 J. P. 417; 7 L. G. R. 876.

(13) *Peek v. Waterloo with Seaforth Loc. Bd.* (1863), 2 H. & C. 709; 33 L. J. M. C. 11; 9 Jur. (N.S.) 1344; 9 L. T. 338; 27 J. P. 807. *Cf. Cowen v. Phillips*, *ante*, p. 20.

(14) *Tendring Union v. Downton*, L. R. 1891, 3 Ch. 265; 61 L. J. Ch. 82; 65 L. T. 434.

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Servants of
the Crown.**

charged on the land, and the plaintiffs were given costs up to the filing of the defence, and the defendants were given subsequent costs.³

Persons acting in the service of the Crown are not "owners" for the purposes of the Act of premises belonging to and used by them solely for the purposes of the Crown, if the Crown is not specially mentioned or referred to by necessary implication. The commanding officer of a volunteer corps was therefore held not to be liable to pay the cost of making up a street under sect. 150 as the owner of the headquarters of the corps which adjoined the street, and were vested in him as such commanding officer.⁴

Occupier.

For the purpose of the Highway Acts the word "owner" includes "occupier,"⁵ and it was accordingly held that a tenant from year to year came within the definition. *Per* Jessel, M.R., "every man in occupation of land has a kind of limited ownership, and therefore, on a fair reading of the section, the word 'owner' must mean owner or occupier."⁶ But a decision that the occupier was "owner" of lands, so as to be chargeable with the expenses of a fire-engine sent from a neighbouring district to a fire on his premises, was overruled.⁷

Ground rent.

Under a Scottish Act,⁸ containing a similar definition of "owner" to that in the present section, it was held that the term did not include a bank in receipt of certain ground rents.⁹

Rackrent.

**Definition of
rackrent.**

"'Rackrent' means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent."

**Meaning of
rackrent.**

The definition of "annual value," on which that of rackrent depends, is in substance identical with that of "rateable value" in the Valuation (Metropolis) Act, 1869,¹⁰ which is itself a repetition in somewhat clearer language of the definition of "net annual value" in the Parochial Assessment Act, 1836, mentioned below. The result is that "rackrent" in practice simply means rent which is not less than two-thirds of the rateable value of the premises. The valuation list in force, however, is not conclusive as to the annual value for the purposes of the definition. Accordingly, in the case of a dispute as to the ownership of property for the purposes of the Public Health Acts, dependent upon whether the rent actually paid is or is not a "rackrent," the question of the annual value of the premises must be determined by the tribunal before which the dispute comes.

**Net annual
value.**

Sect. 1 of the Parochial Assessments Act, 1836,¹¹ enacts that all rates for the relief of the poor are to be based on an estimate of the "net annual value," which is defined in the same terms as those in which the "full net annual value" is defined by the present section. The "full net annual value" of any premises for the purposes of the Public Health Act is therefore to be taken from the column of the poor rate or valuation list headed "rateable value." This is the value of the premises to their owner, and, as was pointed out by Lord Bramwell,¹² is the "true value" of them, this term being inaccurately applied to the "gross estimated rental" or "gross value," which is not the value of the premises to any one, but is the amount of the rent which a tenant from year to year, paying the usual tenants' rates and taxes, and tithe commutation rentcharge (if any), but not paying for repairs, insurance, or maintenance, might reasonably be expected to pay.

**Meaning of
"free from."**

In a case relating to a sewers rate, *Shee, J.*, said that the expression "free of" must "be understood to mean free from as regards the tenant, putting it aside altogether."¹³

Deductions.

As to deductions in respect of contributions to compensation funds under the Licensing Acts,¹⁴ and in respect of ground rents,¹⁵ landlords' disbursements on

(3) *Glossop Cpn. v. Cooper and Hussey* (1913, G. C. Ct.), 136 L. T. Jo. 90. See also *Macey v. James' Executors*, ante, p. 16.

(4) *Hornsey U.D.C. v. Hennell*, cited in Note to s. 327, post.

(5) 5 & 6 Wm. IV. c. 50, s. 5.

(6) *Woodard v. Billericay Highway Bd.* (1879), L. R. 11 Ch. D. 214; 48 L. J. Ch. 535; 43 J. P. 224.

(7) *Sale v. Phillips*, post, Vol. II., p. 1659.

(8) 34 & 35 Vict. c. cxli., s. 6.

(9) *Aberdeen City Cpn. v. British Linen Bank*, 1911 S. C. (S.) 239; 48 Sc. L. R. 151;

2 Glen's Loc. Gov. Case Law 133.

(10) 33 & 34 Vict. c. 67, s. 4.

(11) 6 & 7 Will. IV. c. 96, s. 1.

(12) In *Dobbs v. Grand Junction Water Co.* (1884), L. R. 9 A. C. 54; 53 L. J. Q. B. 50; 49 L. T. 541; 48 J. P. 5.

(13) In *Reg. v. Hall-Dare* (1864, Q. B.) 34 L. J. M. C. 17 at p. 20; 5 B. & S. 785; 11 L. T. 301; 11 Jur. (N.S.) 59.

(14) *Waddle v. Sunderland U.A.C. (C. A.)*, L. R. 1908, 1 K. B. 642; 77 L. J. K. B. 509; 98 L. T. 260; 72 J. P. 99; 6 L. G. R. 415.

(15) *Edinburgh and Leith Gas Comrs. v.*

agricultural land,¹⁶ harbour dredging expenses,¹⁷ and sea defence rentcharges,¹⁸ and in connection with flats,¹⁹ see the cases cited below.

An unexpired lease granted in 1883 was held to afford some (though not satisfactory) evidence that the rent reserved by it was a rackrent in 1909, so as to enable the lessee, who had been called upon under sect. 94 of the present Act to execute structural works for the abatement of a nuisance on the demised premises, and had executed the works himself after having failed to get the owner of the reversion expectant on the lease to execute them, to recover the expenses incurred by him from the owner of the reversion.²⁰

For instances in which a rackrent as above defined is paid by a lessee of premises to the lessor, and a rackrent is also paid to the lessee by his sub-tenant in respect of the same premises, see the cases cited in the Note on "owner."²¹

Street.

"*'Street' includes any highway [(not being a turnpike road)], and any public bridge (not being a county bridge), and any road lane footway square court alley or passage whether a thoroughfare or not.*"

The words "not being a turnpike road" were repealed by the Statute Law Revision Act, 1898, having become obsolete on the expiry of the last turnpike trust.

There are numerous statutory definitions of "street" substantially identical with or closely resembling that in the present Act, *e.g.*, in the Gasworks Clauses Act, 1847,¹ the Waterworks Clauses Act, 1847,² the Towns Improvement Clauses Act, 1847,³ the Metropolis Management Act, 1855,⁴ and the Electric Lighting Act, 1882.⁵

The word "includes" is used in the definition of "street" in the present section, and not the word "means," as in some of the other definitions. Hence the term applies not only to a "highway, and any public bridge (not being a county bridge), and any road, lane," etc., but also to anything which is "a street in the ordinary sense of the term," although not a highway, bridge, etc. *Per* Brett, L.J., "I think the first remark to be made on the Act of Parliament is that it certainly deals with at least two different kinds of streets. One is a street which nobody in ordinary language, without the help of an Act of Parliament, would have called a street. And the other is a street which everybody, without the aid of an Act of Parliament, would have called a street."⁶

Therefore a turnpike road, although it was expressly excluded from the classes of streets specified in the definition, was a "street" within the meaning of the term as used in the Act, if it was a "street" in the ordinary sense of the term, that is, a road with a row of houses on either side.⁷

With reference to the definition, on the other hand, a country lane, which was a "highway" or way over which all the Queen's subjects had the right to pass and repass, but on which there were no houses at all, was held to be a street within the meaning of the Act.⁸

Subject, therefore, to what is said below as to bridges, every "highway," whether a carriageway or only a bridleway or footway, is a "street" within the definition, however little it may have the character of a street in the ordinary sense of the term.⁹

A road, passage, &c., which is *not* a highway may be a "street" within the definition,¹⁰ and the question whether it is or is not a street or part of a street is a question of fact and degree,¹¹ though the High Court will always consider

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Evidence of rackrent.

Premises sub-let.

Definition of street.

Repeal.

Other statutory definitions of street.

Definition not exclusive.

Edinburgh Assessor, 1912 S. C. (S.) 190; 49 Sc. L. R. 311; 3 Glen's Loc. Gov. Case Law 181.

(16) *Miller's Trustees v. Berwickshire Assessor*, 1911 S. C. (S.) 908; 48 Sc. L. R. 352; 2 Glen's Loc. Gov. Case Law 233.

(17) *Clyde Navigation Trustees v. Lanarkshire Assessor*, 1910 S. C. (S.) 804; 47 Sc. L. R. 384; 1 Glen's Loc. Gov. Case Law 105.

(18) *Green v. Newport U.A.C.*, L. R. 1909 A. C. 35; 78 L. J. K. B. 97; 99 L. T. 893; 73 J. P. 17; 7 L. G. R. 258.

(19) *St. Marylebone B.A.C. v. Consolidated Properties, Ltd.*, L. R. 1914 A. C. 870; 83 L. J. K. B. 1251; 111 L. T. 953; 78 J. P. 393; 12 L. G. R. 835.

(20) *Wareham and Dale, Ltd. v. Fyffe* (1910 K. B. D.), 74 J. P. 249; 8 L. G. R. 620.

(21) *Ante*, pp. 18, 19.

(1) See s. 3, *post*, Vol. II., p. 1202.

(2) See s. 3, *post*, Vol. II., p. 1212.

(3) See s. 3, *post*, Vol. II., p. 1619.

(4) See s. 250, quoted in Note to s. 157, *post*.

(5) See s. 32, *post*, Vol. II., p. 1293.

(6) In *Robinson v. Barton Loc. Bd.* (1882), L. R. 21 Ch. D. 634; 52 L. J. Ch. 5; 47 L. T. 286, reversed in H. L. on grounds not affecting this point, see *post*, p. 24; repeated in *Portsmouth Cpn. v. Smith* (1884), L. R. 13 Q. B. D. 195; 53 L. J. Q. B. 92; 50 L. T. 308; 48 J. P. 404, affirmed in H. L. on another point, see Note to s. 150, *post*.

(7) See *Reg. v. Fullford*, and cases cited therewith, *post*, p. 25, and *Fenwick v. Croydon R.S.A.*, *post*, p. 24.

(8) *Coverdale v. Charlton* (1878), L. R. 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. 88; 43 J. P. 268.

(9) See *Coverdale v. Charlton*, *supra*.

(10) *Midland Ry. Co. v. Watton*, *post*, p. 24.

(11) See *Bell & Sons v. Great Crosby*

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House-built street.

whether there is "any" evidence which justifies the finding of fact.¹² But it may not be "wholly private,"¹³ and it must probably have, to some extent, the characteristics of a street in the ordinary sense.¹⁴

With regard to the expression "a street in the ordinary sense of the term," Brett, M.R., observed¹⁵ that he thought that the word "street," when popularly used, meant "a thoroughfare bounded either on one side or both sides by houses." Lord Selborne in a previous case had remarked, "in the natural and popular sense of the word 'street,' or the words 'new street,' I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous); and by 'new street' a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it."¹⁶ There need not, however, be houses on both sides of a thoroughfare in order to make a "street";¹⁷ but where there are houses the term "street" may for some purposes include the houses.¹⁸

In connection with the expression "a house forming part of a street," it was held that the word "street" applied only to a row of houses in some degree proximate and contiguous, and not to a set of detached houses at irregular distances and not in a continuous line; and that it is a question of fact for a jury whether or not the house does form part of a street. Such a set of detached houses along a turnpike road, not in a continuous line, but some facing one way and some another, and having no appearance of uniformity, was held not to be a street within the meaning of sect. 28 of the Local Government Act of 1861.¹⁹ Similarly, under the Metropolis Management Act,²⁰ requiring roads laid out as streets for carriage traffic to be of a certain width, the question is more or less one of fact, for the magistrate to see that there are houses enough to make the *locus in quo* a street.¹ Where it is a question of fact the justices cannot be compelled to state a case² for the opinion of the High Court.³

A case which suggested that a place or way might properly be considered not to be a "street" within the meaning of the Act, because there were no houses on either side of it, although it came within the terms of the definition, was expressly dissented from by the Master of the Rolls in the Portsmouth case above cited.⁴ The case referred to related to a road laid out as a cartroad, which was only partly a highway, that is, it was not a public carriage-road, but along which the public had only the right to a footway and bridleway. Towards one end of the road there were numerous houses, but the lands on each side of the remainder of the road were of an agricultural character. Proceedings had been taken for the recovery of expenses under sect. 150, and the magistrates stated, in a special case, "we hold that as a matter of fact the road in question was not a street, but we considered ourselves bound by the definition in sect. 4 of the Public Health Act, 1875, to declare it to be a street." The court had held that they were not so bound, but should have decided, as a question of fact, whether or not the place was a street.⁵

In a subsequent case a road, which was not a highway before the passing of the Highway Act, 1835, and was found not to be a street in the ordinary sense of the term, was held to be a "street" for the purposes of sect. 150.⁶

The provisions of the Metropolis Management Acts, for the paving of "new

U.D.C., cited in Note to s. 150 (under s. 5 of P.S.W. Act, 1892), *post*.

(12) See *per* Lord Esher, M.R., in *Midland Ry. Co. v. Watton*, 50 J. P., at p. 407.

(13) See *per* Buckley, J., in *Walthamstow v. Sandell*, 2 L. G. R., at p. 839, and other cases cited therewith (see Table of Cases).

(14) See *per* Lords Blackburn and Watson in *Portsmouth Cpn. v. Smith*, L. R. 10 A. C. at pp. 372, 373, 375.

(15) According to the report of *Portsmouth Cpn. v. Smith* in 53 L. J. Q. B., at p. 95; but the corresponding passage in L. R. 13 Q. B. D. at p. 195 (top) is: "It is true that Asylum Road is not a 'street,' if a 'street' means a way bounded on either side by houses."

(16) In *Robinson v. Barton Loc. Bd.* (1883), L. R. 8 A. C. 801; 53 L. J. Ch. 226; 50 L. T. 57; 48 J. P. 276.

(17) *Per* Wills, J., in *Richards v. Kessick* (1888), 57 L. J. M. C. 48; 59 L. T. 318; 52

J. P. 756.

(18) See *post*, p. 28.

(19) 24 & 25 Vict. c. 61, s. 28; *Reg. v. Fullford* (1864), 33 L. J. M. C. 122; 10 L. T. 346; 10 Jur. (N.S.) 522; 12 W. R. 715.

(20) 25 & 26 Vict. c. 102, s. 98, now repealed by L. B. Act, 1894.

(1) *Taylor v. Metropolitan Bd. of Works* (1867), L. R. 2 Q. B. 213; 36 L. J. M. C. 53; 31 J. P. 581.

(2) Under 20 & 21 Vict. c. 43.

(3) *Reg. v. Sheil* (1884), 50 L. T. 590; 49 J. P. 68.

(4) *Portsmouth Cpn. v. Smith*, *ante*, p. 23. See also *Jowett v. Idle Loc. Bd.*, cited in Note to s. 150, *post*.

(5) *Maude v. Baildon Loc. Bd.* (1883), L. R. 10 Q. B. D. 394; 48 L. T. 874; 47 J. P. 644. And see *Reg. v. Burnup*, cited in Note to s. 150, *post*.

(6) *Fenwick v. Croydon R.S.A.*, L. R. 1891, 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. 645; 55 J. P. 470.

streets" at the cost of the frontagers, have been held by the Court of Appeal not to be applicable to newly formed roads along which no buildings have been erected, for those provisions contemplate the existence of houses along the streets in question.⁷

Public bridges other than county bridges are expressly within the definition of "street." And as the definition defines the expression street, not as "meaning," but as "including" highways, etc., a county bridge is, it seems, a street for the purposes of the Public Health Acts if it comes within the meaning of the word in its ordinary acceptance.⁸

The expression "county bridge" may include, not only bridges repairable by the county, but bridges of such a character as to be *prima facie* so repairable, whether actually repairable by the county or not.⁹ But whether it has this extended meaning in the present definition has not been decided.

A highway may be dedicated over an artificial structure;¹⁰ and a bridge was held to be so situated as to be a street within the meaning of a statute (in which there was no definition of "street") authorising a local authority to alter the level of "any street."¹¹

An open tract of seashore between high-water mark and enclosed land, over which the inhabitants of the villages had always gone to and fro but by no defined track, was held not to be a "street, highway, or public place" within the meaning of the Gasworks Clauses Act, 1847.¹² And the Court of Appeal upheld a finding that an open space 120 feet long and 63 feet wide near the centre of a town, over which the public had been in the habit of walking in all directions without restraint for thirty years, which had been to some extent repaired by the local board, and on which a public fountain had been erected, was not so dedicated to the use of the public as a highway as to justify the urban authority in removing a hoarding by which the purchaser of the soil had enclosed a portion of it.¹³

Under certain Scottish Acts¹⁴ local authorities are liable for injuries sustained by passengers along "public streets and footpaths," owing to their non-repair, the doctrine of non-feasance not applying in that country. For the purposes of these Acts, "street" is defined as including "any road, highway, bridge, quay, lane, square, court, alley, close, wynd, vennel, thoroughfare, and public passage, or other place within the burgh, used either by carts or foot-passengers." A foot-passenger was injured by falling off a space along the top of a sea wall at a spot which had been damaged by the sea and not repaired. A fence separated this space from the railway, and the part between the fence and the edge of the wall was used by the public without interruption. A level crossing over a railway led to this space, and opposite the crossing the local authority had constructed steps down to the beach. They had also erected seats at various points along the space for the use of the public. It was held (reversing the Lord Ordinary) that the local authority were not liable.¹⁵ *Per Lord Dunedin, L.P.*: "The idea which is underlying a street, of which the definition is a very wide one, is that it is some place which is really used as a proper means of passage from one place to another. Now this place is evidently not so used. Nobody goes on the top of this embankment to go from one place to another. Of course, a person can go from one place to another by it in the same sense as 'all roads lead to Rome,' but really the only reason for going on the top of this embankment is in order to look at the view. I think it is out of the question to say that the moment there is a place where the public are allowed to congregate, either by permission of the burgh or the proprietor of the ground, that place, for the purposes of control, becomes a street, and carries with it an

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Bridge.

Open space.

(7) *Allen v. Fulham Vestry*, cited in Note to s. 157 (under heading "New Streets"), *post*.

(8) See *Reg. v. Fullford* (1864), 33 L. J. M. C. 122; 10 Jur. (N.S.) 522; 10 L. T. 346; *Thomas v. Roberts* (1878), 43 J. P. 574; and *Nutter v. Accrington Loc. Bd.* (1878), L. R. 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. 802; 43 J. P. 635; affirmed in H. L., 1880 W. N. 148; 43 L. T. 710; decided with reference to turnpike roads before the repeal of the words in the definition referring to such roads.

(9) *Reg. v. Chart and Longbridge* (1870) L. R. 1 C. C. R. 237; 39 L. J. M. C. 107; 22 L. T. 416.

(10) *Tyne Improvement Comrs. v. Imrie* (1899), 81 L. T. 174.

(11) *Beaver v. Manchester Cpn.* (1857), 8 El. & Bl. 44; 4 Jur. (N.S.) 23; 26 L. J. Q. B. 311. See also *North London Ry. Co. v. St. Mary, Islington, Vestry* (1872, Q. B.), 27 L. T. 672; 37 J. P. 341; 21 W. R. 226.

(12) *Maddock v. Wallasey Loc. Bd.* (1886), 55 L. J. Q. B. 267; 50 J. P. 404.

(13) *Robinson v. Cowpen Loc. Bd.* (1893), 63 L. J. Q. B. 235.

(14) *Burgh Police Acts, 1892 and 1903*, 55 & 56 Vict. c. 55, s. 4 (31); 3 Edw. VII. c. 33, s. 104 (2) (c).

(15) *Taylor v. Saltcoats B.C.*, 1912 S. C. (S.) 880; 3 Glen's Loc. Gov. Case Law, 95.

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obligation on the local authority to keep it in such a condition that nobody can slip. The mere fact that in some places the parapet wall still remains, and the local authority put down a few seats for the people, who like to sit there and gaze upon the view, cannot, in my view, alter the obligations which are upon the authority. . . . If people choose to go out for an evening stroll on places where they may tumble, they must really do so at their risk."

Unfinished street.

An undedicated and unfinished and almost impassable road in the metropolis, with ten occupied and eleven empty houses along it, was held¹⁶ not to be a "street" which the local authority were bound to light,¹⁷ though another builder's road in the metropolis, not flagged or paved with stone, and with the footpaths made of gravel with a granite kerb, and with the houses incomplete and unoccupied, was held to be a "street," although it was also a "new street," so as to entitle the vestry, under the Metropolis Management Act, 1855,¹⁸ to open it and connect drains with their main sewer which ran along it.¹⁹ But where proposed streets existed only on the deposited plans, and were not laid out, improvement commissioners were held not to be entitled to interfere with them on the plea that they were "streets."²⁰

Under the Scottish enactments corresponding to sect. 150 of the present Act²¹ a piece of ground on which there was an old public footway leading from one highway to another and slight vehicular traffic, but which had never been formed as a roadway for such traffic, and was not in a condition to be so used, was held not to be a "private street" which the local authority could make up at the expense of the frontagers.²² *Per Lord Ardwall*: "This is not a private street to which the sections founded on by the appellants apply, or, to put it more shortly, is not a street or road at all, but simply a piece of waste ground which no person either now or formerly has attempted to form or lay out as a road or street. The fact that the appellants made some alterations on it without interference by the owners of property abutting on the streets, so that a casual empty cart could struggle over it, cannot, in my opinion, have the effect of bringing it within the category of a private street. I think it would be an unsafe extension of the powers conferred on town councils under the Acts in question to hold that, if a proprietor of a piece of waste ground has allowed carts, say, to cross it as a short cut or for other purposes, they can thereupon claim that it is a private street, and proceed to compel the proprietor or proprietors on each side of it to lay out and form for the first time a street over such piece of ground. . . . It is a totally different matter when a road or street has been formed or laid out, even roughly, for the purpose of being used as such, and it is in such cases, as I think, that, for the benefit of the inhabitants, the town council are entitled to step in and insist that the road or street so formed shall be put into proper condition."

Added strips.

As to whether strips added to widen existing streets may themselves be treated as "streets," see the Note to sect. 150, *post*.

Turnpike road.

Turnpike roads, as it has been shown, were not "streets" within the Act, unless houses were built along them. The origin of these roads and the meaning of the expression (with reference to a road which was not subject to the General Turnpike Acts), were thus explained by Lord Abinger, C.B., in a case arising out of a Railway Act, which provided for carrying the road under or over the line where the railway crossed any turnpike road: "A turnpike road is a road across which turnpike gates are erected and tolls taken, and such roads existed previous to the passing of the General Turnpike Act,²³ and independently of that statute altogether. A 'turnpike road' means a road having toll-gates or bars on it, which were originally called 'turns,' and were first constructed about the middle of the last century. Certain individuals, with a view to the repair of particular roads, subscribed among themselves for that purpose, and erected gates upon the roads, taking tolls from those who passed through them. These were violently opposed at first, and petitions were presented to Parliament against them; and Acts were in consequence passed for their regulation. This was the origin of turnpike roads. The distinctive mark of a turnpike road is the right

(16) In *Reg. v. Islington Vestry* (1858, Q. B.), E. B. & E. 743; 22 J. P. 383.

(17) Under 18 & 19 Vict. c. 120, s. 130.

(18) 18 & 19 Vict. c. 120, ss. 78, 250.

(19) *Hampstead Vestry v. Hoopel* (1885), L. R. 15 Q. B. D. 652; 54 L. J. M. C. 147; 49 J. P. 741.

(20) *Mackett v. Herne Bay Comrs.* (1878),

37 L. T. 812.

(21) 55 & 56 Vict. c. 55, s. 133; 3 Edw. VII. c. 33, s. 104 (2) (d).

(22) *Dunfermline Royal B.C. v. Rintoul*, 1911 S. C. (S.) 737; 2 Glen's Loc. Gov. Case Law 131.

(23) 13 Geo. III. c. 84.

of turning back any one who refuses to pay toll." ⁷ So, *per* Lord Campbell, C.J., whether a road is a turnpike road "does not depend upon the width or make of the road, but upon the question whether the road is repaired by toll payable by passengers for the use of the road." ⁸ A private road, over which persons are allowed to pass on making a payment, is not a "turnpike road." ⁹ A piece of road, however, on which turnpike trustees were prohibited from taking toll or expending money in repairs, might still be part of the turnpike road for some purposes; for instance, for the purposes of the enactments relating to main roads. ¹⁰ The "turnpike road" included the footpath at the side. ¹¹

The turnpike roads of England were primarily regulated by special local Acts, but the General Turnpike Acts ¹² were also applicable to almost all of them. There are now no turnpike trusts left, and the reference to such roads in the present section has accordingly been repealed by the Statute Law Revision Act, 1898.

In a case decided on other grounds ¹³ Ridley, J., expressed his opinion that the Epping Forest Act did not prevent an old forest path being a "street" within the present definition. ¹⁴

The term "highway" is not restricted to any particular kind of way, and may include any "road, lane, footway, square, court, alley or passage" that has been irrevocably dedicated to the use of the public for the purpose of passage over it.

The words "road, lane, etc.," in the definition can have reference only to roads, etc., about which there is some element of publicity. ¹⁵

Day, J., in overruling a contention that bye-laws with respect to new streets under sect. 157 of the present Act could only relate to public streets, and therefore did not apply to passages primarily made for giving access to middens at the backs of houses, said that the passages in question communicated with the public streets, and there was nothing to show that the public could not pass along them, that no gates were shown on the plans of the proposed works, and it appeared to him that the public could and would pass, that the passages might become very inconvenient if they were allowed to be made of an insufficient width, that they were not private ways in any true sense of the word, but were places over which the public might acquire a right of passage. ¹⁶

Being used in addition to the word "highway," the words "road," etc., are not confined in this Act to ways over which the public have an absolute right of passage. ¹⁷ On the other hand, they cannot include all roads, for having regard to the earlier part of the clause, they are obviously not intended to include "turnpike roads." And a magistrate's finding that the approach to some blocks of artisans' dwellings, which were closed by a gate for the exclusion of the public, was not a "street" for foot traffic only, was held to have been justified. ¹⁸ A carriage-drive leading from a public street through an archway and round the inner quadrangle of a building used as residential flats, was held not to be a "street" for the purpose of the London Building Act, 1894; and the question whether or not it was such a street was held to be a question of law. ¹⁹ The court, however, dissented from this case in a later case in which the owner of a building estate commenced, without the sanction of the London County Council, to lay out a road from a public carriage-road to a square, intending to erect houses along the new road and around the square. He intended the road to be solely for the

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Epping
Forest.

Highway.

Private
ways.

(7) *Northam Bridge and Road Co. v. London and Southampton Ry. Co.* (1840), 6 M. & W. 438; 4 Jur. 892; 1 Ry. Cas. 653.

(8) *Reg. v. East and West India Dock and Birmingham Junction Ry. Co.* (1853), 22 L. J. Q. B. 380; 2 E. & B. 466; 17 Jur. 1181.

(9) *Austerberry v. Oldham Cpn.* (1885), L. R. 29 Ch. D. 750; 55 L. J. Ch. 663; 53 L. T. 543.

(10) *Yorkshire (W.R.) JJ. v. Sheffield Cpn.* (1883), L. R. 8 A. C. 781; 53 L. J. M. C. 41; 49 L. T. 786; 48 J. P. 228; *Lancashire JJ. v. Newton-in-Makerfield Improvement Comrs.* (1886), L. R. 11 A. C. 416; 56 L. J. M. C. 17; 55 L. T. 615; 51 J. P. 68.

(11) *Loveridge v. Hodson* (1831), 2 B. & Ad. 602; and see Note to L. G. Act, 1888, s. 11, *post*, Vol. II., p. 1896.

(12) 3 Geo. IV. c. 126; 4 Geo. IV. c. 94; and numerous amending Acts.

(13) *Woodford U.D.C. v. Henwood*, cited

in Note to s. 150 (under ss. 5 and 8 of P.S.W. Act, 1892), *post*.

(14) See 64 J. P., at p. 149, col. iii.

(15) See *Dodd v. St. Pancras Vestry* (1869), 34 J. P. 517; *Reg. v. Goole Loc. Bd.*, L. R. 1891, 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. 595; 55 J. P. 535; and *Walthamstow U.D.C. v. Sandell*, *ante*, p. 24.

(16) *Reg. v. Goole Loc. Bd.*, *supra*, followed by *Buckley, J.*, in *Walthamstow U.D.C. v. Sandell*, *ante*, p. 24. See also *A.G. v. Gibb*, cited in Note to s. 157, *post*.

(17) See *Taylor v. Oldham Cpn.* and *Jowett v. Idle Loc. Bd.*, cited in Note to s. 150 (under heading "Meaning of Street"), *post*; and *Hill v. Wallasey*, *post*, p. 140.

(18) *Metropolitan Bd. of Works v. Nathan* (1885), 54 L. T. 423. But see *London C.C. v. Davis* (1895), 64 L. J. M. C. 212; 43 W. R. 574; 59 J. P. 583.

(19) *Wood v. London C.C.* (1895) 64 L. J. M. C. 276; 73 L. T. 313; 59 J. P. 615.

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Private ways
—continued.

use of the occupiers of the proposed houses and of persons going to those houses, and not for the use of the public, whom he intended to exclude by erecting gates at the junction with the public carriage-road and by keeping a porter to open and shut the gates. It was held that he was rightly convicted under sect. 7 of the London Building Act, 1894, of having commenced to form or lay out a "street" for carriage traffic without having first obtained the sanction of the county council.⁵

A Jewish market or bazaar containing fifty-five shops mostly let to weekly tenants, and having several means of access from the neighbouring streets, the principal means of access being closed by gates at night and on certain days, was held, reversing the decision of the magistrate, to be a street, which a person was forming and laying out, within the meaning of the London Building Act, 1894.⁶

An old private road in the metropolis over which the public could only pass on license or by payment of toll, could not be paved at the expense of the adjoining owners, by reading the definition of "street" in the Metropolis Management Act, 1855, which is similar to that in the present Act, into the definition of "new street" in the Metropolis Management Amendment Act, 1862,⁷ which includes in the latter term all streets not taken in charge by the local authority before the passing of the Act.⁸

With reference to the definition of "street" in sect. 3 of the Town Police Clauses Act, 1847,⁹ viz., that the term shall include "any road, square, court, alley, and thoroughfare or public passage," Bramwell, B., said, in holding that the metalled approach to a railway station, which was not a street in the ordinary sense, was not within the definition, "it is said that the place where this carriage was plying for hire was a road. But I think it was not a road, nor any part of a road. A road as used in the Act of Parliament must manifestly mean a public road, a road which the public have a right to use for passage. This is so with all the places mentioned. They are all places of passage, and are all meant to be public. Otherwise a square which was not public, that is, the inclosure of a square, would be within the Act. I cannot think this is so; and am of opinion that the road spoken of must be a road over which the public have rights."¹⁰

If the public have not acquired such rights, that is to say, if the road or place has not irrevocably become a highway by reason of its dedication to the use of the public and the actual user of it by the public, the owner of the land may close it against the public, and even though he may have intended to make it into a street, may change his mind. For this reason, namely, that the owner was at liberty to change his mind, Bacon, V.C., held that a road, which had been laid out and left open for some years, and on which a few of the intended houses had been built, but with respect to which the owner had subsequently abandoned the intention of completing the street, and let the site with the adjoining land to some timber merchants, was not a road with which the urban authority could deal under sect. 150.¹¹

Extent of
street.

The strict and *primâ facie* meaning of the word "street" is confined to the road and footways, but if the context requires, it may include the houses fronting and abutting on the thoroughfare.¹² The following definition of "street" given in the Imperial Dictionary was approved of by Jessel, M.R.,¹³ viz.: "The street itself is no doubt properly the paved or prepared road, that is, the street. It sometimes includes the houses along each side of it. But that is not its proper meaning. It is called a street even without houses. There are some streets with no houses. But the usual common meaning of the word 'street' is a road with houses on one or both sides of it."

It was held by the House of Lords that the word "street," in a local Act which empowered the Corporation of the City of London to take lands, etc., for the purpose of forming a new street, did not mean the mere roadway, but a thoroughfare with houses on both sides: *per* Lord Chelmsford: "When the

(5) *Armstrong v. London C.C.* (C. A.), L. R. 1900, 1 Q. B. 416; 69 L. J. Q. B. 267; 81 L. T. 638; 64 J. P. 197.

(6) *London C.C. v. Davis* (1904), 91 L. T. 555; 68 J. P. 520; 2 L. G. R. 1065.

(7) See s. 112, quoted in Note to s. 157, *post*.

(8) *Arter v. Hammersmith Vestry*, L. R. 1897, 1 Q. B. 646; 66 L. J. Q. B. 460; 76 L. T. 390; 61 J. P. 279.

(9) *Post*, Vol. II., p. 1644.

(10) *Curtis v. Embery* (1872), L. R. 7 Ex. 369; 42 L. J. M. C. 39; 21 W. R. 143.

(11) *Hall v. Bootle Cpn.* (1881), 44 L. T. 873; 29 W. R. 862.

(12) *London, Chatham, and Dover Ry. Co. v. London Cpn.* (1868), 19 L. T. 252.

(13) In *Taylor v. Oldham Cpn.* (1876), L. R. 4 Ch. D. 408; 46 L. J. Ch. 105; 35 L. T. 696; 25 W. R. 178.

Legislature empowered the Mayor and Corporation to take lands, houses, and buildings for the purposes of the Act, it did not confine them to the mere width of the intended road, but gave them authority to take as much land as might be necessary for the formation of the street itself, by the erection of houses or other buildings on each side."⁶ On the other hand, with reference to the vesting of a street in an urban authority, the street does not include the houses by the side of the street; it includes the space between the houses which is used as the footway and roadway; it also comprehends what may be called the surface, that is to say, not a surface bit of no reasonable thickness, but a surface of such a thickness as the authority may require for the purpose of doing to the street that which is necessary for it as a street; and to that extent the authority have a property in it under the present Act.⁷ With reference to bye-laws as to new streets, those relating to the construction of the streets appear to have been considered applicable to the houses as well as the street proper, but not those relating to the level or width.⁸

The term "street" does not, however, always apply to every part of the space which might, in common parlance, be spoken of as a street. For instance, in a public road in the metropolis, having on each side a line of houses and a paved footway immediately in front of them, there was between each footway and the carriage-way an intermediate space from thirty-three to fifty-eight feet wide. The occupants of the houses used the parts of the spaces opposite their houses for the purposes of their trades, paying a small yearly rent to the lord of the manor, and subject to such use the public had always passed over the spaces as of right. It was held that the spaces were not a "street" within the meaning of the Metropolis Local Management Act, 1855 (which gives a similar definition of the word to the present Act), although they had been partially dedicated to the public, and could not be considered private property without any public easement; and therefore a movable shed, erected by a publican on one of the spaces without causing any obstruction to the paved footway, was not an obstruction which the district board could remove under sects. 119, 120 of the Act (those sections containing provisions similar to sects. 69 and 70 of the Town Police Clauses Act, 1847).⁹

And a mews, which was a highway subject to the right of the owners of adjoining coach-houses to wash their carriages in it, was held not to be "the carriage-way of a street," so as to allow a person washing a carriage in it to be convicted for obstructing such a carriage-way.¹⁰ But the site of a dung pit, filled up and abandoned, in a mews which was not a thoroughfare but had been dedicated to the use of the public, was, together with the rest of the mews, held to be a street over which another vestry could exercise their powers.¹¹

The result of these decisions is that if a way over which persons pass is a highway, that is to say, a way over which the public are entitled to pass, (a) with carriages as well as otherwise, (b) on horseback or with cattle, or (c) only on foot, and if it is not a county bridge, then it is by virtue of the definition a "street" within the meaning of the present Act, unless there is something in the context to give it a more restricted meaning in a particular section; but that if it is a county bridge, or is a private way over which the public are not entitled to pass, then it is not such a "street" unless it is a street in the ordinary sense of the term, that is, a way with houses built more or less continuously along both sides of it, or at any rate along one side.

As to the meaning of the term "new street," see the Note to sect. 157, *post*.

House.

"'House' includes schools, also factories and other buildings in which [more than twenty] persons are employed [at one time]."

The words "more than twenty" and "at one time" were repealed by the Factory and Workshop Act, 1878.¹³

(6) *Galloway v. London Cpn., and Metropolitan Ry. Co. and London Cpn. v. Galloway; Quinton v. Bristol Cpn.*, cited in Note to s. 154, *post*.

(7) *Coverdale v. Charlton*, cited in Note to s. 149 (under heading "Vesting of Street"), *post*. But see *Tunbridge Wells Cpn. v. Baird*, cited *ibid*; and *Schweder v. Worthing Gas Co.*, *post*, Vol. II., p. 1204.

(8) See Note to s. 157 (under heading "New Streets"), *post*.

(9) *Le Neve v. Mile End Old Town Vestry*

(1858), 27 L. J. Q. B. 208; 8 E. & B. 1054; 4 Jur. (N.S.) 660; followed in *McIntosh v. Romford Loc. Bd.* (1889), 61 L. T. 185.

(10) *Chelsea Vestry v. Stoddard* (1879), 43 J. P. 782.

(11) *Vernon v. St. James Vestry* (1880). L. R. 16 Ch. D. 449; 49 L. J. Ch. 130; 42 L. T. 82; affirmed in C. A. on other grounds; see *post*, p. 114.

(13) 41 Vict. c. 16, s. 107, and Sched. VI., repealed by Act of 1901, s. 161, and Sched. VII., *post*, Vol. II., p. 2167.

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Extent of street—*cont.*

New street.

Definition of house.

Factory.

Sect. 4, n.

The definition is not to be imported into sects. 42 and 43 so as to extend the ordinary meaning of "house refuse" to the refuse from factories, etc.⁷

Toll-house.

A turnpike toll-house was held to be a "house" within the meaning of a clause of the Public Health Act, 1848,⁸ requiring notice to be given of the intended erection of any new house.⁹

Church.

And a church was held to be a "house" within the meaning of an enactment similar to sect. 155 of the present Act, allowing a local authority to prescribe a building line for houses.¹⁰

A chapel, not structurally incapable of being used as a dwelling-house, but with respect to which such incapability arose only from an agreement which might at any time be put at an end by the parties, was held by the Court of Appeal to be a "house" of which the trustees were the "owners" within sect. 105 of the Metropolis Management Act, 1855.¹¹

Flats.

With reference to a covenant not to build any "house" of less value than £500, or more than two "houses" on one building lot, it was held that a block of flats constituted one house only.¹² This case was distinguished in one in which the separate flats had no common staircase or internal communication between them.¹³

Business premises.

Four dwelling-houses, which had been internally connected and converted into business premises, and in which three rooms were given up to a caretaker who lived and slept there, were held to be a "house" liable to a rate under a local Act.¹⁴ And under the same Act three dwelling-houses originally a single mansion but subsequently divided and at the time in question united by connecting doors and used as a fruit store warehouse and offices, in which no one slept and from which all fireplaces but one had been removed, were held by the House of Lords (reversing the Court of Appeal) to be rateable as a "house."¹⁵ *Per* Lord Loreburn, C.:¹⁶ "The structure and character of the building as a whole should be regarded, in order to see whether it is fit or can readily be fitted for such use by any class or condition of person in the ordinary way of living." *Per* Lord James of Hereford:¹⁷ "A man may carry on business in a house as well as in a warehouse or an office, and, if there remains a structure which can be applied to the purposes to which an ordinary house is applied, then I think that the words . . . are satisfied." Another case under the same Act was dealt with by the Court of Appeal at the same time as the last one cited, and was not taken to the House of Lords, and in it the Court held, on the authority of a case which had been decided sixty years before, but was disapproved by the House of Lords in the case last cited, that a large building, erected on the site of old dwelling-houses and used as co-operative stores, and in which there was a kitchen for cooking food for the employees and a room for them to eat it in, but in which no one slept, was not rateable as a "house."¹⁸

And under another local Act, which authorised rates for sea defence works, aeroplane hangars which contained no lavatories or sleeping accommodation, and were used only for housing, repairing and constructing aeroplanes, were held to be "houses" within the expression "houses, shops, and farm buildings."¹⁹ *Per* Lush, J.:²⁰ "It is not necessary in this case to decide that every permanent building is a house. These hangars are used as places at which the tenants of them carry on their business and where work is constantly, though not daily, done."

(7) *London and Provincial Steam Laundry Co. v. Willesden Loc. Bd.*, *post*, p. 122.

(8) 11 & 12 Vict. c. 63, s. 53.

(9) *Tunstall Turnpike Road Trustees v. Lowndes* (1856), 20 J. P. 374.

(10) *Folkestone Cpn. v. Woodward* (1872), L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. 574. Further as to this case, see Note to s. 155, *post*.

(11) *Wright v. Ingle* (1885), L. R. 16 Q. B. D. 379; 55 L. J. M. C. 17; 54 L. T. 511; 50 J. P. 456.

(12) *Kimber v. Admans* (C. A.), L. R. 1900, 1 Ch. 412; 69 L. J. Ch. 296; 82 L. T. 136; 64 J. P. 185.

(13) *Ilford Park Estates, Ltd. v. Jacobs*, L. R. 1903, 2 Ch. 522; 72 L. J. Ch. 699; 89 L. T. 295.

(14) *Lewin v. Newnes* (1904), 90 L. T. 160; 68 J. P. 164.

(15) *Lewin v. End* (1906, H. L.), L. R. 1906 A. C. 299; 75 L. J. K. B. 473; 94 L. T. 649; 70 J. P. 268; 4 L. G. R. 618. *Surman v. Darley* (1845), 14 M. & W. 181; 14 L. J. M. C. 145, disapproved.

(16) L. R. 1906 A. C., at p. 302.

(17) *Ibid.*, at p. 303. See also Note to H. T. P. Act, 1919, s. 27, *post*, Part II., Div. III.

(18) *Lewin v. Civil Service Supply Assoc.* (1905, C. A.), L. R. 1905, 1 K. B. 669; 74 L. J. K. B. 406; 92 L. T. 486; 69 J. P. 128; 3 L. G. R. 449. *Surman v. Darley*, *supra*, applied.

(19) *Brighton-Shoreham Aerodrome, Ltd. v. Dell* (K. B. D.), L. R. 1917, 2 K. B. 380; 88 L. J. K. B. 1331; 117 L. T. 272; 81 J. P. 205; 15 L. G. R. 609.

(20) See L. R. 1917, 2 K. B., at p. 389.

A covered way connecting residential and educational blocks was held to make all the blocks "one dwelling-house" for inhabited house duty purposes.¹²

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As to the meaning of "dwelling-house," see the Note to sect. 74, *post*.

For the purposes of sect. 92 of the Lands Clauses Consolidation Act, 1845, which enables a person to refuse to sell or convey to the promoters of an undertaking under that Act a "part only of any house or other building or manufactory," if he is willing and able to sell and convey the whole, a much wider interpretation of the term "house" has been established by numerous decisions: see the Note to that section.¹³ It there means everything which would pass under an ordinary conveyance of a house.¹⁴

Premises occupied with house.

This wider interpretation is not however applicable to provisions imposing a burden on the tenant of a "house."

Thus, a local Act authorised commissioners to make a rate for the purposes of the Act upon "houses," without defining the term. And the court held that it did not include buildings and yards used for purposes of business and occupied at the same time with a dwelling-house, except when they were within the curtilage; that it included gardens, which were subordinate to the occupation of a house as a residence, and occupied and enjoyed with and ancillary to the house, but not orchards, paddocks, or meadows, or timber-yards.¹⁵

A dwelling-house and offices (but not the stables) were held to constitute "one house" for inhabited house duty purposes.¹⁶

For the purposes of the provisions relating to nuisances, viz. sects. 91-111, a ship or vessel may in certain cases be treated as a "house": see sect. 110.

Ship.

As to the meaning of the terms "building," "new building," see the Note on the definition of "drain," *infra*, and the Note to sect. 157, *post*.

Building.

Drain.

"'Drain' means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed."

Definition of drain.

Kindersley, V.-C., said that the word "drain," as used in the Public Health Act, 1848, evidently meant a passage for sewage from a single house only which might afterwards fall into a cesspool or larger sewer.¹⁸

Meaning of drain.

It was contended that a covered underground drain was not within the expression "drain, stream, or watercourse" as used in the provisions of the Land Drainage Act, 1847,¹⁹ which enable the proprietors or occupiers of lands to require the proprietors or occupiers of adjoining lands to cleanse or scour, or join in cleansing or scouring, the channels of drains, streams, or watercourses on or near to the boundaries of such lands. But it was held that the term "drain" was not confined to open drains.²⁰ The provisions referred to were held by the Court of Appeal not to impose upon a landowner the obligation to cleanse a watercourse below a mill in order to prevent the water from being penned back so as to lessen the efficiency of the millwheel.²¹

A "dumb well," or pit in the chalk, into which a drain under the control of a parish highway board had for several years discharged surface-water from the highway, and through the bottom of which the water percolated into the soil, was held not to be itself a "drain" which the board were at liberty to use as part of their system of drainage; and the landowner was held entitled to an injunction to restrain them from clearing out the well and opening pipes inserted by them, which the landowner had stopped up.²²

Dumb well.

For the purposes of the definitions of "drain" and "sewer," more than one house may constitute only one building. Thus Cozens-Hardy, J., held that a pair of semi-detached houses erected on a building plot did not constitute two buildings so as to make their combined drain a "sewer."²³ But in a later case,

One building.

(12) *Bedford College v. Guest* (C. A.), L. R. 1920, 2 K. B. 278; 89 L. J. K. B. 586; 123 L. T. 305; 84 J. P. 182; 18 L. G. R. 677.

(13) *Post*, Vol. II., p. 1586.

(14) *Hewson v. South Western Ry. Co.* (1860), 2 L. T. 369; 8 W. R. 467.

(15) *Hole v. Milton Comrs.* (1867), 31 J. P. 804.

(16) *Knight v. Manley* (1905, K. B. D.), 92 L. T. 506; 21 T. L. R. 203.

(18) *Sutton v. Norwich Cpn.*, *post*, p. 33.

(19) 10 & 11 Vict. c. 38, ss. 14, 15.

(20) *Bowes v. Watson* (1880), 42 L. T. 27; 28 W. R. 394; 44 J. P. 364.

(21) *Finch v. Bannister*, L. R. 1908, 2 K. B. 441; 77 L. J. K. B. 718; 99 L. T. 228; 72 J. P. 203; 6 L. G. R. 534.

(22) *Croft v. Rickmansworth Highway Bd.* (1888), L. R. 39 Ch. D. 272; 58 L. J. Ch. 14; 60 L. T. 34.

(23) *Hedley v. Webb*, L. R. 1901, 2 Ch. 126; 70 L. J. Ch. 663; 84 L. T. 526; 65 J. P. 425.

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One building
—continued.

where the justices had found as a fact that a pair of such houses were two separate buildings and not within the same curtilage, the Divisional Court refused to interfere with their finding. The houses in this case were described as semi-detached houses, built apparently at the same time, having one continuous roof, and divided by a party wall not going up through the roof, as having gardens in front and behind, divided by fences, and as having always been the subject of separate lettings, occupied by separate tenants, and separately rated.³

Where the roof drainage of three houses was discharged into a pipe which conveyed into the public sewer the house drainage of the centre house only, a contention by the local authority that, when the rainwater reached the centre house it became the drainage of that house and that therefore the pipe only took the drainage of "one house" was overruled, and the pipe was held to be a "sewer."⁴

Two tenements were separated by a court about twenty feet wide. Both were known as 93½ Green Street, and the tenant lived in the front part and used the back part as a brothel. Access to both was obtained through the same passage into the street. The tenant, while in the front tenement, was sent for by the police to come to the back tenement. It was held that a conviction, for being found "in a house or building used as a brothel," must be quashed, as the two tenements were not "one building" but two, within the Burgh Police (Scotland) Act, 1892.⁵

Curtilage.

In Tomlin's Law Dictionary the term "curtilage" is said to be derived from the French *cour* (court), and Saxon *leagh* (locus); and it is described as "a court-yard, back-side, or piece of ground lying near and belonging to a dwelling-house;" but in the above interpretation clause it is used as though it were synonymous with boundary or fence, in the same manner as it is used in the following passages: "And it is clear that any out-house within the curtilage or same common fence as the mansion itself must be considered as parcel of the mansion." "But if the out-houses be adjoining to the dwelling-house, and occupied as parcel thereof, though there be no common inclosure or curtilage, they may still be considered as parts of the mansion."⁶

The Lowther Arcade (a passage with a gate at each end, containing twenty-five houses and shops, and arched over by a common roof) was held by the Court of Appeal not to be "one building or premises within the same curtilage;" and the drain running under the centre of the arcade was therefore a "sewer."⁷ But two blocks of buildings, containing forty-six sets of apartments, and having between them a causeway, in which was the common dustbin, were held to have a common curtilage, and a main drain laid under the causeway without notice to the local authority was held not to be a sewer.⁸

This last case was, however, distinguished in a case where there were six houses with separate entrances, private yards, and gardens, belonging to the same owner, and divided into two blocks by a common passage leading to another common passage behind the houses. The lines of pipes in question were laid along these passages to a sewer in the street, and the house-drains were connected with them. It was held by the Divisional Court that these lines of pipes were "sewers" and not "drains" for the purposes of a bye-law requiring every drain of a new building directly connecting with a public sewer to be trapped.⁹

It was also distinguished in one in which the premises were described in the following manner:—The appellants were the owners of eighteen houses, Nos. 7 to 25 in No. 1 Court, Eyre Lane, Sheffield. The houses were back to back houses. Nos. 7 to 13 formed part of a block, and Nos. 14 to 25 were in one block; Nos. 7 to 13 faced Nos. 14 to 19, and between was an open space of ground with a pavement on either side; and Nos. 20 to 25 faced the boundary wall of the court, and between was an open space of ground with a pavement on the side of it. The main entrance to the court was from a partly enclosed space of ground to which entrance was obtained from a main thoroughfare; and it could

(3) *Humphery v. Young*, L. R. 1903, 1 K. B. 44; 72 L. J. K. B. 6; 87 L. T. 551; 67 J. P. 34; 1 L. G. R. 142. See also *Moir v. Williams*, cited in Note to s. 157, *post*.

(4) *Kershaw v. Paine* (1913, K. B. D.), 78 J. P. 149; 12 L. G. R. 297.

(5) 55 & 56 Vict. c. 55, s. 40; *Blackwood v. McIntyre*, 1914 S. C. (J.) 165; 51 Sc. L. R. 800; 5 Glen's Loc. Gov. Case Law 166.

(6) 2 East's Pleas of the Crown, tit. "Burglary," 493. For a special provision as

to buildings "within the same curtilage with" dwelling-houses, see the Larceny Act, 1916 (6 & 7 Geo. V. c. 50, s. 46 (2)).

(7) *St. Martin-in-the-Fields Vestry v. Bird*, L. R. 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 60 J. P. 52.

(8) *Pilbrow v. Shoreditch Vestry*, L. R. 1895, 1 Q. B. 433; 64 L. J. M. C. 130; 72 L. T. 135; 59 J. P. 68.

(9) *Blundell v. Price*, 1898 Loc. Gov. Chron. 512.

also be entered by two narrow passages between certain of the houses, Nos. 7 to 13. The slop-water from the sinks of each house was carried by a separate open channel across the pavement to a long open channel running along the side of the pavement, and discharging into one or other of two gullies, and thence into a main sewer outside the court. It was held by the Divisional Court, reversing the decision of the justices on a summons against the owners of the houses for a nuisance in one of the channels running alongside the pavement, that such channels were "sewers," because the houses were not "premises within the same curtilage," Lord Alverstone, C.J., saying that no definition of a curtilage existed which would cover the case of a number of houses separately occupied by different people simply because there was a common access, and, to a certain extent, common conveniences.¹

A pipe took the drainage from four contiguous cottages owned by the defendant into a cesspool in a field owned by the plaintiff. These cottages were found by the County Court Judge to be four separate buildings, each with a separate curtilage, because they were separated by party walls and each had a separate back garden with a water-closet at its end. It was held that there was evidence justifying the decision of the County Court Judge that the pipe was a "sewer."²

The courtyard of Devonshire House, which is used partly as a stable yard, partly as an approach to the kitchens and domestic offices, and the remainder for all the usual purposes to which a courtyard can be put was held to be included in the "curtilage" and therefore not liable to undeveloped land duty under the Finance Act of 1910.³

Sect. 19 of the Public Health Acts Amendment Act, 1890,⁴ uses the expression "a single private drain" with reference to a drain by which two or more houses belonging to different owners are connected with a "public" sewer. It defines the expression "drain" as including (but only for the purposes of that section) a drain used for the drainage of more than one building. This does not appear to affect the definition of "drain" and "sewer" for other purposes, or the vesting of such "single private drains" in the local authority; though the section gives the local authority express power to recover certain expenses incurred by them in connection with such drains from the owners of the houses.

The general law on this subject has been found so unsatisfactory that a great many local authorities have obtained local Acts giving special definitions of "drain," "single private drain," and "sewer," so that the present section is by no means of universal application.⁵

Sewer.

" 'Sewer' includes sewers and drains of every description, except drains to which the word 'drain' interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act."

In the case cited below,⁶ Vice-Chancellor Kindersley said: "The word 'drain,' as used in the [Public Health Act, 1848,⁷] evidently means a passage for sewage from a single house only, which may afterwards fall into a cesspool or larger sewer. The word 'sewer' comes from the word to 'sew,' i.e., to drain, and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire, by means of canals, etc. In the common sense of the term, it means a large and generally, though not always, underground passage, for fluid and feculent matter, from a house or houses to some other locality; but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit, or to be converted into manure or other useful purpose."

According to the definitions of "drain" and "sewer" in the present section (as to the expression "single private drain" in the Act of 1890, see *supra*), a drain from one building or set of premises is a "sewer" within the meaning of the Act below the point at which another drain from a building or premises

Sect. 4, n.
Curtilage—
continued.

Single
private
drain.

Local Acts.

Definition of
sewer.

Meaning
of sewer.

(1) *Harris v. Scurfield* (1904, K. B. D.), 91 L. T. 536; 68 J. P. 516; 2 L. G. R. 974. See also *Brass v. London C.C.*, L. R. 1904, 2 K. B. 336; 73 L. J. K. B. 841; 91 L. T. 344; 68 J. P. 365; 2 L. G. R. 809.
(2) *Orchard v. King*, *post*, p. 40.
(3) 10 Edw. VII. c. 8, ss. 16 (1) (2), 17 (4); *Inland Revenue Comrs. v. Duke of Devonshire*, L. R. 1914, 2 K. B. 627; 83 L. J.

K. B. 706; 110 L. T. 659.
(4) Fully annotated in Div. II. of the present Part of this work.
(5) See, e.g., *Hull Cpn. v. North Eastern Ry. Co.*, *post*, p. 56.
(6) *Sutton v. Norwich Cpn.*, 27 L. J. Ch., at p. 742, col. i.
(7) 11 & 12 Vict. c. 63, s. 2.

Sect. 4, n.

within a different curtilage joins it or empties into it, whether it passes through private property or not. With certain exceptions such "sewers" are vested in the local authority of the district : see sect. 13, and the Note to that section.

Sewer not yet used.

It may be possible for a line of pipes, connected with a sewer, itself to constitute a sewer, although the drain of one house only, or no drain at all, may be connected with it; as, for instance, where the local authority have laid a sewer in a street for the drainage of houses which are not yet built, or whose drains are not yet connected with such sewer.

Effect of alterations to system.

Thus, a line of pipes laid by a building estate owner along a new street on his estate, and intended by him to be the sewer for the street, had been inspected and approved by the surveyor of the district council, but was not in use as the houses in the street had not been built. Neville, J., held that it was a sewer vested in the council, and accordingly refused to grant an injunction to prevent the council from connecting another sewer with it.⁸

A drain, which drains two buildings not within the same curtilage, and is therefore a "sewer" within the definition, does not, it has been held, cease to be vested in the local authority when one of the buildings is disconnected from it by arrangement with the authority, although it is afterwards used for the drainage of one building only.⁹ But this case must not be taken to lay down the proposition "once a sewer always a sewer;" Avory, J.,¹⁰ saying that he was unable to follow it "to the full extent if it is to be taken as deciding that a pipe or a line of pipes which has once been a sewer must remain a sewer for all time subject to the control of the local authority which will always remain liable to maintain it as a sewer. There would appear to me to be many cases in which it might physically happen that a thing which was at one time a sewer might by some alteration become converted into a drain." Ridley, J., concurred, but Pickford, J., dissented. The alteration which the court held converted a sewer to a drain was one carried out by the local authority under sect. 83 of the Metropolis Management Act, 1855,¹¹ for the purpose of making the system comply with that originally sanctioned by their predecessors.¹²

Sewer in private ground.

A 9-inch drain laid by the owner at the rear of some houses to connect them with the main sewer, with the knowledge of the sewer authority, was held¹³ to be a "sewer" and not a "drain" within the definition in the Act of 1855 quoted below; and a mandamus was granted requiring a metropolitan vestry to repair a similar drain or "sewer," where there was no evidence of knowledge or approval on the part of the vestry or Metropolitan Board of Works.¹⁴

Definition in metropolis.

The definition in the Metropolis Management Act, 1855,¹⁵ is as follows :—"The word 'drain' shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board; and the word 'sewer' shall mean and include sewers and drains of every description, except drains to which the word 'drain,' interpreted as aforesaid, applies."¹⁶

Sewer from end to end.

Under the present Act justices were held to have rightly dismissed a summons for a nuisance arising from a defective drain that had been laid under three houses for the purpose of draining those houses, on the ground that the drain was a "sewer" vested in the local authority.¹⁷ In this case it was suggested that

(8) *Turner v. Handsworth U.D.C.*, L. R. 1909, 1 Ch. 381; 78 L. J. Ch. 202; 100 L. T. 194; 73 J. P. 95; 7 L. G. R. 255.

(9) *Shoreditch Vestry v. Phelan*, L. R. 1896, 1 Q. B. 533; 65 L. J. M. C. 111; 74 L. T. 285; 60 J. P. 244.

(10) In *Kershaw v. Alfred John Smith & Co., Ltd.*, L. R. 1913, 2 K. B. 455, at p. 465; 82 L. J. K. B. 791; 108 L. T. 650; 77 J. P. 297; 11 L. G. R. 519.

(11) 18 & 19 Vict. c. 120, s. 83.

(12) Further as to this case, see *post*, p. 36.

(13) In *Bateman v. Poplar Dist. Bd.* (1886), L. R. 33 Ch. D. 360; 56 L. J. Ch. 149; 58 L. T. 720; reversed in *C. A.* (Lopes, L.J., diss.), but on grounds not applicable to the definition in the present Act.

(14) *Bethnal Green Vestry v. London Sch. Bd.*, L. R. 1898 A. C. 190; 67 L. J. Q. B. 234; 77 L. T. 635; *Appleyard v. Lambeth Vestry* (1897), 66 L. J. Q. B. 347; 76 L. T. 442; 61 J. P. 276.

(15) 18 & 19 Vict. c. 120, s. 250.

(16) As to what constitutes an "order" within this definition, see the following cases, which have been cited elsewhere on other points: *Wilson's Music Co. v. Finsbury B.C.*, cited in Note to s. 257 (just before heading "charge on premises"), *post*; *House Property and Investment Co. v. Grice*, *post*, p. 36; *Kershaw v. Alfred John Smith & Co.*, *supra*, and *post*, p. 36.

(17) *Travis v. Uttley*, L. R. 1894, 1 Q. B. 233; 63 L. J. M. C. 48; 70 L. T. 242; 58 J. P. 85.

the drain was a "sewer" from end to end; but it was subsequently decided in the Court of Appeal that a conduit was a "drain" so long as it received the drainage of one house only, but a "sewer" from the point where the drainage of the second house came into it.⁵

The last-mentioned case⁶ arose under the Metropolis Management Acts, which, as will be seen from the definition quoted above, exclude from the definition of "sewer" drains made for the drainage of groups or blocks of houses by combined operations under the order⁸ of the local authority, and under which drains cannot lawfully be laid otherwise than in such manner as the local authority may in their discretion direct.⁷ The builder had been authorised under those Acts to combine the drains of certain pairs of houses, but had without the knowledge or sanction of the local authority combined the drains of four houses; and Lord Esher, M.R., pointed out that although the builder of the houses had connected the drains of more houses than the local authority under the Metropolis Management Act, 1855, had authorised him to connect with the conduit in question, a purchaser without notice of the fact that the drainage system was in contravention of the authorised plan was not estopped from contending that the conduit was a "sewer" by any act of his own or of any one by whose acts he was bound. And Kay, L.J., after saying that want of knowledge on the part of the local authority was no answer to the assertion of the respondent (the owner of the premises) that he was not liable for anything but a drain, added, "the conversion of what would have been a drain into a sewer was not by any act of the respondent, and there is no estoppel against him."

Under the Metropolitan Acts a combined drain made in pursuance of an order of the local authority, remains a drain and not a sewer.⁸ And the mere fact that there is some divergence from the sanctioned scheme, without any drains from houses not within the scheme being connected with it does not render the combined drain a "sewer;"⁹ though a substantial divergence will have this effect.¹⁰

And in one case,¹¹ Lord Coleridge, C.J., and Lopes, L.J., and in another,¹² Cozens-Hardy, J., expressed the opinion that the wrongful construction of a conduit in another person's land by trespass, could not confer rights on the local authority by making the conduit a "sewer," and vesting it in them. *Per* Buckley, J.: "If a sewer in point of fact has been laid and used, it is none the less a sewer because it has been laid wrongfully, as, for instance, where the proper local sanction, or sanction from the proper authority,¹³ has not been obtained. But if a sewer has been laid wrongfully in the sense that somebody has committed a trespass by going on to the lands of another and there laying such a pipe as that it is a sewer, it does not follow that he has so acted as in point of fact to hand over the land of his neighbour to the local authority, because if it is a sewer it vests in the local authority."¹⁴

Channell, J., in a metropolitan case,¹⁵ expressed the opinion that the person who committed the wrongful act (*viz.* connecting the drain from the sink of another house behind the back of the surveyor of the local authority), or a person, not being a purchaser for valuable consideration, who claimed through the wrongdoer, and had no higher rights than that person, could not by reason of such wrongful act have the right to insist upon the structure being repaired as a "sewer" at the expense of the ratepayers; but in another metropolitan case,¹⁶ Channell, J., said¹⁷: "There is considerable obscurity as to how or when this connection between the surface-water drain and the other pipe was made; but I think that the onus is on the defendants to show that it was wrongfully done by some one whose act estops the plaintiffs from saying, as against the defendants,

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Sewer
wrongfully
constructed.

(5) *Kershaw v. Taylor*, L. R. 1895, 2 Q. B. 471; 64 L. J. M. C. 245; 73 L. T. 274; 59 J. P. 726. See also *per* Wills, J., in *Bradford v. Eastbourne Cpn.*, cited in Note to P. H. Act, 1890, s. 19, *post*, Part I., Div. II.; *Beckenham U.D.C. v. Wood* (1896, Q. B. D.), 60 J. P. 490; *Hornsey Loc. Bd. v. Davis*, *post*, p. 41; and *Harvey v. Busby* (1906, K. B. D.), 95 L. T. 91; 70 J. P. 301; 4 L. G. R. 693.

(6) *Kershaw v. Taylor*, *supra*.

(7) 18 & 19 Vict. c. 120, s. 76.

(8) See *Gorringe v. Shoreditch B.C.* (1902), 86 L. T. 592; 66 J. P. 565. See also footnote (3), *ante*, p. 34.

(9) *Greater London Property Co. v. Foot*, L. R. 1899, 1 Q. B. 972; 68 L. J. Q. B. 628;

80 L. T. 390; 63 J. P. 420.

(10) *Harvey v. Jaye* (1907, K. B. D.), 97 L. T. 543; 71 J. P. 473; 5 L. G. R. 967.

(11) *Meador v. West Cowes Loc. Bd.*, *post*, p. 39.

(12) *Hedley v. Webb*, *ante*, p. 32.

(13) *E.g.* under 18 & 19 Vict. c. 120, s. 76.

(14) *Pakenham v. Ticehurst R.D.C.* (1903), 67 J. P. 448; 2 L. G. R. 19.

(15) *Heaver and Others v. Fulham Cpn.*, L. R. 1904, 2 K. B. 383; 73 L. J. K. B. 715; 91 L. T. 31; 68 J. P. 278; 2 L. G. R. 672.

(16) *Wilson Music Co. v. Finsbury B.C.*, L. R. 1908, 1 K. B. 563; 77 L. J. K. B. 471; 98 L. T. 574; 72 J. P. 37; 6 L. G. R. 349.

(17) L. R. 1908, 1 K. B., at p. 567.

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that the pipe is now a sewer, and in my opinion the defendants have not discharged that onus." And Avory, J., in another metropolitan case,⁶ said: "By the wrongful act of a builder this line of pipes became for a time a sewer, and although the builder could not set up his own wrongful act in support of the contention that it was a sewer, a purchaser for value without notice might do so."⁷

Estoppel.

Estoppel was urged by both parties in a case already noted,⁸ the local authority contending that, there being no record of any application to the district board to sanction the system, it must be presumed that the connection of the rain-water pipes from the adjoining houses was made wrongfully, and that therefore the respondent was estopped from denying that the pipe in question was a "drain"; and the owner contending that the surveyor must have known how the system was being constructed if he had been performing his duties properly, and that, if there was any estoppel at all, it was against the appellant denying that the pipe was a "sewer." The pipe was held to be a "sewer."

"To constitute an estoppel there must be an untruth stated or an act done whereby another person is prejudiced or induced to act to his prejudice. . . . In the present case the local authority have not been prejudiced, because they have never in fact maintained the pipes as a sewer."⁹

Sewer not known to local authority.

A local authority were held not to be liable to an action for damage caused by obstructions in a drain which they did not know, and could not by the exercise of reasonable care have known, was a "sewer."¹⁰ But the connection of a rain-water pipe from one house with a drain made and used for the combined drainage of other houses under the Metropolis Management Acts was held by Bruce, J., to convert such "drain" into a "sewer" vested in and repairable by the local authority;¹¹ and the Divisional Court subsequently held that the connection of a stable drain with a similar combined "drain," without the knowledge of the vestry or of the owner of the houses drained by the combined drain, rendered the latter a "sewer," and prevented the vestry from compelling the owner to abate a nuisance in it.¹²

Rain-water pipe.

The two last-cited cases were upheld by the Court of Appeal, who expressly decided that the fact that a line of pipes carrying sewage from one house only carried in addition rain water and not sewage from another house did not prevent it from being a "sewer."¹³ In a subsequent case at *nisi prius*, Channell, J., said that he would have hesitated a long time before deciding that, because a rain-water stack-pipe carried away the rain water from the roofs of two houses, that stack-pipe became a sewer;¹⁴ and in a still later case in the Divisional Court Channell, J., adhered to his opinion on this point, though he and the other members of the court felt bound to follow the case in the Court of Appeal.¹⁵

Highway drain.

The Divisional Court held that a drain made by a private person to carry the drainage of a highway and prevent it from flowing over his premises was not a "sewer" into which he was entitled to discharge sewage.¹⁶

A drain which crossed under a highway, and had been substituted by a highway board for a previously existing stone conduit in order to receive the surface water from the highway and carry it to a pond, was held not to have become a "sewer" within the meaning of the present Act, when the powers, etc., of the highway board were transferred to the rural district council by sect. 25 of the Local Government Act, 1894, even though drains from the premises of the neighbouring owners had discharged sewage into the stone conduit, and were connected by the highway board with the substituted drain. The owners of the premises, and not the district council, were therefore held to be liable for a nuisance caused by the sewage in the pond. *Per* Lord Alverstone, C.J., "the transfer does not alter the status of any drain which was constructed for a wholly different purpose."¹⁷

(6) *Kershaw v. Alfred Smith & Co.*, *infra*.

(7) L. R. 1913, 2 K. B., at p. 464.

(8) *Kershaw v. Paine*, *ante*, p. 32.

(9) *Per* Avory, J., in *Kershaw v. Alfred John Smith & Co.*, L. R. 1913, 2 K. B., at p. 464. See further as to this case, *ante*, p. 34.

(10) *Bateman v. Poplar Dist. Bd.* (1886), L. R. 37 Ch. D. 272; 57 L. J. Ch. 579; 58 L. T. 720. See also *Rickaby v. New Forest R.D.C.*, *post*, p. 37.

(11) *Holland v. Lazarus* (1897), 66 L. J. Q. B. 285; 61 J. P. 262.

(12) *Geen v. Newington Vestry*, L. R. 1898, 2 Q. B. 1; 67 L. J. Q. B. 557; see also

High v. Billings (1903, K. B. D.), 1 L. G. R. 723; and *House Property Co. v. Grice* (1911, K. B. D.), 75 J. P. 395; 9 L. G. R. 758.

(13) *Silles v. Fulham B.C.*, L. R. 1903, 1 K. B. 829; 72 L. J. K. B. 397; 88 L. T. 753; 67 J. P. 273; 1 L. G. R. 643.

(14) *Heaver v. Fulham Cpn.*, *ante*, p. 35.

(15) *Kershaw v. Paine*, *ante*, p. 32.

(16) *Wincanton R.D.C. v. Parsons*, L. R. 1905, 2 K. B. 34; 74 L. J. K. B. 533; 93 L. T. 13; 69 J. P. 242; 3 L. G. R. 771.

(17) *Williamson v. Durham R.D.C.*, L. R. 1906, 2 K. B. 65; 75 L. J. K. B. 498; 95 L. T. 471; 70 J. P. 352; 4 L. G. R. 1163.

This was followed in a case in which two cottages drained into a roadside ditch, the road having been set out as a public highway by an enclosure award, and the rural district council having made and kept open certain grips or cuttings leading into the ditch to drain the highway.¹⁸ Sect. 4, n.

A drain constructed for the purpose of taking the surface drainage of a highway was at the passing of the present Act under the control of the then highway authority. The highway became a main road, and in about 1890 drains from the cellars of four houses and a privy were connected with the first-mentioned drain without the knowledge of any local authority. In an action by the owner and occupier of the houses, claiming from the rural district council damages in respect of the flooding of some of the cellars in consequence of an obstruction in that drain below the point of connection, Warrington, J., held that the drain had become vested in the county council under the Local Government Act, 1888,¹⁹ as a drain belonging to the main road, and had not become a "sewer" so as to be divested out of that council and vested in the rural district council, by reason of the connection of the house drains with it, and that the latter council were not liable for damage.²⁰

A natural stream, which had been cleared out, widened, and deepened by inclosure commissioners, and was formed by the natural and artificial drainage of the fields in the neighbourhood, and, after receiving the drainage of two houses, made its way into the river Ouse, was held not to be a "sewer."²¹ An open watercourse, to some extent polluted by sewage, was held not to be a sewer, or at any rate not such a sewer that the local authority could have complete control over it and pour in a greatly increased quantity of sewage.²² And the fact that a watercourse, which is the natural drain of a district, is to some extent polluted by sewage, does not entitle the local authority, by virtue of their control over sewers, to treat it as a sewer and connect other drains with it, so as to deprive the proprietors of the adjoining lands of their right to enjoy the use of the comparatively pure water to which they have been accustomed, or so as to create a nuisance.²³ Natural stream.

But where the sewage of certain houses, after passing through a stone "sough" or sewer, had for some years been allowed to fall into an open watercourse, which flowed into a brook, the watercourse was held to be a "sewer" within the Act.²⁴ The Dean Burn had some hundreds of years ago been a purely agricultural stream, but by degrees its character had altered, until it received not only the surface drainage of the neighbouring land, but the drainage from about one hundred houses in two villages, and the slops and refuse from twenty or thirty cottages; and the sewage matter flowing into it had within the last two or three years been largely increased owing to some extensive building operations in the neighbourhood. In these circumstances the burn was held by the Court of Appeal to have become a "sewer," which the urban authority were entitled to cover in and use.²⁵ And Byrne, J., held that a stream had become a "sewer" at a point below that to which the tide reached.²⁶

On the other hand, the course taken by an occasional flood in a chalk district, known as a "bourne flow," was held by Walton, J., not to be a "sewer" into which road drainage might be discharged, even in the portion of it which had been defined by artificial channels.²⁷ And the Divisional Court upheld the decision of a county court judge that a company were not entitled to discharge polluting liquid into a beck which had four tributaries, three of them discharging no sewage, and the fourth mainly discharging sewage, the judge having found as a fact that the beck was a "stream" within sect. 20 of the Rivers Pollution Prevention Act, 1876, although he had not expressly found that it was not a "sewer."²⁸

But in another case decided at the same time the court remitted an appeal to the quarter sessions for rehearing under the West Riding of Yorkshire Rivers Act, 1894,²⁹ in order that evidence might be directed to the question whether the

(18) *Irving v. Carlisle R.D.C.* (1907, K. B. D.), 71 J. P. 212; 5 L. G. R. 776.

(19) See s. 11 (6), *post*, Vol. II., p. 1895.

(20) *Rickarby v. New Forest U.D.C.* (1910), 74 J. P. 441; 8 L. G. R. 893.

(21) *Reg. v. Godmanchester Loc. Bd.* (1866), L. R. 1 Q. B. 328; 35 L. J. Q. B. 125; 14 L. T. 104; 5 B. & S. 936.

(22) *A.G. v. Hackney Loc. Bd.* (1875), L. R. 20 Eq. 626; 44 L. J. Ch. 545; 33 L. T. 244.

(23) *Vowles v. Colmer* (1895), 64 L. J. Ch. 414; 72 L. T. 389.

(24) *Wheatcroft v. Matlock Loc. Bd.* (1885), 52 L. T. 356.

(25) *Falconar v. South Shields Cpn.* (1895), 11 T. L. R. 223; followed in *A.G. v. Lewes Cpn.*, *post*, p. 38.

(26) *Newcastle-upon-Tyne Cpn. v. Houseman*, 63 J. P. 85; 1899 Loc. Gov. Chron. 438.

(27) *Pearce v. Croydon R.D.C.*, *post*, p. 69.

(28) *Yorkshire (W.R.) Rivers Bd. v. Yorkshire Dyers, Ltd.* (1902), 67 J. P. 80.

(29) 57 & 58 Vict. c. clxvi.

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Natural
stream—cont.

channel at the point at which the respondents discharged their effluent had *by the lawful operation of the sanitary authority* become a sewer into which they had a right to discharge. In delivering the judgment of the court, Lord Alverstone, C.J., said: "if, even although the natural flow of water has not wholly ceased, a watercourse had for a number of years been treated by the sanitary authority as a sewer, and persons had been allowed as of right to connect their drains with it, it seems to us to be quite possible that the local authority might not be able to set up, as against persons desiring or continuing to drain into that sewer, that it is not a sewer," and that "it seems to us that the matter upon which they [the justices] have placed some reliance—namely, the covering over of the drain—was wholly immaterial unless that covering over had been done by the local authority in order to turn the watercourse into a sewer; whereas it seems undisputed that this covering over had been done entirely by the riparian proprietors for their own purposes."⁸

On an appeal on the merits from a county court judge, who had found that a certain channel was a stream within the meaning of the Rivers Pollution Prevention Act, 1876, as distinguished from a sewer, the Divisional Court declined to reverse his decision, the evidence showing that, whether the channel was natural or artificial, a considerable body of pure water had for a great number of years entered it below the point at which the defendants, a manufacturing firm, discharged polluting liquid into it; that pure water had also entered it from above that point until the defendants diverted such water; that the sewage of fifty or sixty cottages, which had formerly been discharged into the channel, had been diverted on the establishment of a sewerage system, and only two cottages still discharged slop water into it.⁹

A stream flowed from about the middle of the autumn to about the middle of the spring, except in very dry seasons; and was dry at other times, except during very wet seasons. Water from a tidal river into which the stream debouched came up the course of the stream for some distance during the flow of the tide, and headed back the water of the stream." Part of the stream was culverted, and the culvert was defective. The local authority discharged crude sewage into the culvert, and the adjoining land was periodically inundated and sewage was deposited on it. Swinfen Eady, J., held that the stream had become a sewer, and that the local authority were liable for the nuisance to the adjoining land.¹⁰

An open channel made by a landowner along the line of the natural drainage of the catchment area for the sole purpose of removing superfluous water from his land, and receiving effluent of a satisfactory standard from the local authority's sewage farm, which effluent was its sole contents in dry weather, was held to be a "sewer," and not a "natural stream."¹¹

Fen drainage
works.

The word "sewer" embraces "works on the largest scale, such as draining the fens of Lincolnshire by means of canals."¹² Thus a marsh wall or embankment, which kept back the river Thames from inundating the Isle of Dogs at high tide, was held to be a "sewer" within the meaning of the Metropolis Management Act, 1855,¹³ so as to prevent a person from building over it without the consent of the local authority, the wall being part of the apparatus essential to the draining of a level, which had been under the jurisdiction of the Metropolitan Commissioners of Sewers.¹⁴

Clean water
conduits.

An iron pipe for carrying off effluent water from sewage works was held to be a "sewer" within the meaning of the Act,¹⁵ and so was a line of pipes carrying only surface water.¹⁶

A drain made to carry surface water into a public sewer and prevent it from running into a quarry was held by the Court of Appeal to be a "sewer," though

(8) *Yorkshire (W.R.) Rivers Bd. v. Reuben Gaunt & Sons, Ltd.* (1903), 67 J. P. 183; 1 L. G. R. 133; distinguished in *A.G. v. Lewes Cpn., infra.*

(9) *Yorkshire (W.R.) Rivers Bd. v. Preston & Sons* (1904), 92 L. T. 24; 69 J. P. 1; 3 L. G. R. 289. See also *Hainesworth v. Yorkshire (W.R.) Rivers Bd.* (1902, K. B. D.), 5 L. G. R. 356n.

(10) *A.G. v. Lewes Cpn.* (1911, Ch. D.), L. R. 1911, 2 Ch. 495; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26.

(11) *Phillimore v. Watford R.D.C., post*, p. 55.

(12) See *Sutton v. Norwich Cpn.* (1858), *ante*, p. 33. See also, as to cesspools, *Croft*

v. Rickmansworth Highway Bd., ante, p. 31; *Meader v. West Cowes Loc. Bd., post*, p. 39.

(13) 18 & 19 Vict. c. 120, s. 204.

(14) *Poplar Dist. Bd. v. Knight* (1858), E. B. & E. 408; 5 Jur. (N.S.) 196; 28 L. J. M. C. 37.

(15) *Tottenham Loc. Bd. v. Button*, Times, 17th July, 1885.

(16) *Durrant v. Branksome U.D.C., post*, p. 66; *Croysdale v. Sunbury-on-Thames U.D.C., post*, p. 54. See also *per Lindley, M.R., in London and North Western Ry. Co. v. Runcorn R.D.C.*, L. R. 1898, 1 Ch., at p. 562; 67 L. J. Ch. 324; 78 L. T. 343.

in the circumstances it was held to have been made for the owner's profit.⁶ And a "drain" from one house was converted into a "sewer" by the connection with it of a drain discharging only the rain water from the roof of another house.⁷

In the Court of Appeal it was pointed out that the Kinson Pottery Company's case⁸ did not decide that a drain might be a "sewer" for some of the purposes of the Act, and not a "sewer" for other purposes, but (*per* Stirling, L.J.) that the company could not take advantage of their own wrong, namely, permitting the improper escape of fæcal matter into the sewer; and the water table or channel formed by sloping the surface of a road down to the edge of the footpath which was raised above it was held to be a "sewer," and the local authority were held liable in damages and to an injunction to restrain them from permitting foul or noxious matter to remain in the channel so as to cause a nuisance to the occupier of one of the adjoining houses, the overflow from a cesspool belonging to two other houses in the road having found its way into the channel and having been allowed to remain there in pools.⁹

In another case a line of pipes which carried the drainage of three sets of premises to a stream also received the surface drainage of a highway at a catchpit made in the upper portion of the lines of pipes above the points at which the drainage of two of the three sets of premises was received. A nuisance arose at the catchpit from the breakage of the pipes immediately below it. The question was whether the respondent (the occupier of the premises which drained into that portion of the line of pipes) was responsible for the nuisance, or whether that portion was a sewer for which the appellants (the district council) were responsible. The court decided that the occupier was responsible, whether that portion of the line of pipes was such a sewer or not; but they also expressed the opinion that it was not a "sewer." *Per* Kennedy, J.: "It was made by private persons for private purposes, to prevent surface water collecting on the highway from running thence on to their premises. And under those circumstances the mere fact that the respondent has for some years discharged the sewage from his house into this pipe cannot convert it into a sewer."¹⁰

The fact that four gullies in a private road took surface water into a pipe did not render that pipe a "sewer," but the pipe was held to be a "sewer" below the point at which it received the surface drainage from a public courtyard.¹¹

A manhole, or brick shaft, covered by an iron plate, and affording a side entrance to a sewer to enable workmen to descend to examine the state of the sewer, was held not to be a mere accessory to the sewer under sect. 46 of the Public Health Act, 1848, but part of the sewer itself.¹²

Accessories
of sewer.

An attempt was made to extend this decision to an engine house with pumping machinery, partly above and partly below the level of the ground, for lifting sewage and forcing it up a rising main to an outfall for treatment, but Byrne, J., held that the structure was not part of the sewer, but was erected "for the purpose of receiving . . . or otherwise disposing of sewage" under sect. 27 of the present Act, and could not be constructed on a piece of roadside waste under sect. 16, even if that were part of the highway, but that the necessary site must be purchased by the local authority.¹³

A line of 6-inch pipes was laid by a builder to take the drainage of ten houses to a cesspit, from which another line of pipes carried the overflow to a river through the lands of another person. This person, acting within his rights, cut off the second line of pipes, and so caused the sewage to flow back and create a nuisance. The builder brought an action to restrain the local board from continuing the nuisance, contending that the cesspit was a "sewer" vested in the local board which they were bound to cleanse, but the Court of Appeal held that it was not, and that, as the pipes in a sense led nowhere, they were not a sewer either.¹⁴

This was followed in a case in which the local authority claimed as a sewer

(6) *Sykes v. Sowerby U.D.C.*, *post*, p. 55.

(7) *Silles v. Fulham B.C.*, *ante*, p. 36.

(8) *Kinson Pottery Co. v. Poole Cpn.*, *post*, p. 88.

(9) *Wilkinson v. Llandaff and Dinas Powis R.D.C.*, L. R. 1903, 2 Ch. 695; 73 L. J. Ch. 8; 89 L. T. 462; 68 J. P. 1; 2 L. G. R. 174.

(10) *Wincanton R.D.C. v. Parsons*, L. R. 1905, 2 K. B. 34; 74 L. J. K. B. 533; 93 L. T. 13; 69 J. P. 242; 3 L. G. R. 771 (see the plan at p. 773 of the last-mentioned report).

(11) *Wilson's Music Co. v. Finsbury B.C.*,

cited in Note to s. 257 (just before heading "charge on premises"), *post*. See also *Hull Cpn. v. N.E. Ry. Co.*, *post*, p. 56.

(12) *Swanston v. Twickenham Loc. Bd.* (1879), L. R. 11 Ch. D. 838; 48 L. J. Ch. 623; 40 L. T. 734.

(13) *King's College, Cambridge v. Uxbridge R.D.C.*, L. R. 1901, 2 Ch. 768; 70 L. J. Ch. 844; 85 L. T. 303.

(14) *Meador v. West Cowes Loc. Bd.*, L. R. 1892, 3 Ch. 18; 61 L. J. Ch. 561; 67 L. T. 454. But see *Orchard v. King*, *post*, p. 40.

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a conduit laid wholly in private land in spite of their disapproval, for the purpose of connecting a series of cesspools with an overflow cesspool, from which the sewage was taken and treated by the owner and used by him on his own land;³ and also in one in which the conduit had been laid along a street, where it was available for the drainage of premises of other owners, in accordance with plans approved of by the local authority. This conduit, however, had been constructed under an agreement made between the defendant and the local authority on the defendant's application to them to approve his building plans. The agreement expressly provided that, "for the purposes of the Public Health Acts," the line of pipes should be a "private drain," and that it and a cesspool on private land into which it discharged should be repaired and cleansed by the defendant. In these circumstances it was held that the local authority could deal with a nuisance arising from the condition of the cesspool under the nuisance clauses of the present Act.⁴

The repealed Workmen's Compensation Act, 1897, defined the "engineering work" to which the Act applied as including "any work of construction or alteration or repair of a sewer." And it was held by the Court of Appeal that the widow of a workman was entitled to compensation under the Act in consequence of the death of her husband by an accident which happened while he was engaged in making a trench across the footpath of a street in order to lay a pipe to connect the drain from a private house with the sewer of the local authority under the street; the court being of opinion that "employment on or in or about engineering work" included employment on work done for the purpose of obtaining access to the sewer as well as on the actual work of making the alteration in the sewer; for the work had for its object the connecting of the private drain with the public sewer, and was antecedent ancillary work which was necessary for performing the actual work of alteration.⁵ But where the roadway of a street was being opened for the purpose of repairing a defect in a gas main a quarter of a mile from the gasworks, and one of the workmen was injured, it was held by the Court of Appeal that he was not being employed "on in or about" a factory within the Act of 1897.⁶

Outfall.

Lord Coleridge said that a sewer means something which carries sewage away, and a line of pipes which begins somewhere, and ends in a sense nowhere, is not a "sewer" within the Act.⁷ And *per* Buckley, J., "a sewer within the Public Health Act, 1875, must, I conceive, be in some form or other a line of flow by which sewage, or water of some kind, such as would be conveyed through a sewer, shall be taken from one point to another point, and there discharged. It must have a *terminus a quo* and a *terminus ad quem*."⁸

A conduit is, however, none the less a sewer because there is in its course a catchpit for intercepting solid matter, or because the flow of sewage is so dealt with at the end of the conduit in question that beyond that point it becomes innocuous.⁹

And where a pipe from four houses discharged into a cesspool which simply overflowed on to the plaintiff's field, there being no further provision for the effluent, a county court judge dismissed an action for an injunction to restrain a nuisance caused by this overflow on the ground that the pipes were "sewers" vested in the local authority, and that the plaintiff's remedy was against them. It was held by Bray and Lush, JJ., that there was evidence to support this decision.¹⁰

The Court of Appeal affirmed the judgment of Mathew, J., in a case in which he held that a street had been "sewered" to the satisfaction of the urban authority within sect. 150, where a line of sewer pipes had been laid along the street, but no outfall had been provided at the lower end of the line because of the delay which had arisen in carrying out the diversion of a river which crossed the street at that end. There had, however, always been an intention to provide the outfall upon the diversion of the river being carried out, and the river had been diverted and the urban authority had provided a similar outfall for the new

(3) *Button v. Tottenham U.D.C.* (1898), 78 L. T. 470; 62 J. P. 423; 19 Cox C. C. 36.

(4) *Butt v. Snow* (1903, K. B. D.), 89 L. T. 302; 67 J. P. 454; 2 L. G. R. 222. See also *Pinnock v. Waterworth*, *post*, p. 54.

(5) *Coles v. Anderson* (1905, C. A.), 69 J. P. 201.

(6) *Spacey v. Dowlais Gas Co.*, L. R. 1905,

2 K. B. 879; 75 L. J. K. B. 5; 93 L. T. 685.

(7) In *Meador v. West Cowes*, *ante*, p. 39.

(8) In *Pakenham v. Ticehurst R.D.C.* (1903), 67 J. P. 448; 2 L. G. R. 19.

(9) *Ibid.*

(10) *Orchard v. King* (1913, K. B. D.), 4 Glen's Loc. Gov. Case Law 148.

sewer which they laid in substitution for the old line of sewer pipes before the case was tried.⁴

Slaughter-house.

“ ‘ Slaughter-house ’ includes the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle horses or animals of any description for sale.”

It was held that the expression “ a slaughter-house for cattle,” in the Slaughter-houses (Licensing) Order, 1918, was not confined to places where the slaughtered animals were intended for human food.⁵

The expression “ any yard building or other premises for receiving or keeping the carcasses of dead horses ”⁶ was held by the Divisional Court not to include a public *cul de sac* seventy-five yards long leading out of a street, though this place was used by the defendant for receiving carcasses of dead horses.⁷

Water Company.

“ ‘ Water company ’ means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit.”

The company, as defined by the present section, need not have parliamentary powers. It is questionable whether the definition includes a district council who have established waterworks under the Act, and by supplying water within their district make a profit which is carried to the credit of the general rate; for district councils are not authorised to make such profit out of the consumers within the district.⁸ Though a local authority, having powers under a special Act to make profits from their waterworks and apply them either for the benefit of their district, or for the benefit of the consumers, were held to be a “ water company ” within the meaning of the present Act, and therefore entitled to the benefit of sect. 52.⁹

A company supplying hydraulic power by water mains were held not to be a “ water company ” so as to be entitled to use certain subways at a reduced charge under the London County Council (Subways) Act, 1893.¹⁰

Waterworks.

“ ‘ Waterworks ’ includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company.”

In an action for a declaration as to the meaning, and for damages for breach, of a covenant by a water authority to “ at all times maintain and keep all their works now made and hereafter to be made ” on the plaintiff’s estate in good and sufficient repair and condition, Eve, J., held that the expression “ works now made ” included ponds and channels which were partly natural and partly artificial, expressing the opinion that the word “ works ” in the covenant “ is a compendious and fairly accurate description of the company’s system, and that it includes every natural and artificial constituent utilised for the services of the system. The natural watercourse utilised for the collection and conduct to the ponds of water diverted from some other stream, or, it may be, from several other streams, is, in my opinion, as much a part of the company’s works as is any artificial aqueduct, and in like manner the channel or stream in which the waste overflow is disgorged is really discharging the functions of the drain, culvert, or tunnel without which the system would be incomplete.”¹¹

(4) *Hornsey Loc. Bd. v. Davies*, cited in Note to s. 150, *post*.

(5) *Palmer v. Powell* (1920, K. B. D.), 89 L. J. K. B. 1119; 84 J. P. 209; 18 L. G. R. 502.

(6) In the L.C.C. (General Powers) Act, 1903 (3 Edw. VII. c. clxxxvii.), s. 53.

(7) *Bailey v. Lowman*, L. R. 1910, 2 K. B. 39; 79 L. J. K. B. 641; 102 L. T. 569; 74 J. P. 211; 8 L. G. R. 476.

(8) See *Worcester Cpn. v. Droitwich U.A.C.*, *post*, pp. 136, 142.

(9) *Wolverhampton Cpn. v. Bilston Comrs.*, L. R. 1891, 1 Ch. 315; 39 W. R. 394; affirmed in C. A. on another ground, 1891 W. N. 56.

(10) 56 & 57 Vict. c. ccii. s. 5; *London C.C. v. London Hydraulic Co.* (1897), 61 J. P. 760.

(11) *Evan-Thomas v. Neath Cpn.* (1912), 76 J. P., at p. 400.

PART II.

AUTHORITIES FOR EXECUTION OF ACT.

CONSTITUTION OF DISTRICTS AND AUTHORITIES.

Urban and rural sanitary districts. P.H. 1872, s. 3.*
*See note to the present section.

Sect. 5. For the purposes of this Act England, except the metropolis, shall consist of districts to be called respectively—(1.) Urban sanitary districts, and (2.) rural sanitary districts (in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

Note.

Marginal references to repealed Acts.

Under the marginal notes to the present and most of the following sections of the present Act will be found abbreviated references to the corresponding sections of Acts repealed and consolidated by the present Act.¹

The following is a list of the Acts in which such corresponding sections occur, with the abbreviations used :—

- “ C.L. 1851 ”—Common Lodging Houses Act, 1851 (14 & 15 Vict. c. 28).
- “ C.L. 1853 ”—Common Lodging Houses Act, 1853 (16 & 17 Vict. c. 41).
- “ D. ”—Diseases Prevention Act, 1855 (18 & 19 Vict. c. 116).
- “ L.G. ”—Local Government Act, 1858 (21 & 22 Vict. c. 98).
- “ L.G.Am. ”—Local Government Amendment Act, 1861 (24 & 25 Vict. c. 61).
- “ L.G. 1863 ”—Local Government Amendment Act, 1863 (26 & 27 Vict. c. 17).
- “ N.R. 1855 ”—Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121).
- “ N.R. 1860 ”—Nuisances Removal Act, 1860 (23 & 24 Vict. c. 77).
- “ N.R. 1863 ”—Nuisances Removal Act, 1863 (26 & 27 Vict. c. 117).
- “ N.R. 1866 ”—Nuisances Removal Act, 1866 (29 & 30 Vict. c. 41).
- “ P.H. ”—Public Health Act, 1848 (11 & 12 Vict. c. 63).
- “ P.H. 1872 ”—Public Health Act, 1872 (35 & 36 Vict. c. 79).
- “ P.H. 1874 ”—Sanitary Law Amendment Act, 1874 (37 & 38 Vict. c. 89).
- “ San. 1866 ”—Sanitary Act, 1866 (29 & 30 Vict. c. 90).
- “ San. 1868 ”—Sanitary Act, 1868 (31 & 32 Vict. c. 115).
- “ San. 1869 ”—Sanitary Loans Act, 1869 (32 & 33 Vict. c. 100).
- “ San. 1870 ”—Sanitary Act, 1870 (33 & 34 Vict. c. 53).
- “ S.U. 1865 ”—Sewage Utilization Act, 1865 (28 & 29 Vict. c. 75).
- “ S.U. 1867 ”—Sewage Utilization Act, 1867 (30 & 31 Vict. c. 113).
- “ T.I. ”—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34).
- “ T.P. ”—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89).

Sanitary authorities.

Sanitary authorities first received the appellation of urban and rural sanitary authorities in the year 1872, upon the passing of the Public Health Act of that year.

District councils.

The Local Government Act, 1894, drops the word “sanitary,” and urban sanitary authorities are now called “urban district councils,” and their districts “urban districts”; but this does not alter the style or title of the corporation or council of a borough.² The rural sanitary districts are now called “rural districts,” and the authorities of such districts are “rural district councils.”² Both urban and rural districts are included in the term “county district,” and both urban and rural councils in the term “district council.”²

County boroughs.

In the case, however, of a county borough, the borough and the council may for some purposes be excluded from the expressions “urban district” and “urban district council.”³

(1) For the enactments repealed by s. 343 and Sched. V., Part I. of the present Act, see the Note to s. 343, *post*.
(2) See Act of 1894, s. 21, *post*, Vol. II., p. 2033.
(3) *Ibid.*, s. 35, and *Kirkdale Burial Bd. v. Liverpool Cpn.*, *post*, p. 44.

Many of the functions of district councils are intimately connected with those of other existing local authorities, and such councils have taken over the greater part of their powers from the local authorities that have now been superseded, and their duties are in many cases prescribed by unrepealed enactments which originally related to the superseded authorities. It is therefore necessary for anyone who desires to enquire into the functions and to ascertain the extent and limitations of the powers and duties of a district council, without becoming bewildered by the mass of more or less disjointed statute law that is now applicable to such a council, to have at any rate some knowledge not only of the names of the present and former local authorities, but also of their histories and of the course of legislation which has affected them. With the view of affording as much information on these points as can be comprised within a reasonable compass, short accounts of the several local authorities in question were given in Part I. of the previous edition of this work, which has been omitted from this edition for reasons stated in the Preface. These accounts will now be found in Chapter I. of "The District Councillor's Guide,"⁴ in separate sections under the following headings, which are arranged in chronological order with reference to the times when the authorities dealt with in those sections were first established:—Vestries (a survival of the Anglo-Saxon "Gemot" or meeting of the freemen of the township or parish), Municipal Corporations (A.D. 1439), Bridge Authorities (1530), Surveyors of highways (1555), Overseers of the poor (1601), Improvement commissioners (1662), Turnpike trustees (1728), Lighting inspectors (1833), Guardians of the poor (1834), Library authorities (1845), Baths and washhouses authorities (1846), Nuisance authorities (1846), Local boards of health (1848), Burial authorities (1850), Local boards (1858), Highway boards (1862), Sewer authorities (1865), Joint boards (1867), Education authorities (1870), Urban sanitary authorities (1872), Rural sanitary authorities (1872), Port sanitary authorities (1872), County councils (1888), Urban district councils (1894), Rural district councils (1894), Parish councils (1894), and Parish meetings (1894).

Sect. 5, n.
Superseded
and existing
authorities.

See also the Note to sect. 6 of the present Act.

Sect. 6. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively. . . .⁵

Description of
urban districts
and urban
authorities.
P.H. 1872, ss. 3,
4. P.H., s. 33,
L.G., s. 26.

Provided that—

(1.) Any borough, the whole of which is included in and forms part of a Local Government district or Improvement Act district, and any Improvement Act district which is included in and forms part of a Local Government district, and any Local Government district which is included in and forms part of an Improvement Act district, shall for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the improvement commissioners or local board, as the case may be, of such larger district, shall be the urban authority therein; and

(2.) Where an Improvement Act district is coincident in area with a Local Government district, the improvement commissioners, and not a local board, shall be the urban authority therein; and

(3.) Where any part of an Improvement Act district is situated within a borough or Local Government district, or where any part of a Local Government district is situated within a borough, the remaining part of such Improvement Act district or of such Local Government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the [Minister of Health] by provisional order otherwise directs.

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport, Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the Local Government district of Oxford. So much of the borough of Folkestone as is not included within the Local Government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act, 1855."

(4) Published by Messrs. Knight & Co. in non-tabular form in the first paragraph
(5) The contents of this "table" are given of the Note to the present section.

Sect. 6, n.

Note.

Omitted
Table.

The first "urban district" mentioned in the table was "Borough constituted such either before or after the passing of this Act;" and the first "urban authority" so mentioned was "The Mayor, Aldermen, and Burgesses acting by the Council." The second "urban district" was "Improvement Act district constituted such before the passing of this Act, and having no part of its area situated within a borough or local government district;" and the second "urban authority" was "The Improvement Commissioners." The third "urban district" was "Local Government district constituted such either before or after the passing of this Act, having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district;" and the third "urban authority" was "The Local Board."

Former
authorities.

As to the superseded authorities, see the Note to the preceding section.

The boundaries of county districts other than boroughs may be altered by the county council under the Local Government Act, 1888.⁶

Identity of
municipal
and sanitary
authorities.

With reference to sect. 24 of the Local Government Act, 1858, which enacted that the local board should, in corporate boroughs, be the mayor, aldermen, and burgesses, acting by the council, Pollock, B., in delivering the judgment of the court said: "This does not create a new separate body, or provide for an independent seal or independent power of contracting, but in substance enacts that in corporate boroughs the corporation shall be the local board; and if so, then, whether, in contracting, the name and style of the corporation is used, or that of the corporation acting as the local board, the essential body and contracting party is the corporation; or, to put the proposition in another form, the local board has no existence, and there could be no contract with them, unless by the local board is intended the corporation, who according to the Act are the local board."⁷

With regard to the transfer of property and powers which is to take place on the incorporation of a new borough, see sect. 310 of the present Act, *post*.

The "style or title" of the corporation or council of a borough is not altered by boroughs being included in the term "county district" or "urban district," or by their sanitary authority being included in the term "district council" or "urban district council," by the Local Government Act, 1894.

The enactment⁸ that the "council" of every county borough shall be the local education authority was held by Swinfen Eady, J., to mean that the corporation (in Leeds, the Lord Mayor, aldermen, and citizens), acting by the council, were to be the local authority; so that land acquired for the purposes of that authority should be conveyed to the corporation and not to the council.⁹

New
boroughs.

New boroughs are constituted by royal charters granted on the application of inhabitant householders in the manner prescribed by the Municipal Corporations Act, 1882;¹⁰ and the Privy Council issue schemes under that Act dealing with the powers of the new corporations and those of the previously existing authorities. Before such a charter is granted or scheme settled a local inquiry is held at which persons interested are heard.

The boundaries of boroughs can be altered by the Minister of Health by provisional order under the Local Government Act, 1888.¹¹

County
boroughs.

Certain large boroughs were constituted "county boroughs" by the Local Government Act, 1888,¹² and others have been and may be so constituted by provisional order under that Act.¹¹ Their councils have, subject to modifications, the powers of county councils, but they remain urban authorities under the present Act; and they have been held to be "district councils" of "urban districts" within the meaning of those terms as used in the Local Government Act, 1894, elsewhere than in Part II. of that Act, from which they are excepted unless expressly mentioned.¹³

Unreformed
boroughs.

The Municipal Corporations Act, 1883,¹⁴ abolished some of the ancient non-municipal borough corporations, but preserved in certain cases rights which had

(6) See s. 57, *post*, Vol. II., p. 1930.

(7) *Andrews v. Ryde Cpn.* (1874), L. R. 9 Ex. 302; 43 L. J. Ex. 174; 23 W. R. 58; and see *Nowell v. Worcester Cpn.* (1854), 9 Ex. 457; 23 L. J. Ex. 139; *Pedder v. Preston Cpn.*, cited in Note to s. 189 (under heading "treasurer"), *post*.

(8) 2 Edw. VII. c. 42, s. 1.

(9) *In re Leeds Institute and Leeds City*

Cpn., L. R. 1909, 1 Ch. 500; 78 L. J. Ch. 321; 100 L. T. 468; 73 J. P. 201; 7 L. G. R. 912.

(10) See ss. 210-218, *post*, Vol. II., p. 1833.

(11) See s. 54, *post*, Vol. II., p. 1927.

(12) See s. 31, *post*, Vol. II., p. 1918.

(13) *Kirkdale Burial Bd. v. Liverpool Cpn.* (C. A.), L. R. 1904, 1 Ch. 829; 73 L. J. Ch. 529; 91 L. T. 28; 68 J. P. 289; 2 L. G. R. 763.

(14) 46 & 47 Vict. c. 18.

belonged to them, and expressly saved the right to re-incorporate the inhabitants under the Municipal Corporations Act, 1882.³

Improvement Act districts are defined by sect. 4 as areas for the time being subject to the jurisdiction of improvement commissioners; and such commissioners are defined as any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating. Further with regard to improvement commissioners, see the work mentioned below.⁴

With regard to the transfer of the powers of commissioners under local Acts to the urban sanitary authority, see the last clause of sect. 10, sect. 270 (2), and sect. 310.

Turnpike trustees, though invested by local Acts with powers similar to those of the Sanitary Acts, were not created urban sanitary authorities, but their powers were transferred to the local authority: see sect. 322.

The boards constituted under the Public Health Act, 1848, before the passing of the Local Government Act, 1858, were called "local boards of health"; those constituted under the latter Act were simply called "local boards."⁵

In the present Act "local boards of health" are included in the term "local board": see the definition of "local government district" in sect. 4.

Local boards, under the description of urban district councils, are now elected by ballot in the manner provided by the Local Government Act, 1894.⁶

With regard to the cases in which a local authority is authorised to exercise powers beyond the limits of its district, see sect. 285, and the Note to that section.

The Local Government Act, 1888,⁷ required the Local Government Board to make provisional orders dealing with boroughs in which the council of the borough were not already the urban sanitary authority for a district coincident with the borough. There were fourteen such boroughs, namely, Banbury, Blandford Forum, Calne, Cambridge, Chippenham, Faversham, Folkestone, Launceston, Lyme Regis, Lymington, Morpeth, Oxford, St. Ives, and Wenlock. Except Folkestone (as to which see the last paragraph of the present Note), they were all dealt with by provisional orders confirmed by the Local Government Board's Provisional Orders Confirmation Acts of 1889.⁸

With regard to the local authority of Oxford, see the preceding Note, and the Note to sect. 342.

The local authority for Cambridge in 1875 was a body of improvement commissioners acting under local Acts.⁹ It is now the corporation.¹⁰

Improvement commissioners were constituted for the borough of Newport, Isle of Wight, by a local Act;¹¹ the corporation were constituted a local board, and the local Act was repealed in 1867.¹² By an Act of 1876, the corporation were placed on the same footing as sanitary authorities in other boroughs.¹³

Improvement commissioners were constituted by a local Act of 1796,¹⁴ which was repealed by the Folkestone Improvement Act, 1855.¹⁵ Part of the municipal borough is still in the district of the Sandgate Urban District Council; and the Folkestone corporation are the sanitary authority for all other parts of the borough, being "the authority for executing the Folkestone Improvement Act, 1855."¹⁶

Sect. 7. Every local board, and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate, designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act) by such name as they then bear, and (in the case of local boards constituted after the passing of this Act) by such name as they may with the sanction of the [Minister of Health] adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any licence in mortmain for the purposes of this Act.

Sect. 6, n.

Improve-
ment com-
missioners.Turnpike
trustees.

Local boards.

Limits of
jurisdiction.Exceptional
boroughs.

Oxford.

Cambridge.

Newport,
Isle of Wight.

Folkestone.

Incorporation of
local boards and
improvement
commissioners.
San. 1866, s. 46.
P.H., s. 35.

(3) See "Glen's District Councillor's Guide," Chap. I., § 3.

(4) *Ibid.*, Chap. I., § 7.

(5) *Ibid.*, Chap. I., §§ 14, 16.

(6) See ss. 23, 48, *post*, Vol. II., pp. 2036, 2082.

(7) 51 & 52 Vict. c. 41, s. 52.

(8) 52 & 53 Vict. c. xv. Oxford; c. xxii. Wenlock; c. xlv. Calne and Chippenham; c. cxii. Blandford Forum, Lyme Regis, Lymington, and Morpeth; c. cxvi. Banbury

and Cambridge; and c. clxxii. Faversham, Launceston, and St. Ives.

(9) 28 Geo. III. c. lxiv.; 34 Geo. III. c. civ.

(10) 52 & 53 Vict. c. cxvi.

(11) 26 Geo. III. c. cxix.

(12) By 30 & 31 Vict. c. 83.

(13) 39 & 40 Vict. c. lxi.

(14) 36 Geo. III. c. lxix.

(15) 18 & 19 Vict. c. cxlvii, s. 30.

(16) *Ibid.*, s. 28.

Sect. 7, n.

Note.

Incorporation.

Except in municipal boroughs, the local boards of health constituted under the Public Health Act, 1848, were not originally bodies corporate; they were, however, incorporated by the Sanitary Act, 1866. Joint boards constituted under Part VIII. of the present Act are incorporated by sect. 280.

An action to enforce rights granted by the Crown to the inhabitants of a parish whereby such inhabitants were created a corporation is not maintainable by an individual inhabitant; but only by the inhabitants as a corporation.¹³

Name of local board.

The unincorporated local boards constituted under the Public Health Act, 1848, and the Local Government Act, 1858, sued and were sued in the names of their clerks,¹⁴ and no express provision was made by those Acts with respect to the names of local boards, though in some forms prescribed by the Acts the board was described as "the Local Board [of Health] for the District of ."¹

The boards not already incorporated were incorporated by the Sanitary Act, 1866,² with such names as they usually bore or might adopt. Sect. 311 of the present Act authorised them to change their names, but only with the sanction of the Local Government Board. Now any district council may, with the sanction of the county council, change their name and the name of their district.³ Local boards are called urban district councils and their districts urban districts.⁴ Such boards and their districts are included in the terms "district council" and "county district."⁵

Improvement commissioners.

Improvement commissioners are defined by sect. 4 as any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating. They are all now urban district councils, so far as their powers as sanitary authorities are concerned; but where they have any powers, etc., in respect of any harbour, the body of improvement commissioners is continued as a separate body from the district council.⁶

Seal.

With regard to the necessity for executing contracts by affixing the common seal, see the Note to sect. 174.

Mortmain.

The old statutes of Mortmain were repealed by the Mortmain and Charitable Uses Act, 1888, which was amended by the Mortmain and Charitable Uses Act, 1891. As to these Acts, see the Note to sect. 13 of the Public Libraries Act, 1892.⁷

Bodies corporate are authorised to acquire and hold real and personal property in joint tenancy, by the Bodies Corporate (Joint Tenancy) Act, 1899.⁸

Election of local boards. P.H., s. 13, L.G., s. 24, etc.

Sect. 8. The members of local boards shall be elective [; and the number and qualification of members of local boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of a local board, and all other matters relating to the election of members of local boards, shall be governed by the rules contained in Schedule II. to this Act].

Note.

Elections.

The present section was repealed by the Local Government Act, 1894,⁹ except as regards the first words; and elections of local boards are no longer held under the present Act; but such boards are elected as urban district councils, under the rules framed by the Local Government Board, so as to come into office on the 15th April in each year.¹⁰ The elections are conducted under the Ballot Act as applied by those rules; and the electors are the persons on the local government registers, including women who have attained the age of thirty and are not subject to any legal incapacity, but in the case of married women the qualification is limited to wives of men entitled to be registered in respect of premises in which they both reside.¹¹ An elector or any person who has resided in the district for the preceding twelve months is qualified to be elected; but aliens, paupers, convicts, bankrupts, paid officers of the council, and persons interested in contracts with them are still disqualified.¹²

(13) *Chilton v. London Cpn.* (1878), L. R. 7 Ch. D. 735; 47 L. J. Ch. 433; 38 L. T. 498.

(14) 11 & 12 Vict. c. 63, s. 138.

(1) *Ibid.*, s. 17; and 21 & 22 Vict. c. 98, sched.

(2) 29 & 30 Vict. c. 90, s. 46.

(3) L. G. Act, 1894, s. 55 (3), *post*, Vol. II., p. 2090.

(4) *Ibid.*, s. 21 (1), *post*, Vol. II.

(5) *Ibid.*, s. 21 (3), *post*, Vol. II.

(6) *Ibid.*, s. 65, *post*, Vol. II., p. 2097.

(7) *Post*, Vol. II., p. 1407.

(8) *Post*, Vol. II., p. 2089.

(9) See s. 89, *post*, Vol. II., p. 2113.

(10) *Ibid.*, s. 23 (5, 6), 48, *post*, Vol. II.

(11) R. P. Act, 1918, ss. 3, 4, *post*, Vol. II., p. 2282, repealing L. G. Act, 1894, ss. 43, 44.

(12) L. G. Act, 1894, ss. 23 (2), 46, *post*, Vol. II.

Some improvement commissioners adopted the provisions of the Local Government Act, 1858, with respect to elections; and by sect. 312 of the present Act, they were to be elected in the same manner as local boards. Now they are urban district councils; but where their Act relates to a harbour, commissioners continue to be elected under such Act as a body distinct from the district council.⁵

Sect. 8, n.
Improve-
ment com-
missioners.

Sect. 9. The area of any union which is not coincident in area with an urban district, nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district, shall be a rural district, and the guardians of the union shall form the rural authority of such district [: *Provided that—*

Description of
rural districts
and rural
authorities.
P.H., 1872, s. 5.

(1.) *An ex-officio guardian resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union :*

(2.) *An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority :*

(3.) *Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district; but until such order has been made the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district].*

Where the number of elective guardians [*who are not by this section disqualified from acting and voting as members of the rural authority*] is less than five, the [Minister of Health] may from time to time by order nominate such number of persons as may be necessary to make up that number [*from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union*], and the persons so nominated shall be entitled to act and vote as members of the rural authority but not further or otherwise.

[*Subject to the provisions of this Act, all statutes orders and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act.*]

P.H., 1874, s. 1.

Note.

The words printed in italics in the present section (except those from “who are not” to “rural authority,” which were repealed by the Statute Law Revision Act, 1898) were repealed by the Local Government Act, 1894, and the rural sanitary authority, under the name of the rural district council, are a distinct body corporate from the guardians of the poor, although the above enactment that “the guardians of the union shall form the rural authority of such district” is not expressly repealed.

Rural district
councils.

The same persons are, however, both guardians and members of the rural authority, so far as the rural parts of the union are concerned, though they are now elected as district councillors and are guardians *ex-officio*,¹ instead of being elected as guardians and thereby becoming members of the sanitary authority *ex-officio*. In the urban portions of unions, guardians and members of the urban district councils are elected separately, as they were before the Act of 1894.²

Rural district councils are incorporated by the name of the district council, with the addition of the name of the district, or if there is any doubt as to the name, by such name as the county council direct;³ but they may change their name and the name of their district with the sanction of the county council.⁴

(5) L. G. Act, 1894, s. 65, *post*, Vol. II., p. 2097.

(2) *Ibid.*, s. 20, and s. 23 (1), *post*, Vol. II.

(3) *Ibid.*, s. 24 (7), *post*, Vol. II.

(4) *Ibid.*, s. 55 (3), *post*, Vol. II.

(1) *Ibid.*, s. 24 (3), *post*, Vol. II., p. 2038.

**Sect. 9, n.
Guardians.**

"Guardians" and "Union" are defined by sect. 4. The former term has reference to the guardians of the poor constituted under the general or local statutes for the relief of the poor. The latter term includes single parishes not in union, under separate boards of guardians.

Boards of guardians constituted under the Poor Law Amendment Act, 1834,⁵ are by the Union and Parish Property Act, 1835,⁶ a body corporate by the name of "The Guardians of the Poor of the — Union [or of the parish of —] in the county of —"

**Ex-officio
guardians.**

The justices of the peace residing in any parish in the union, and acting for the county, riding, or division in which any part of the union was situated, were *ex-officio* guardians of such union,⁷ until that class of guardians was abolished by the Local Government Act, 1894.⁸

**Nominated
members.**

The unrepealed provision of the present section for the nomination of members of the rural sanitary authority is applied by the Local Government Act, 1894, to the district councils of rural districts to which they applied at the passing of that Act, and to cases where a portion of a rural sanitary district, which was in a different administrative county from the remainder and was by that Act constituted a separate rural district, has less than five councillors. In such cases, however, the [Minister of Health] has power to place the administration of such rural district in the hands of the council or one of the councils of the district or districts formed from the original rural sanitary district.⁹

**Payment
of debts.**

Notwithstanding the last clause of the present section, the limitation of time within which guardians may pay debts incurred by them in the administration of the laws for the relief of the poor, was held not to be applicable to debts arising out of contracts for works entered into by the guardians as rural sanitary authority, for the clause did not alter the character of the debt dealt with by sect. 1 of the Poor Law (Payment of Debts) Act, 1859.¹⁰

**Powers and
duties of urban
authorities.**

P.H. 1872, s. 7.*
San. 1866, s. 43.*

Sect. 10. In addition to the powers rights duties capacities liabilities and obligations exerciseable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exerciseable or attaching by and to the local authority under the Bakehouse Regulation Act, and the Artizans and Labourers Dwellings Act, or any Acts amending the same.

Where the Baths and Wash-houses Acts and the Labouring Classes Lodging Houses Acts, or any of them, are in force within the district of any urban authority, such authority shall have all powers rights duties capacities liabilities and obligations in relation to such Acts exerciseable by or attaching to the council incorporated commissioners local board improvement commissioners and other commissioners or persons acting in the execution of the said Acts or any of them.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts; and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts.

P.H. 1874, s. 3.*

Where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners trustees or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers rights duties capacities liabilities and obligations of such commissioners trustees or other persons in relation to such purposes shall be transferred and attach to the said urban authority.

Note.**Powers
of urban
district
council.**

Urban district councils are the same bodies corporate as the previously existing urban sanitary authorities of their districts,¹¹ and therefore have the powers and duties of urban sanitary authorities under the present Act. Additional functions were attached to them by the Act of 1894, in connection with the protection of

(5) 4 & 5 Wm. IV. c. 76, ss. 38, 39.

(6) 5 & 6 Wm. IV. c. 69, s. 7.

(7) 4 & 5 Wm. IV. c. 76, s. 38; 7 & 8 Vict. c. 101, s. 24.

(8) See s. 20 (1), *post*, Vol. II., p. 2025.

(9) *Ibid.*, s. 24 (5, 6), *post*, Vol. II.

(10) 22 & 23 Vict. c. 49, s. 1. *Dearle v. Petersfield Guardians* (1888, C. A.), L. R. 21 Q. B. D. 447; 57 L. J. Q. B. 640; 60 L. T. 85; 53 J. P. 102.

(11) L. G. Act, 1894, ss. 21, 35, 85 (5), *post*, Vol. II., pp. 2033, 2059, 2112.

public rights of way and rights of common,² the licensing of gang-masters, the granting of pawnbrokers' certificates, the licensing of dealers in game, the granting of licences for passage brokers and emigrant runners, the abolition of fairs and alteration of the fair days, the execution of the Acts relating to petroleum and to infant life protection, and the licensing of knackers' yards.³ The Minister of Health may confer on a county borough council or other urban district council the power of appointing overseers, and of appointing or revoking the appointment of assistant overseers, as well as any of the powers of the overseers or of a parish council,⁴ and on an urban district council (other than a county borough council), the powers of the vestry in relation to the rating of small tenements.⁵ The county council may employ a district council as their agents in the transaction of any administrative business on matters arising in or affecting the interests of their district.⁶

Sect. 10, n.

The district councils may appoint committees to exercise any of their powers, except the powers of raising loans, and making rates or contracts; and the approval of the council to the acts of the committee is not required where such committee is appointed for the purposes of the Public Health or Highway Acts.⁷ They may appoint joint committees with other district councils for any purposes in which the councils are jointly interested.⁸

Committees.

They may take over the powers, duties, property, and liabilities of any authorities acting within their district under the "adoptive Acts," namely, the Lighting and Watching Act, 1833, the Baths and Washhouses Acts, 1846 to 1882, the Burial Acts, 1852 to 1900, the Public Improvements Act, 1860, or the Public Libraries Act, 1892.⁹

Powers under adoptive Acts.

With regard to their powers under the Allotments Acts, see the Note at the commencement of the Small Holdings and Allotments Act, 1908;¹⁰ see also the Note to sect. 1,¹¹ with regard to other Acts under which urban authorities have powers.

Powers under other general Acts.

With regard to the Bakehouse Regulation, Artizans' and Labourers' Dwellings, Baths and Washhouses, and Labouring Classes' Lodging-Houses Acts, see the Note on the definitions in sect. 4.¹²

With regard to the transfer to municipal corporations of the powers, etc., of trustees acting under local Acts, see sect. 136 of the Municipal Corporations Act, 1882.¹³

Local Acts.

Under the repealed enactment for which that section was substituted, the local board of health for a parish comprising the town of Margate, by indenture, professed to transfer their powers to the corporation of the borough. The Court of Queen's Bench were, however, of opinion that the corporation had no jurisdiction, and that the transfer to them of the powers of the local board was invalid, a local board for a district comprising a borough not being trustees for executing an Act for paving, etc., within the meaning of the enactment.¹⁴ But now see sect. 310 of the present Act, *post*.

See also sect. 322, with regard to the transfer of powers of turnpike trustees to the local authority.

No transfer of powers, etc., under the present Act is to affect statutory rights of navigation or of taking tolls in connection therewith: see sect. 330.

Under sect. 303 the Minister of Health may repeal or alter local Acts for sanitary purposes, and under sect. 304 he may settle any differences that may arise upon a transfer of powers under this Act.

Sect. 11. In addition to the powers rights duties capacities liabilities and obligations exercisable by or attaching to a rural authority under this Act, every rural authority shall, within their district, (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same.

Powers and duties of rural authorities. P.H. 1872, s. 8.

(2) L. G. Act, 1894, s. 26, *post*, Vol. II.(3) *Ibid.*, s. 27, *post*, Vol. II.(4) *Ibid.*, s. 33, *post*, Vol. II.(5) *Ibid.*, s. 34, *post*, Vol. II.(6) *Ibid.*, s. 64, *post*, Vol. II., p. 2097.(7) *Ibid.*, s. 56, *post*, Vol. II.(8) *Ibid.*, s. 57, *post*, Vol. II.(9) *Ibid.*, s. 62, *post*, Vol. II.(10) *Post*, Vol. II., p. 1496.(11) *Ante*, p. 2.(12) *Ante*, pp. 8, 9.(13) *Post*, Vol. II., p. 1828, substituted for the repealed Act 20 & 21 Vict. c. 50.(14) *Swinford v. Keble* (1866), L. R. 1 Q. B. 549; 35 L. J. Q. B. 185; 14 L. T. 770; 12 Jur. (N.S.) 783; 7 B. & S. 573.

Sect. 11, n.**Powers of rural district councils.**

The rural district councils constituted under the Local Government Act, 1894, are, unlike the rural sanitary authorities under the present Act, distinct bodies corporate from the guardians of the poor.¹ The powers, duties, and liabilities of the previously existing rural sanitary authorities were transferred to them;² and in addition they are the successors of the previously existing highway authorities, and have the powers, duties, and liabilities of such authorities, and also the powers of urban authorities under sects. 144-148 of the present Act, and certain additional powers for the protection of public rights of way, rights of common, and roadside wastes.³

Rural as well as urban district councils have the powers and duties formerly exercised and performed by justices out of session in relation to the licensing of gang-masters, dealers in game, passage brokers, emigrant runners, keepers of knackers' yards, and pawnbrokers, the abolition of or alteration of days for holding fairs, and the execution of the Acts relating to petroleum.⁴ As to markets, see the Public Health Act, 1908.⁵

Urban powers.

Sect. 276 of the present Act provides for the investment of a rural authority by special order of the Minister of Health with any of the powers conferred on urban authorities under the present Act and the Acts incorporated with it; and, without prejudice to that provision the Local Government Act, 1894,⁶ enables the Minister to issue general orders conferring any urban powers under any Acts upon rural district councils generally.

The Public Health Acts Amendment Act, 1890,⁷ enables rural authorities to adopt certain provisions of that Act without any order or sanction of the Minister, and also enables the Minister to invest a rural authority with any urban powers under the Act.

County council powers.

A rural district council may be employed by the county council to act as their agents in the transaction of any administrative business on matters arising in or affecting the interests of the district.⁸

Committees.

On the other hand, the rural district council may delegate powers to committees or parish councils.⁹ And they may concur with other councils in appointing joint committees for purposes in which the councils are jointly interested.¹⁰

Powers under other Acts.

With regard to the powers and duties of rural district councils as to allotments, see the Note at the commencement of the Small Holdings and Allotments Act, 1908.¹¹

They will in certain cases have the powers given to turnpike trustees by local Acts: see sect. 322.

With regard to the Bakehouse Regulation Act, see the Note to sect. 4.¹²

Vesting of property in local authorities.
P.H. 1872, s. 9.
P.H. 1874, s. 4.

Sect. 12. From and after the passing of this Act all such property real and personal, including all interests rights and easements in to and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the council of any borough, or any improvement commissioners or local board as the urban sanitary authority of any district under the Sanitary Acts, or any board of guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such council, improvement commissioners, or local board, or board of guardians as the local authority of their district under this Act, subject to all debts liabilities and obligations affecting the same property.

All debts liabilities and obligations incurred by any authority whose powers rights duties liabilities capacities and obligations are under this Act exerciseable by or attached to a local authority may be enforced against the local authority to the same extent and in the same manner as they might have been enforced against the authority which incurred the same.

(1) See *ante*, p. 47.

(2) L. G. Act, 1894, s. 25 (1), *post*, Vol. II., p. 2038.

(3) *Ibid.*, ss. 25, 26. As to these powers, see Glen's "Law relating to Highways," 2nd Ed., published by Messrs. Knight & Co.

(4) L. G. Act, 1894, s. 27, and see the Note thereto, *post*, Vol. II., p. 2047.

(5) Quoted in Note to s. 166 of present Act. *post*.

(6) See s. 25 (5-7), *post*, Vol. II.

(7) See ss. 3 (2), 5, 50, *post*, Part I., Div. II.

(8) L. G. Act, 1894, s. 64, *post*, Vol. II., p. 2097.

(9) See s. 202 of present Act, *post*, and L. G. Act, 1894, ss. 15, 56, *post*, Vol. II., pp. 2018, 2090.

(10) L. G. Act, 1894, s. 57, *post*, Vol. II., p. 2091.

(11) *Post*, Vol. II., p. 1496.

(12) *Ante*, p. 8.

Note.

Sect. 12, n.
Vesting of
property, &c.

See also the saving for the sanitary authorities existing at the passing of this Act, and for their officers, etc., in sect. 326.

With regard to the vesting, in a local board newly constituted after the passing of the present Act, of the property, etc., of the local authority which previously had jurisdiction in the district, see sect. 275.

Where an Act of Parliament vests land in commissioners for public purposes, unless there be some special authority to that effect, they have no power to part with the land.¹ See, however, sect. 175 as to the sale, and sect. 177 as to the lease of surplus lands.

As to what is meant by the “vesting” of sewers in sanitary authorities, and of streets in highway authorities, see the Notes to sects. 13 and 149 of the present Act.

(1) *Per Erle, C.J., in Tepper v. Nichols* 11 Jur. (N.S.) 18; 11 L. T. 509.
(1864), 18 C. B. (N.S.) 140; 34 L. J. C. P. 61;

PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains.

Sewers vested in local authority. P.H., s. 43.*

Sect. 13. All existing and future sewers within the district of a local authority, together with all buildings works materials and things belonging thereto, Except

(1.) Sewers made by any person for his own profit, or by any company for the profit of the shareholders; and

(2.) Sewers made and used for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; and

(3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,

shall vest in and be under the control of such local authority.

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred.

*See Note to s. 5 of present Act.

Note.

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Meaning of Sewer.

Sewer.

The term "sewer" is defined by sect. 4, and its meaning is discussed in the Note to that section.¹

Single private drain.

The "single private drains" referred to in sect. 19 of the Public Health Acts Amendment Act, 1890,² come within the definition of "sewer," and are only to be treated as "drains" for the purposes of that section and of sect. 41 of the present Act so far as sect. 41 is applied to them by sect. 19.

Highway drains.

Highway drains, or drains for carrying away the surface drainage from highways, which were not under the control of sanitary authorities, namely, those in rural districts, were excepted from the definition of "sewer"; but now that rural district councils are the highway authorities, having the management of roads in their districts, this exception has no general application, save in the case of main road drains, which are vested in the county councils by the Local Government Act, 1888.³

Vesting of Sewers.

Meaning of vesting.

Jessel, M.R., said ⁴: "It was found under the old law, and it was sometimes held,⁵ that the sewer authorities . . . had only an easement, and it was found to be very inconvenient, and consequently, therefore, in the modern Acts the property in the sewers has been vested in the sewer authorities; that is to say, that instead of allowing the subsoil to remain in the owner of the soil, subject to an easement, or right of sewerage or drainage, the absolute property in the sewer (which means

(1) Ante, p. 33.

(2) Post, Part I., Div. II.

(3) See s. 11 (6), post, Vol. II., p. 1895.

(4) In Taylor v. Oldham Cpn. (1877), L. R.

4 Ch. D. 411; 46 L. J. Ch. 105; 35 L. T. 696.

(5) See Thornton v. Nutter (1867). 31 J. P. 419.

not merely the brick barrel, or whatever it may be, forming the sewer, but the whole interior of the sewer, that is, the whole of the space occupied by it) is now vested in the sewage authorities; and, if the sewer is a large one, it amounts in substance, for all useful purposes, to the whole of the subsoil, and that is absolutely vested in the corporation."

This "vesting" is similar to the vesting of streets in urban district councils by sect. 149, and only gives the local authority a modified and limited ownership in the subsoil. They are not altogether in the same position as a landowner through whose land a sewer runs.⁴ And they cannot stop up the sewer, and thereby cause a nuisance to the inhabitants.⁵ James, L.J., in deciding a case relating to the vesting of streets, said: "It appears to me that it would be a very strong thing indeed to say that because the sewer, the cylinder of iron or brickwork, which is put in the ground for the passage of the sewage, with the inclosed space, is vested in the public body; then, if the system of sewage is entirely diverted and new sewers made, and the materials taken up and the earthwork filled in, there would still be vested in the public body a right of freehold, a right of estate in perpetuity in that portion of the earth, wherever you could ascertain it, which had been at some time or other occupied by the sewer, although every trace of a sewer had been obliterated and the space filled up. That would be a very unreasonable interpretation."⁶

As to the powers conferred and duties imposed on local authorities in consequence of the vesting of sewers in them, see sects. 15 and 19 of the present Act and the Notes thereto.

The fact that the sewer is laid in private property does not prevent it from vesting in the local authority. A drain which ran under the basements of three cottages was therefore held to be a sewer for the condition of which the local authority were responsible; and the owner of the cottages was not liable to be called upon to abate a nuisance which had arisen in respect of it.⁷

Nor, in cases where (as in the metropolis) drains cannot be lawfully laid without the approval of the local authority, does the fact that house drains have been constructed in such a manner as to come within the definition of "sewers," without the knowledge or approval of the local authority, prevent them from vesting in that authority as sewers. Thus, where the builder of four houses in the metropolis caused them to be drained into one drain, contrary to the directions of the district board, and proceedings were taken against a purchaser of one of the houses in respect of a nuisance arising from the defective condition of this drain, it was held by the Court of Appeal that he was not estopped by the wrongful act of his predecessor in title from alleging that the drain was a "sewer" which the board ought to repair.⁸ This was followed in another metropolitan case, in which the fact that the premises of another owner were drained into the drain in question was not discovered until the plaintiff, in consequence of a notice to repair the drain, opened it up. The drain had been made some thirty years previously without the authority of the vestry. In this case the plaintiff recovered from the vestry the expenses which he had incurred in complying with their notice.⁹

But Channell, J., expressed the opinion¹⁰ that it would some day be held that a pipe laid "wrongfully" would not make the pipe with which it was connected "a sewer as between the public authority and any person who in fact claims through the wrongdoer, whether he claims as a purchaser for value without notice or not."¹¹ In the case, however, in which this opinion was expressed, it was held that, as the burden of proof that the pipe was so laid was upon the local authority, and this burden had not been discharged, the point did not arise.¹²

Interference with Sewer.

As to the right to have sewers supported by the surrounding soil, see the Note to sect. 16 of the present Act.

As to building over sewers, see sect. 26.

(4) *Ogilvie v. Blything R.S.A.* (1892), 67 L. T. 18.

(5) *A.G. v. Dorking Guardians* (1882), L. R. 20 Ch. D. 595; 51 L. J. Ch. 585; 46 L. T. 573.

(6) *Rolls v. Southwark Vestry* (1880), L. R. 14 Ch. D. 797; 49 L. J. Ch. 691; 43 L. T. 140; 44 J. P. 680. See also Note to s. 149 (heading "Vesting of Streets"), *post*.

(7) *Travis v. Uttley*, L. R. 1894, 1 Q. B.

233; 63 L. J. M. C. 48; 70 L. T. 242; 58 J. P. 85; and see *Fordom v. Parsons*, *post*, p. 60.

(8) *Kershaw v. Taylor*, *ante*, p. 35.

(9) *Florence v. Paddington Vestry*, 1895 W. N. 143; 40 S. J. 51; 12 T. L. R. 30.

(10) In *Wilson Music Co. v. Finsbury B.C.*, *post*, p. 78. See 6 L. G. R., at p. 355.

(11) On this point see also *Heaver v. Fulham B.C.*, *ante*, p. 35.

(12) See 6 L. G. R., at p. 355.

Sect. 13, n.

Meaning of vesting—*continued.*

Effect of vesting.

Sewer in private property.

Sewer laid wrongfully.

Removal of support.

Building over sewer.

**Sect. 13, n.
Diversion.**

**Blocking by
landowner.**

The Secretary of State has power to stop up or divert sewers, drains, and pipes, as well as highways, under the Defence Act, 1860.⁶

A sewer was laid by a local authority across private land in 1910 with the then owner's verbal consent. A settling tank was constructed by the local authority at a point through which the sewer passed, also with the then owner's verbal consent. No acknowledgment was ever paid by the local authority. Subsequently a purchaser, without notice of the existence of the sewer, filled up the tank. A nuisance consequently arose at houses drained by the sewer. A writ was issued by the local authority claiming an injunction. The nuisance becoming acute, the local authority obtained an *interim* order authorising them to empty the tank and restraining the defendant from replacing the materials removed. The materials were removed by the authority, and promptly replaced by the defendant. The vacation judge ordered the issue of a writ of attachment for contempt of court, the writ to lie in the office for a week, within which time the defendant was to clear out the tank, and the defendant to pay the local authority's party and party costs of the application for the writ in any event.⁷

Sewer made for Profit.

**Burden
of proof.**

Huddleston, B.,⁸ said that "the *onus* of proof would lie on those who allege that the sewer was made by some person for his own profit," but this has recently been doubted by Atkin, J.⁹

**Indirect
profit.**

"Profit" does not include all indirect benefit. Thus a sewer, constructed by the freeholder of part of a new street, which was not then dedicated to the public, for the drainage of the whole street, under an agreement with the freeholder of the other part, was held to be vested in the local board; Kay, J., holding that a sewer made for draining a street of houses could not be considered to be "made for the profit" of the person who made it merely because he had connected it with some of his own houses.¹

Direct profit.

A sewer "made for profit" does not mean a sewer made for the mere purpose of drainage, nor a sewer made for the mere purpose of discharging matter which is not intended to be utilised, but is to be got rid of for sanitary reasons. It means a sewer made for the purpose of realising a profit, above and beyond, and independently of, any sanitary purpose—such, for instance, as a sewer made to collect feculent matter with a view of utilising it for manure, or a sewer made for the purpose of carrying away surface or other water, and using it for irrigation.² And where the owner of a sewer derived a revenue from it by making charges for the use of it by the householders, Romer, J., held that such sewer was "made for profit."³ But, as the same learned judge held in a subsequent case, the fact that the owner of a building estate makes a fixed charge, to be paid by the builder of each house on the estate, for permission to connect the drains with the sewer laid by the owner for the drainage of the estate, does not render the sewer a "sewer made for his own profit."⁴

On the other hand, Stirling, J., considered that the "profit" was not to be restricted to a direct money payment: he said, "when the object of making the sewer is not either for sanitary or ordinary drainage purposes, but to enable the land to be occupied more profitably, or to avoid an expenditure, which would otherwise have to be incurred in order that the occupation might be equally beneficial, it seems to me that the sewer is made for the profit of the occupier"; and he accordingly held that a line of pipes laid by a landowner to carry surface water from a ditch bordering a highway to a pond on his land for watering his cattle, although a "sewer," was "made for his profit."⁵

This was approved in a subsequent case in the Court of Appeal, in which a drain or sough made by a quarry owner, to carry into a public sewer the surface

(6) See s. 40 of that Act, cited in Note to s. 335, *post*.

(7) *Hinckley R.D.C. v. Cockerill* (Ch. D.), 1910 Loc. Gov. Chron. 789; 1 Glen's Loc. Gov. Case Law 114. See also *Riddell v. Spear*, *post*, p. 195.

(8) In *Bonella v. Twickenham Loc. Bd.*, cited in Note to s. 150, *post*; see L. R. 18 Q. B. D., at p. 583. See also *per* Eve, J., in the *Watford Case*, *post*, p. 55.

(9) In *Yorkshire (W.R.) Rivers Bd. v. Linthwaite U.D.C.* (No. 2), *post*, p. 55; see 79 J. P., at p. 437, col. iii.

(1) *Acton Loc. Bd. v. Batten* (1884), L. R. 28 Ch. D. 283; 54 L. J. Ch. 251; 52 L. T. 17.

See also *Bonella v. Twickenham Loc. Bd.*, *supra*; and *Pinnock v. Waterworth* (1887), 51 J. P. 248.

(2) *Per* Lopes, L.J., in *Ferrand v. Hallas Land and Building Co.*, L. R. 1893, 2 Q. B. 141; 62 L. J. Q. B. 479; 69 L. T. 8; 57 J. P. 692.

(3) *Minehead Loc. Bd. v. Luttrell*, L. R. 1894, 2 Ch. 178; 63 L. J. Ch. 497; 70 L. T. 446.

(4) *Vowles v. Colmer* (1895), 64 L. J. Ch. 415; 72 L. T. 389.

(5) *Croysdale v. Sunbury-on-Thames U.D.C.*, L. R. 1898, 2 Ch. 515; 79 L. T. 26.

water coming on his land, so as to prevent such water from running over the quarry, and thereby to enable the quarry to be more economically and conveniently worked, was held to be a "sewer," but to be made for profit: *A. L. Smith, L.J.*, explaining that in the *Sunbury-on-Thames* case *Stirling, J.*, in using the expression "ordinary drainage purposes" meant "ordinary sewage drainage purposes."⁶

Eve, J., said, with reference to an open artificial channel already described,⁷ that, though it was a "sewer" and therefore "*prima facie* vested in the defendants as the local authority within whose district it is situate," it was "nothing but an agricultural ditch made by the landowner for the sole purpose of draining his land or removing from it superfluous water—made, that is to say, for the more profitable use of the land, and made, therefore, by a person for his own profit. . . . The course which the ditch follows is the obvious and natural one to be adopted by a landowner desirous of making it as effective as possible for the purposes for which it is made."⁸

Drains taking surface water from a road constructed by a railway company for providing access to cottages erected by them for their workmen were held by *Sargant, J.*, not to have been made for profit.⁹

In 1863 a piece of land adjacent to a river was laid out by the owner for the purpose of erecting woollen mills under ground leases granted by him, and he constructed a main sewer or drain for the purpose of carrying off the trade refuse from the mills (when erected) into the river. Subsequently six mills were erected on the land, and later some water-closets in the mills for the use of the employees were connected with the sewer, with the result that a continuous flow of polluting liquid passed into the river. There was no evidence that the landowner had laid out the land as an ordinary building estate, or that any dwelling-houses were connected with the sewer, except one, for the drainage of which house into the sewer the owner agreed in 1864 to pay, and did pay, to the owner of the sewer, a rental of 5s. a year. In 1891 the sanitary authority for the district through which the sewer ran entered into an agreement,¹⁰ under which they purchased the right to send house drainage into the sewer. It was held that the sewer was made for profit.¹¹

An owner laid a sewer in a private road with the sanction of the local authority, who agreed that if and when they took over the road he should be credited with the amount allowed by the contractor in his schedule of prices in the contract for the private street works, and the owner agreed to lay the sewer at his own risk, and to maintain it until the road was taken over. *Astbury, J.*, held that the sewer had been "made for profit," because the owner expected that he would derive a profit owing to the anticipated rise in prices, and that other owners would pay him for the right to connect to it, and that therefore he was entitled to contributions on a frontage basis from such other owners.¹²

Land Drainage Works.

A natural watercourse which had been cleared, widened, and deepened by inclosure commissioners, and received the sewage of a few houses, was held, firstly, not to be a sewer, and, secondly, if it were a sewer, to come within the second of the exceptions, because nothing had made it a sewer except what was done by the commissioners under their Act.¹³

Pipes and drains constructed by a railway company as accommodation works in pursuance of the Railways Clauses Consolidation Act, 1845,¹⁴ for the purpose of carrying the surface water from their own and adjoining lands to a pipe passing under the railway and thence to a pool, were considered by the Court of Appeal to be "sewers," apart from the fact that the sewage from certain houses had for some years passed into them without the knowledge of the company; but were held to come within the second exception to sect. 13 of the present Act,

Sect. 13, n.
Direct
profit—cont.

Natural
watercourse.

Surface
water pipes.

(6) *Sykes v. Sowerby U.D.C.*, L. R. 1900, 1 Q. B. 584; 69 L. J. Q. B. 464; 82 L. T. 177; 64 J. P. 164, 340.

(7) *Ante*, p. 38.

(8) *Phillimore v. Watford R.D.C.*, L. R. 1913, 2 Ch. 434; 82 L. J. Ch. 514; 77 J. P. 453; 11 L. G. R. 980.

(9) *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.* (1915), 79 J. P. 221; affirmed in C. A., where this point was not dealt with; see the Note to P. H. Act, 1890, s. 19, *post*, Part I., Div. II.

(10) Further as to this agreement, see *post*, Vol. II., p. 1745.

(11) *Yorkshire (W.R.) Rivers Bd. v. Linthwaite U.D.C.* (No. 2) (1915), 84 L. J. K. B. 1610; 113 L. T. 547; 79 J. P. 433; 13 L. G. R. 772.

(12) *Vare v. Joy* (1920), 124 L. T. 148; 85 J. P. 29; 18 L. G. R. 712.

(13) *Reg. v. Godmanchester Loc. Bd.*, *ante*, p. 37.

(14) See s. 68, *post*, Vol. II., p. 1610.

Sect. 13, n.
Surface
water pipes—
continued.

as being "made and used for the purpose of draining, preserving, or improving land under a local or private Act of Parliament." A contention that the Acts referred to must be Acts for drainage purposes was overruled.¹

Drains constructed by a railway company under their private Acts for the purpose of complying with a notice served by the local authority, which required that a street owned by the company should be properly drained, were held by Sargant, J., not to come within this exception.²

With regard to works for the supply of sewage to land for agricultural purposes, see sect. 31, and the Note to that section.

Commissioners of Sewers.

Sewers Acts.

The first statute to prescribe the duties of commissioners of sewers in a regular form was passed in the reign of Henry VI.³ It was repealed by the Statute Law Revision Act, 1863. The principal Acts containing provisions still in force relating to such commissioners are mentioned in the footnote.⁴

The law on this subject does not fall within the scope of the present work.⁵ But it may be mentioned that the property in certain lands, buildings, and works is "vested" in the commissioners of sewers within or under whose view, cognisance, or management they are;⁶ and that this was held not to deprive the owners of all the property under the view of the commissioners of valuable lands and estates, and transfer them to the commissioners, without compensation or any manifest reason of policy for so doing, but only to enable the commissioners to exercise such a proprietary right over the lands as they might purchase under the Act.⁷ It was also held that the vesting did not take place at all until the commissioners had shown some exercise of jurisdiction over the works.⁸

The extension of the city of Bristol, so as to include part of the area within the jurisdiction of the commissioners of sewers for the Lower Level of the County of Gloucester, was held not to take that part out of the jurisdiction of the commissioners.⁹

Where certain commissioners were given "full power and authority," and also "required" to make and repair drains, they were held liable in damages for failure to repair.¹⁰

Rateability of Sewers.

Land struck
with sterility.

The question of the rateability and valuation for rating purposes of sewers, pumping stations, and other sewage works, came before the House of Lords in some recent cases relating to the sewers and works of the London County Council. After referring, amongst others, to the Mersey Docks case,¹¹ in which the House decided that the circumstance that land is held by a public body for public purposes does not affect its rateability, and agreeing with the statement of Bowen, L.J., in the West Bromwich School Board case,¹² that if land is "struck with sterility in any and everybody's hands," whether by law or by its inherent condition, so that its occupation is, and would be, of no value to any one, it cannot be rated, the House decided that the county council, although they had no statutory power to hire premises as pumping stations, etc., were, in determining the rateable value of the land, works, buildings, pumping stations, and machinery, to be taken into consideration as possible hypothetical tenants; that the sewers which were laid above the surface of the ground and occupied land which would otherwise have

(1) *L. & N.W. Ry. Co. v. Runcorn R.D.C.*, L. R. 1898, 1 Ch. 561; 67 L. J. Ch. 28; 77 L. T. 485; 62 J. P. 9.

(2) *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.* (1915), 79 J. P. 221; affirmed in C. A., where this point was not dealt with; see the Note to P. H. Act, 1890, s. 19, post, Part I., Div. II.

(3) 6 Hen. VI. c. 5.

(4) 23 Hen. VIII. c. 5, made perpetual by 3 & 4 Edw. VI. c. 8; and the 13 Eliz. c. 9; 3 & 4 Wm. IV. c. 22; 4 & 5 Vict. c. 45; 12 & 13 Vict. c. 50; and 24 & 25 Vict. c. 133.

(5) As to the law relating to Commissioners of Sewers, see "Land Drainage and Sewers," by Messrs. Kennedy and Sandars, and the Land Drainage Act, 1918, referred to post, p. 102.

(6) 3 & 4 Wm. IV. c. 22, s. 47.

(7) *Stracey v. Nelson* (1844), 12 M. & W. 535; 13 L. J. Ex. 97.

(8) *West Norfolk Farmers Manure Co. v. Archdale* (1886), L. R. 16 Q. B. D. 754; 55 L. J. Q. B. 230; 54 L. T. 561; 50 J. P. 500.

(9) *Bristol Cpn. v. Canning* (1906, Ch. D.), 95 L. T. 183; s.c. nom. *Bristol Cpn. v. Gloucester Lower Level Comrs. of Sewers*, 70 J. P. 528.

(10) *Boynton v. Ancholme Drainage Comrs.* (C. A.), L. R. 1921, 2 K. B. 213; 90 L. J. K. B. 75; 124 L. T. 54; 85 J. P. 33; 18 L. G. R. 610; see also *Rex v. Marshland Smeech Comrs.*, post, Vol. II., p. 1989.

(11) *Jones v. Mersey Docks and Harbour Bd.* (1865), 11 H. L. C. 443; 20 C. B. (N.S.) 56; 35 L. J. M. C. 1; 11 Jur. (N.S.) 746; 12 L. T. 643.

(12) *West Bromwich Sch. Bd. v. West Bromwich Overseers* (1884), L. R. 13 Q. B. D. 929; s.c. nom. *Reg. v. West Bromwich Sch. Bd.*, 53 L. J. M. C. 153; 52 L. T. 164; 48 J. P. 808.

been rateable, gave the county council a rateable occupation of the land; but that, although the exemption of underground sewers did not rest on grounds altogether satisfactory, the practice, which had prevailed for a very long period, and had been sanctioned by judicial authority, of not rating sewers which were under land, the surface of which was occupied by other persons and in ordinary cases was assessed, ought not to be departed from by the House.¹

In a subsequent case the Court of Appeal declined to extend this exemption of underground sewers from rateability to cases in which the surface of the land was occupied or in any way affected by the sewers, or in which any payment was made to the owners of the sewers for the use of them by others; and accordingly they held that a sewer was rateable, where part of it was carried on concrete arches above the surface of the ground, part was below the surface, but some of this was covered by an embankment rising above the level of the adjoining land, and the remainder passed partly above and partly below the surface of the foreshore of the Bristol Channel, and where the main sewerage board to whom it belonged received payments for the use of it from various local authorities as well as from their own constituent authorities.² And in another case a rising main sewer, conduits for delivering sewage on a sewage farm, and effluent conduits, were held not to come within the exemption, although they were all underground, because they were not simple sewers, but adjuncts to the system of sewage works on the sewage farm.³

Where a main sewerage board received no payments for the use of their sewers (otherwise than through the ordinary rates levied in their district) beyond the extra cost of dealing with the sewage discharged into their sewers from districts or premises outside their own district, the Divisional Court held that the exemption referred to in the Erith case did not extend to the underground portion of a sewer belonging to the board of which other portions in the same parish were above ground, but did extend to the portion of a sewer in a parish when that portion was entirely underground, although other portions of the same sewer in other parishes might be above ground;⁴ and this decision was affirmed by the Court of Appeal.⁵ The House of Lords, however, in dismissing a further appeal to them, have practically abolished the exemption; for after considering the Erith case it was laid down by Lord Atkinson, with the concurrence of Lord Loreburn, C., and Lords Ashbourne, Shaw, and Mersey, that "sewers, whether overground or underground, are rateable wherever the occupation of them is *valuable* within the meaning of the authorities dealing with rating."⁶

As to the basis of valuation, it was held by the Valuation Appeal Court in Scotland that sewers owned and occupied by a statutory body are to be rated at the yearly rent which the hypothetical statutory tenant would give for them, and (1) that such rent was represented by a sum made up by taking $3\frac{1}{4}$ per cent. on their total capital cost and adding thereto, in addition to the landlord's rates and average annual charge which would fall on the landlord for maintenance, such percentage on the cost of the sewers (as distinct from land and wayleaves) as, paid annually into a sinking fund, would provide for their complete renewal in 100 years; (2) that in calculating the capital cost, (a) lands purchased must be taken at the full prices paid, (b) (Lord Salvesen dissenting) legal and engineering expenses incurred in acquiring the lands must be added, (c) Parliamentary expenses of obtaining statutory powers may not be added, and (d) (Lord Cullen dissenting) sums paid as compensation for disturbance may not be added; and (3) that the capital cost of the existing sewers acquired and utilised must be taken as an additional sum which would have had to be expended on new sewers if such existing sewers had not been available.⁷

(1) *London C.C. v. Erith Overseers*; *West Ham Overseers v. London C.C.*; and *St. George's U.A.C. v. London C.C.*, L. R. 1893 A. C. 562; 63 L. J. M. C. 9; 69 L. T. 725; 57 J. P. 821; see also *Lambeth Overseers v. London C.C.*, cited at end of Note to s. 164, *post*.

(2) *Ystradyfodwg and Pontypridd Main Sewerage Bd. v. Newport U.A.C.*, L. R. 1901, 1 Q. B. 406; 70 L. J. K. B. 318; 65 J. P. 307; *s.c. nom. Newport U.A.C. v. Ystradyfodwg Main Sewerage Bd.*, 84 L. T. 40.

(3) *Leicester Cpn. v. Beaumont Leys Churchwardens and Barrow-on-Soar U.A.C.* (1894), 63 L. J. M. C. 176.

(4) *West Kent Main Sewerage Bd. v.*

Dartford U.D.C. (1910, K. B. D.), 74 J. P. 129; 8 L. G. R. 287.

(5) *Ibid.* (1910, C. A.), 74 J. P. 292; 8 L. G. R. 677.

(6) *Ibid.*, L. R. 1911 A. C. 171; 80 L. J. K. B. 805; 104 L. T. 357; 75 J. P. 305; 9 L. G. R. 511. Followed by the Valuation Appeal Court in *Dundee B.C. v. Forfarshire Assessor*, 1912 S. C. (S.) 848; 49 Sc. L. R. 333; 3 Glen's Loc. Gov. Case Law 175.

(7) *Water of Leith Purification and Sewerage Comrs. v. Leith and Midlothian Assessors*, 1914 S. C. (S.) 664; 51 Sc. L. R. 177; 5 Glen's Loc. Gov. Case Law 187.

Sect. 13, n.

Land struck
with sterility
—continued.

Sect. 13, n.*Taxability of Sewers.***Income tax.**

A sewer was vested in and under the control of a sewerage board for a united drainage district as the local sanitary authority. The sewer, which was about seventeen and a quarter miles in length, was constructed partly underground, partly on the surface, and partly in an artificial embankment. No charge in respect of income tax was made by reason of its construction in the assessment of the owners or occupiers of the lands over, through, or under which the sewer was constructed. The sewerage board derived no profit from the sewer. It was held that the sewer was a hereditament capable of actual occupation, that the sewerage board were in occupation, and that the board were assessable to income tax under the Act of 1842 (see now Act of 1918⁸) upon the annual value of the sewer.⁹

Exemption.

Now, however, by sect. 34 of the Finance Act, 1921,¹⁰ "income tax shall not be charged in respect of a sewer vested in a local authority in the United Kingdom: Provided that the foregoing exemption shall not extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer"; and "in this section the expression 'sewer' means a sewer maintained by a local authority in pursuance of their statutory duties in relation to the public health," and "the expression 'local authority' means a public body having power under any enactment relating to the public health to construct and maintain sewers."

**Power to
purchase sewers.
P.H., s. 44.**

Sect. 14. Any local authority may purchase or otherwise acquire from any person any sewer, or any right of making or of user or other right in or respecting a sewer (with or without any buildings works materials or things belonging thereto), within their district, and any person may sell or grant to such authority any such sewer right or property belonging to him; and any purchase money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right or property sold was subject to.

But any person who, previously to the purchase of a sewer by such authority, has acquired a right to use such sewer shall be entitled to use the same, or any sewer substituted in lieu thereof, to the same extent as he would or might have done if the purchase had not been made.

Note.*Rights of Drainage.***Tenants for
life.**

As to drains and sewers on settled land, see sects. 38, 41 (4) (ii), and 65 (1) (iii) of the Law of Property Act, 1922.¹¹

**Use of sewers
of adjoining
district.**

A district council may utilise the sewers of an adjoining council for purposes of outfall, by agreement and subject to the sanction of the Minister of Health, under sect. 28.

**Prescriptive
rights.**

The vesting of sewers in local authorities by virtue of sect. 13 does not take away the rights which persons may have obtained by prescription to send their sewage down such sewers.¹² Nor does it render the local authority responsible for the discharge of such sewage into a river,¹³ except so far as the provisions of the Rivers Pollution Prevention Acts are concerned.¹⁴

On the other hand, the local authority do not, by virtue of the previously existing prescriptive rights of individuals, themselves possess a prescriptive right to discharge sewage into a stream.¹⁵

**Enlargement
of user of
right.**

With regard to rights in respect of the flow of water, see the Note to sect. 332.

A person entitled to a limited right, who exercises it in excess so as to cause a nuisance, cannot maintain a right of action for an obstruction of the original right of easement until its exercise has been reduced within its original limits. Thus, if a man has a limited right to the use of a window, and he enlarges it considerably, the only way in which the person who is annoyed by the enlargement of the window can prevent that nuisance is by erecting a barrier, and stopping the whole up. So if a limited right to the use of a drain exists, such as to send clean water only through it, and the person claiming that right sends dirty or foul water, the person having the property in the drain may stop the

(8) 8 & 9 Geo. V. c. 40, s. 1, Sched. A. (No. 1), not (No. 3), for that applies to the properties therein specified when such properties are used as trading concerns for the purpose of earning profits.

(9) *Ystradfydwg and Pontypridd Main Sewerage Bd. v. Bensted*, L. R. 1907 A. C. 264; 76 L. J. K. B. 876; 97 L. T. 141;

71 J. P. 425; 5 L. G. R. 856.

(10) 11 & 12 Geo. V. c. 32, s. 34.

(11) *Post*, Vol. II., p. 2355.

(12) See *A.G. v. Dorking Guardians*, ante, p. 53.

(13) *Reg. v. Staines Loc. Bd.*, post, p. 67.

(14) See s. 1, post, Vol. II., p. 1743.

(15) *A.G. v. Luton Loc. Bd.*, post, p. 72.

whole of the water from flowing until the use of the right is brought within its original limits.⁴

Nor, if a person has a prescriptive right to drain certain premises into his neighbour's land, can he throw the drainage of other premises into the drain. *Per James, L.J.*, "If a man has an artificial drain or sewer by which he drains anything, either water or sewage, into his neighbour's land, he cannot use that drain so as to drain another close or another house. It seems to me impossible to suppose that there is anything in the English law to say that a man has the right to pour in as much sewage water as can come from anywhere, limited only by the size of the particular drain."⁵

A reservation in a lease of "the free running water and soil coming from any other buildings and lands contiguous to the premises hereby demised in and through the sewers and watercourses made or to be made within, through, or under the said premises" extends to water and soil coming to and from—though not actually first arising upon or out of—the contiguous land or buildings, but does not extend beyond such "water and soil" as are the product of the ordinary use of the land and buildings for habitation—therefore not to the refuse of manufactories and tanyards, etc.⁶

It had been held that the owner of one tenement had a right of action against the owner of an adjoining tenement in respect of the flooding of his premises, caused by an obstruction in a drain upon the adjoining tenement that prevented water, brought in the first instance by a spout from that tenement to the plaintiff's premises, from flowing away again in the manner in which it had been accustomed to flow since the two tenements were in the ownership of the same person.⁷ But this decision was disapproved by the Court of Appeal, who laid down the rule that on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements over the other part which are necessary to the reasonable enjoyment of the part granted, and have been theretofore used for its benefit; but that, except in the case of easements of necessity, there is no similar implication in favour of the grantor, who must expressly reserve in the grant any easement which he intends to reserve over the part granted.⁸

With regard to the repair of pipes carried through the land of one person for the benefit of another who has the right to send his drainage through them, see the Note to sect. 54 of the present Act. The right to use and repair a drain through another person's land involves the right to alter its level so as to adapt it to the level of a new sewer substituted by the local authority for that into which it previously drained.⁹

Sect. 14, n.
Enlargement
of user of
right—*cont.*

Continuous
and apparent
easements.

Repair of
pipes.

Sect. 15. Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act.

Maintenance
and making
of sewers.
P.H., s. 45.
S.U. 1865, s. 4.

Note.

Repair of existing Sewers.

The sewers belonging to a district council are those which they themselves or their predecessors have caused to be made, or have purchased or acquired, and those which are compulsorily vested in them under sect. 13 of the present Act.

Vesting of
sewers.

It is the duty of the council not only to keep those sewers in repair in pursuance of the present section, but also to cause them to be constructed, covered, ventilated, and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied, in pursuance of sect. 19 of the present Act. The cases dealing with the neglect of these duties have been collected in the Note to that section.

Duty of
council.

(4) *Cawkwell v. Russell* (1856), 26 L. J. Ex. 34; *Watson v. Troughton* (1882), 48 L. T. 508; 47 J. P. 518. As to alterations of windows, see *Ankerson v. Conelly*, L. R. 1907, 1 Ch. 678; 76 L. J. Ch. 402; 96 L. T. 681; *Andrews v. Waite*, L. R. 1907, 2 Ch. 500; 76 L. J. Ch. 676; 97 L. T. 428. As to excessive user of rights of way, see Note to s. 175, *post*.

(5) *Metropolitan Bd. of Works v. L. & N.W. Ry. Co.* (1881), L. R. 17 Ch. D. 246; 50 L. J. Ch. 409; 44 L. T. 270.

(6) *Chadwick v. Marsden* (1867), L. R. 2 Ex. 285; 36 L. J. Ex. 177; 16 L. T. 666.

(7) *Pyer v. Carter* (1857), 1 H. & N. 916; 26 L. J. Ex. 258; 5 W. R. 371.

(8) *Wheeldon v. Burrows* (1879), L. R. 12 Ch. D. 31; 48 L. J. Ch. 853; 41 L. T. 327; following *Suffield v. Brown* (1864), 4 De G. J. & S. 185; 33 L. J. Ch. 249; 10 Jur. (N.S.) 111; 9 L. T. 627. Followed in *Schwann v. Cotton* (C. A.), L. R. 1916, 2 Ch. 459; 85 L. J. Ch. 689; 115 L. T. 168.

(9) *Finlinson v. Porter*, *post*, p. 91.

Sect. 15, n.
Entry on
lands.

Sect. 305 enables a district council to obtain an order of a court of summary jurisdiction authorising them to enter, examine, or lay open any premises for the purpose of making, keeping in repair, or examining works, or ascertaining the course of sewers or drains; but it does not appear to be necessary for them to obtain such an order before they enter on private premises to repair a sewer which is vested in them.²

Where such a right of entry for the purpose of repairing a sewer was implied by a local Act, it was held that the right was only such as was reasonably necessary for that purpose.³

Provision of New Sewers.

Extent of
duty of local
authority.

The Local Government Board were advised by the Law Officers of the Crown that a local authority are not generally bound under the present Act to provide such sewers as may be necessary to carry off all the trade effluents and liquid refuse coming from manufactories in their district, and that their obligations in this respect are defined by sect. 7 of the Rivers Pollution Prevention Act, 1876,⁴ and are subject to the limitations stated in that section. The Law Officers further expressed the view that the obligation under the Act of 1875 of providing sewers was confined to the ordinary requirements of the district—that is to say, that the local authority were only bound to provide for sewage in the ordinary sense of the term, including foul water produced in the ordinary course of domestic management, and surface water.

Brett, L.J.,⁵ said, “In my opinion no district can be said to be satisfactorily drained or effectually drained for the purposes” of the present Act “where any part of the drainage of the district causes a nuisance, so that if the drainage running through any open ditch or stream causes that ditch or stream to be offensive, then as long as that state of things exists it seems to me the district cannot be said to be effectually drained for the purposes of the Act, which purposes are that the district may be in a sanitary condition.”

Where certain persons had twenty years previously, without the knowledge of the sanitary authority, connected the drains from their water-closets with a sewer previously used only for surface and slop water, so as to cause a nuisance in a ditch into which the sewer discharged, the authority could not, it was held, proceed against those persons under the nuisance clauses of the Act, and evade their obligation under sect. 15 to provide such sewers as were necessary for draining their district.⁶

A local board were held entitled to receive rain and other surface water through gratings into a sewer which they had made under a road, although the water had previously run along an open gutter into a canal, which a canal company had power to supply with water from all brooks, streams, and watercourses within a certain distance from the canal.⁷

The council may make sewers for discharging surface water into a stream.⁸

The sewage which they may be required to receive into their sewers does not, at any rate since the passing of the Rivers Pollution Prevention Act, 1876,⁹ include manufacturing refuse.¹⁰

“Cause to be made” may be satisfied by exercising a power to compel others to do the work.¹¹

Construction
of sewers.

Sect. 16 gives the council power to carry sewers through private and other lands; and sects. 27-31 enable them to dispose of the sewage.

Where a rural district council have determined to adopt plans for the sewerage of any contributory place within their district, they must, under sect. 16 (3) of the Local Government Act, 1894,¹² give notice thereof to the parish council of any

(2) See *Lamacraft v. St. Thomas R.S.A.*, cited in Note to that section, and also *post*, p. 62.

(3) *Birkenhead Cpn. v. London and North Western Ry. Co.*, *post*, p. 83.

(4) *Post*, Vol. II., p. 1748.

(5) In *Glossop v. Heston and Isleworth Loc. Bd.* (1879), L. R. 12 Ch. D. 118; 49 L. J. Ch. 89; 40 L. T. 736; 44 J. P. 36. See also *Boynton v. Ancholme Drainage Comrs.*, *ante*, p. 56.

(6) *Fordom v. Parsons*, L. R. 1894, 2 Q. B. 780; 64 L. J. M. C. 22; 71 L. T. 428; 58 J. P. 765; *Kirkheaton Loc. Bd. v. Beaumont* (1888), 52 J. P. 68. But see *Ashton-under-*

Lyne Cpn. v. Pugh, *infra*.

(7) *Manchester Ry. Co. v. Workson* (1857), 26 L. J. Ch. 345; 23 Beav. 198; 3 Jur. (N.S.) 304.

(8) *Durrant v. Branksome U.D.C.*, *post*, p. 66.

(9) See s. 7, *post*, Vol. II., p. 1748.

(10) *Pasmore v. Oswaldtwistle U.D.C.*, L. R. 1898 A. C. 387; 67 L. J. Q. B. 635; 78 L. T. 569; 62 J. P. 628; *Brook, Ld. v. Meltham U.D.C.*, *post*, p. 87.

(11) See *per* Rigby, L.J., in *Ashton-under-Lyne Cpn. v. Pugh* (1897, C. A.), 67 L. J. Q. B. 32; 77 L. T. 583; 61 J. P. 788.

(12) *Post*, Vol. II., p. 2018.

parish for which the works are to be provided before they contract for the execution of the works.

Under sect. 143 of the Municipal Corporations Act, 1882,⁵ surplus borough funds may be applied in the improvement of the borough by drainage.

In streets not repairable by the inhabitants at large, the adjoining owners may be required to construct the sewers under sect. 150 of the present Act or under the Private Street Works Act, 1892;⁶ but any outfall sewers that may have become necessary must be provided by the district council at the cost of the rates.⁷

The court has power to order sewers (among other works) to be constructed in lands which are in settlement: see sect. 20 of the Settled Estates Act, 1877.⁸

If the local authority neglect the duties imposed upon them by the present section, they may be compelled to perform them by means of the procedure prescribed by sect. 299 of the present Act, or by sect. 16 of the Local Government Act, 1894;⁹ or they may be liable to actions for negligently carrying out the work, see the Note to sect. 308 of the present Act; but they are not liable to actions for damages for injuries caused by their neglect to make the necessary sewers,¹⁰ nor can they (except under sect. 299) be compelled by mandamus to make such sewers.¹¹

In a case previous to that last cited the Court of Appeal refused a mandamus to compel a local board to make such sewers as might be necessary for draining part of their district, on the ground that the board had exercised their discretion and considered that they had provided an outfall for effectually draining it.¹² The Local Government Board had declined to interfere.

A similar provision in the Metropolis Management Act, 1855 (which contains no provision corresponding to sect. 299 of the present Act), requiring the Metropolitan Board of Works (now the London County Council) to "make such sewers and works as they may from time to time think necessary for the effectual sewerage and draining of the Metropolis," was held by the Court of Appeal to give them a discretion only as to the kind of works which should be executed, when sewers were in fact necessary, and not to give them a discretion as to whether they would execute any works at all; and the grant of a mandamus was affirmed.¹³

Bray, J., subsequently held that the Metropolitan Acts did not render it the duty of the London County Council, as distinguished from the Westminster City Council, to construct a new sewer with the object of preventing the sewage from certain houses in that city from passing into the Thames.¹⁴

Sect. 15, n.

Construction of sewers—*continued.*

Default of council.

Sect. 16. Any local authority may carry any sewer through across or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into through or under any lands whatsoever within their district.

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

Powers for making sewers. P.H., s. 45. L.G. Am., s. 4. S.U. 1865, s. 4.

Note.

Construction of Sewers and Water Mains.

By sect. 54 of the present Act, the present section is applied to the laying of water mains by local authorities.

The present section does not authorise the carrying of "drains" through private lands, but as to these see sect. 18 of the Act of 1890.¹⁵

As to whether a "manhole" comes within the term "sewer," see the case cited below.¹⁶

Water mains.

Drains.

Manholes.

(5) *Post*, Vol. II., p. 1831.

(6) Set out at end of Note to s. 150, *post*.

(7) *Reg. v. Tynemouth R.D.C.*, L. R. 1896, 2 Q. B. 219; affirmed in C. A., see Note to s. 158, *post*.

(8) Quoted in Note to s. 146, *post*. See also Law of Property Act, 1922, *post*, Vol. II., p. 2355.

(9) See Note to s. 19, *post*, p. 81.

(10) *Robinson v. Workington Cpn.*, cited in Note to s. 299, *post*.

(11) *Pasmore v. Oswaldtwistle U.D.C.*,

ante, p. 60.

(12) *Reg. v. Tottenham Loc. Bd.*, Times, 25th April, 1893.

(13) *Reg. (Lee District Bd.) v. London C.C.* (1899), 82 L. T. 306; 64 J. P. 20. See also *Boynton's Case*, *ante*, p. 56.

(14) *Westminster City Cpn. v. London C.C.*, L. R. 1906, 2 K. B. 379; 75 L. J. K. B. 549; 94 L. T. 791; 70 J. P. 390; 4 L. G. R. 655.

(15) *Post*, Part I., Div. II.

(16) *Swanston v. Twickenham Loc. Bd.*, *ante*, p. 39.

Sect. 16, n.

Purchase
of land.

It is not necessary for the local authority to purchase or otherwise acquire the land if nothing more is wanted than merely to make a sewer through it.³ With reference to similar provisions in the Metropolitan Acts, Wood, V.-C., considered that in the construction of powers conferred by Act of Parliament upon public bodies, acting for the public benefit alone, the intention of the Legislature was not to be measured by the more guarded powers given to companies established for trading purposes,⁴ and under the present section the Court of Appeal held that a local authority might construct a sewer above and upon, as well as under, the surface of private lands, without purchasing any of the land to be occupied by it.⁵ A pumping station, however, consisting of an engine-house with pump and machinery, erected partly above and partly below the level of the ground, for forcing sewage up a rising main, was held by Byrne, J., not to be a "sewer," but a sewage disposal work, which could not be erected under the present section on a piece of roadside waste, even if such waste formed part of the highway, but only on land purchased or taken on lease by the council.⁶

Purchase of
easements.

It is not necessary for the local authority to acquire easements when laying water mains under the present section.⁷

Order of
justices.

According to an opinion expressed by Cockburn, C.J., at *nisi prius*, it is not necessary for the local authority to obtain an order of justices under sect. 305 before they enter on the lands to lay the sewer, when the owner or occupier refuses to permit them to enter. In this particular case, however, which was an action for damages and an injunction, the jury having found that the intended sewer would cause a nuisance, the injunction was granted, as the statute does not authorise a sewer which would cause a nuisance.⁸

Notices.

With regard to the authentication and service of notices on owners and occupiers, see sects. 266, 267.

Report of
surveyor.

The receipt of the surveyor's report and the giving notice to owners are conditions precedent to the sewers or water mains being carried through private lands; for the parenthesis "(if on the report of the surveyor it appears necessary)" is to be read in the same sense as if it were placed before the words "after giving reasonable notice, etc."⁹

To entitle the local authority to act upon the present section, the sewer must be "necessary," that is, reasonably necessary for the efficient discharge of the duty of the local authority. The surveyor is the person to decide whether it is necessary, and if he has exercised his judgment in good faith the court will not interfere to restrain the local authority from entering upon the land. The "surveyor" must, however, be the person duly appointed to be the surveyor of the local authority; and a civil engineer, who had been in the employment of a local board as assistant to their surveyor, and who, on the death of the surveyor, was appointed "surveyor to the board until a permanent surveyor be appointed," was held not to be competent to make a report upon which the board could act under the section.¹⁰

Under the Scottish enactment corresponding with the present section, the surveyor to a local authority certified that the intended course of a new sewer "seems to be the best and most practical way of taking it. . . . To carry out this plan it is necessary that the sewer be carried through the above close." This was held sufficient.¹¹

Saving for
navigation
works, etc.

A district council were held by Phillimore, J., not to be entitled to carry a sewer under a towing path without the consent—under sect. 327 (3)—of the Thames Conservators, in whom the path was vested.¹²

Compensation.

The owner and occupier of the land and the other persons, if any, who sustain damage by reason of the construction of a sewer, are entitled to compensation

(3) *Thornton v. Nutter* (1867), 31 J. P. 419.

(4) *North London Ry. Co. v. Metropolitan Bd. of Works* (1859), 28 L. J. Ch. 909; John. 405; 5 Jur. (N.S.) 1121.

(5) *Roderick v. Aston Loc. Bd.* (1877), L. R. 5 Ch. D. 328; 46 L. J. Ch. 802; 36 L. T. 328; *Morris v. Mynyddislwyn U.D.C.*, *post*, pp. 79, 90. On this point, see 81 J. P., at p. 264, col. iii.

(6) *King's College, Cambridge v. Uxbridge R.D.C.*, L. R. 1901, 2 Ch. 768; 70 L. J. Ch. 844; 85 L. T. 303.

(7) See *Metropolitan Water Bd. v. London, Brighton, &c., Ry. Co.* (C. A.), L. R. 1915, 2 K. B. 297; 84 L. J. K. B. 1216; 113 L. T. 30; 79 J. P. 337; 13 L. G. R. 576.

(8) *Lamacraft v. St. Thomas R.S.A.* (1880), 42 L. T. 365; 44 J. P. 441.

(9) *New River Co. v. Ware R.S.A.*, 1883 Loc. Gov. Chron. 252.

(10) *Lewis v. Weston-super-Mare Loc. Bd.* (1888), L. R. 40 Ch. D. 55; 58 L. J. Ch. 39; 59 L. T. 769; distinguished by Kekewich, J., in *Kendal v. Lewisham B.C.* (decided in 1903 on the words "surveyor for the time being" in 18 & 19 Vict. c. 120, s. 105), 67 J. P. 236; 1 L. G. R. 416.

(11) *Brown v. Kirkcudbright Magistrates* (1906, S.), 8 F. 77.

(12) *Thames Conservators v. Walton-upon-Thames U.D.C.*, cited in Note to s. 327, *post*.

under sect. 308.¹ But a notice of intention to construct a sewer, which was not carried out, and was withdrawn after the commencement of the arbitration, was held not to entitle the owner to any compensation or to the costs of the arbitration.²

Certain further restrictions are imposed upon the construction of sewage works without the district by sects. 32-34.

Right of Support.

A sewer made by the Metropolitan Commissioners of Sewers was transferred to the Metropolitan Board of Works by virtue of the Metropolis Management Act, 1855. The Metropolitan Railway Company having by the construction of the railway deprived the sewer of its lateral support, less than twenty years after it was made, the sewer burst. In an action by the board of works to recover the sum awarded by an arbitrator under the Lands Clauses Consolidation Act for the damage thereby sustained, it was held, affirming the judgment of the court below, that the board had acquired no right to lateral support for their sewer, either under the above-mentioned Acts or otherwise, and were not entitled to recover.³

The Metropolitan Act, upon which the foregoing case was decided, contained no such provision for compensation as sect. 308 of the present Act; and, therefore, in a case under this Act, in which the metropolitan case was distinguished, it was held that a sanitary authority was entitled to subjacent support for its sewers, though perhaps not to lateral support.⁴

Now, however, the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, has greatly limited this right of support as well as the consequent obligation to compensate the landowner for it on a new sewer being made, though it contains a saving for the right to support for sewers existing at the passing of the Act. It is to be observed that it relates as much to the support of gas and water mains and other works for the purposes of lighting, water supply, drainage, and sewage disposal, and of buildings used for any of those purposes, as to the support of sewers. Its provisions are as follows:—

Sect. 1 enacts⁵ that “This Act may be cited as ‘The Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883,’ and shall be construed as one with the Public Health Act, 1875 (in this Act called the principal Act), as amended by the Acts for the time being in force amending the same.”

Sect. 2 enacts⁶ that “In this Act the expression ‘sanitary work’ means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or provisional order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority: The expression ‘support’ includes vertical and lateral support: The expression ‘Sanitary Act’ means the Act or provisional order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or order was passed and confirmed before or after the commencement of this Act: The expression ‘person’ includes a body corporate.”

Sect. 3 enacts⁷ that “The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive), with respect to mines, shall, in relation to any sanitary work of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act under the authority of which such sanitary work has been or is constructed or is maintained with the following modifications (that is to say):—

(1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression ‘the undertakers’ referred to the local authority, and as if the expression ‘the Special Act’ referred

Sect. 16, n.

Works outside district.

Lateral support.

Subjacent support.

Public Health (Support of Sewers) Act.

(1) See also *Place v. Rawtenstall Cpn.*, post, p. 111.

(2) *Davis v. Witney U.D.C.* (1899, C. A.), 63 J. P. 279.

(3) *Metropolitan Bd. of Works v. Metropolitan Ry. Co.* (1869), L. R. 4 C. P. 192; 38 L. J. C. P. 172; 19 L. T. 744.

(4) *Re Dudley Cpn.* (1881), L. R. 8 Q. B. D. 86; 51 L. J. Q. B. 121; s.c. nom. *Dudley Cpn. v. Trustees of the Earl of Dudley*, 45 L. T. 733; 46 J. P. 340. See also *London & N.W.*

Ry. Co. v. Evans, cited in Note to s. 149, post; *Clippens Oil Co. v. Edinburgh Water Trustees*, cited in Note to s. 308, post; *Glamorganshire Canal Co. v. Nixon's Navigation Co.* (1901), 85 L. T. 53; and *Jary v. Barnsley Cpn.* (Parker, J.), L. R. 1907, 2 Ch. 600; 76 L. J. Ch. 593; 97 L. T. 507; 71 J. P. 468; 5 L. G. R. 1145.

(5) 46 & 47 Vict. c. 37, s. 1.

(6) *Ibid.*, s. 2.

(7) *Ibid.*, s. 3.

Sect. 16, n.
Public Health
(Support of
Sewers) Act—
continued.

to such Sanitary Act and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work :

(2.) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit :

(3.) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act :

(4.) The amount of any compensation in respect of support for a sanitary work payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act, together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act :

(5.) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place."

Sect. 4 enacts ⁸ that " Except as in this Act provided, a local authority shall not by reason only of anything contained in the Sanitary Act under the authority of which a sanitary work has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such Sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner."

Sect. 5 enacts ⁹ that " Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceedings concluded before or pending at the passing of this Act.

Where any right of support has been acquired before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed."

Waterworks
Clauses Act.

Notice to
treat, &c.

Map of works.

Compensation.

With regard to this Act, the incorporated provisions (sects. 18-27) of the Waterworks Clauses Act, 1847,¹⁰ have been set out at length.

The notice to treat is given under sect. 22 of the Waterworks Clauses Act, 1847.¹¹

By sect. 19 of the Waterworks Clauses Act, 1847,¹² sanitary works constructed after the passing of this Act are required to be marked on the map within six months after the date of their construction. See also sect. 20 of the present Act.

The amount of the compensation, unless settled by agreement, will be ascertained by arbitration under sects. 35-37 of the Lands Clauses Consolidation Act, 1845.¹³ In the case of an urban district council, it will be paid out of the general district

(8) 46 & 47 Vict. c. 37, s. 4.

(9) *Ibid.*, s. 5.

(10) *Post*, Vol. II., p. 1213.

(11) *Post*, Vol. II., p. 1214.

(12) *Post*, Vol. II., p. 1213.

(13) *Post*, Vol. II., p. 1573; see W. Cl. Act, 1847, s. 25, *post*, Vol. II., p. 1216.

rate or other rate out of which the expenses of executing the present Act are defrayed—see sect. 207; and in the case of a rural district council it will be part of their special expenses, if it is paid in respect of works of sewerage or water supply, or if the Minister of Health so directs—see sect. 229.

Where undertakers, carrying on a water undertaking under a special Act incorporating the Waterworks Clauses Acts, pump water from a well sunk by them in pursuance of the special Act, and thereby withdraw the support afforded to land by a bed of running silt and cause the land to subside, they are liable to pay compensation in respect of the subsidence under sect. 6 or sect. 12 of the Waterworks Clauses Act, 1847; for the authority to pump the water is derived from the last-mentioned section, and not by implication from the power to sink the well given by the special Act.¹⁴

Where land was purchased for a canal, and the vendor reserved the right to work minerals, but subject to a restriction against working them so as to injure the canal, it was held that a claim for compensation, after service of a notice by the canal company not to work the minerals, failed because the reservation with such a restriction meant that the price paid for the land included a sum to cover loss from inability to work the minerals in consequence of the existence of the canal.¹⁵

Certain water trustees had acquired a common law right of support for one of their pipes, which had been laid without statutory powers, and by the side of it had laid a second pipe under a special Act, which incorporated the Waterworks Clauses Act, 1847; when the owners of the minerals below the pipes gave notice under sect. 22 of that Act of their intention to work the minerals, the trustees gave a counter notice under the same section. It was held by the House of Lords that, although the company could not work their minerals without affecting the first-mentioned pipe, the presence of that pipe did not amount to an exclusion of all claims of compensation, but merely to a reduction in the quantum, the trustees having elected to put in force the Act of 1847.¹⁶

The Court of Appeal have held, reversing Farwell, J., that undertakers can claim, under conveyances made in pursuance of Acts incorporating the Railways Clauses and Waterworks Clauses Acts, a common law right to support, both within and without the forty yards' limit, from land belonging to a person to whom they have not paid and are not ready and willing to pay compensation.¹⁷

If the sanitary work is damaged by reason of the mine being worked negligently or otherwise than in a reasonable and proper manner, the local authority will apparently have a right of action in respect of such damage: at any rate, if the damage is caused by the mine being worked in an unusual manner, and is not made good by the owner, lessee, or occupier of the mine, the local authority may, under sect. 23 of the Waterworks Clauses Act, 1847,¹⁸ recover the expenses which they incur in making it good.

In a canal company's Act there was a saving for the rights of landowners to work their mines without injuring the canal, and a provision for determining the compensation to be paid for minerals left for the support of the canal. The company refused to compensate the owners, who then proceeded with their workings and damaged the canal. It was held that the owners were liable in damages.¹⁹

But a landowner, whose mines were adjacent to but not under a canal, and who was under no statutory obligation to the canal company with respect to the working of his mines, was not entitled, against the will of the company, to leave sufficient minerals for the protection of the canal and to claim compensation for not working them.²⁰

If the sanitary work causes damage to the mine, the local authority may be liable for such damages—see sect. 27 of the Waterworks Clauses Act, 1847.²¹

Sect. 16, n.
Compensation
—continued.

Right of
support.

Damage to
sanitary
work.

Damage
to mine.

(14) *Fletcher v. Birkenhead Cpn.* (C. A.), L. R. 1907, 1 K. B. 205; 76 L. J. K. B. 218; 96 L. T. 287; 71 J. P. 111; 5 L. G. R. 293.

(15) *Marquis of Linlithgow and Young's Paraffin Co. v. North British Ry. Co.*, L. R. 1914 A. C. 820; 51 Sc. L. R. 626; 5 Glen's Loc. Gov. Case Law 24. See also *Davies v. James Bay Ry. Co.*, L. R. 1914 A. C. 1043; 83 L. J. P. C. 339; 5 Glen's Loc. Gov. Case Law 24.

(16) *Edinburgh and District Water Trustees v. Clippens Oil Co.* (1902), 87 L. T. 275.

(17) *Manchester Cpn. v. New Moss Colliery Co.*, L. R. 1906, 2 Ch. 564; 75 L. J. Ch. 772;

95 L. T. 277; 70 J. P. 409; 4 L. G. R. 1129. This decision was affirmed in *H. L.*, see (19), *infra*.

(18) *Post*, Vol. II., p. 1215.

(19) *Knowles v. Lancashire and Yorkshire Ry. Co.* (1889), L. R. 14 A. C. 248; 59 L. J. Q. B. 39; 61 L. T. 91; 54 J. P. 103; see also *New Moss Colliery Co. v. Manchester, Sheffield, and Lincolnshire Ry. Co.*, *post*, Vol. II., p. 1213.

(20) *Chamber Colliery Co. v. Rochdale Canal Co.*, L. R. 1895 A. C. 564; 64 L. J. Q. B. 645; 73 L. T. 258.

(21) *Post*, Vol. II., p. 1216.

Sect. 16, n. With regard to the meaning of the word “mine,” see the Note to sect. 334 of the present Act.

Sewage to be purified before being discharged into streams. S.U. 1865, s. 11.

Sect. 17. Nothing in this Act shall authorise any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal pond or lake until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such canal pond or lake.

Note.

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Use of Sewer.

Non-feasance. A district council, who merely allow a sewer to be used by persons having a right to use it as part of the existing system of drainage vested in the authority, and who do not themselves convey sewage by means of it or grant permission for sewage to be so conveyed, were held by the Court of Appeal not to “use” the sewer within the meaning of the present section.¹

Pollution of Streams.

Scope of section. The prohibition in the present section is against discharging sewage, etc., which would affect or deteriorate the purity or quality of the water into which it is discharged, and not against discharging it into water already so polluted as not to be made fouler by the discharge.²

Surface water. District councils are entitled to discharge surface water by means of their sewers into any such stream, etc., as is mentioned in the present section, although the surface water carries down sand and silt; for it is not “sewage or filthy water,” and, subject to the present section, such councils have an implied power to make their sewers discharge into any such stream, etc.³ Section 332 of the present Act, however, was not referred to in the case in which this decision was given.

Filthy water. Tar-impregnated highway drainage was held to be “filthy water” within the present section,⁴ and the Local Government Board were advised that slop-water, even though not mixed with sewage from water-closets, is liable to become offensive on decomposition, and should be regarded as “filthy water.”

Other enactments. Under sect. 69 district councils may take proceedings for preventing the pollution of streams; under sect. 48 they may cause offensive watercourses, etc., on the boundaries of their districts to be cleansed; and under the nuisance clauses, sects. 91-111, they may procure the abatement of nuisances arising from foul pools, watercourses, etc. Sect. 68 imposes penalties for polluting streams, etc., with gas washings.

Rivers Pollution Acts. Under the Rivers Pollution Prevention Acts, 1876 and 1893,⁵ it is an offence to cause or permit solid or liquid sewage matter to fall into a stream.

Waterworks Clauses Acts. Sects. 61 to 67 of the Waterworks Clauses Act, 1847,⁶ and sect. 16 of the Act of 1863,⁷ contain provisions for protection from pollution of the water in streams, etc., belonging to owners of waterworks.

Towns Improvement Clauses Act. Power given to commissioners, acting under a local Act incorporating sect. 24 of the Towns Improvement Clauses Act, 1847,⁸ to “cause their sewers to communicate with and empty themselves into the sea or any public river,” was held to be conditional upon their creating no nuisance thereby.⁹

(1) *A.G. v. Dorking Guardians* (1882), L. R. 20 Ch. D. 595; 51 L. J. Ch. 585; 46 L. T. 573; *Glossop v. Heston and Isleworth Loc. Bd.* (1879), L. R. 12 Ch. D. 102; 49 L. J. Ch. 89; 40 L. T. 736; 44 J. P. 36; *Earl of Harrington v. Derby Cpn.*, post, p. 75.

(2) *A.G. v. Birmingham, &c., Drainage Bd.*, post, p. 77.

(3) *Durrant v. Branksome U.D.C.*, L. R. 1897, 2 Ch. 291; 66 L. J. Ch. 653; 76 L. T. 739.

(4) *Dell v. Chesham U.D.C.*, L. R. 1921,

3 K. B. 427. See also Note to s. 308 (under heading “action for damages”), post.

(5) *Post*, Vol. II., p. 1743.

(6) *Post*, Vol. II., p. 1231.

(7) *Post*, Vol. II., p. 1243.

(8) 10 & 11 Vict. c. 34, s. 24.

(9) *A.G. v. Kingston-on-Thames Cpn.* (1865), 34 L. J. Ch. 481; 11 Jur. (N.S.) 596; 12 L. T. 665; 29 J. P. 515; and see *A.G. v. Leeds Cpn.* (1870), L. R. 5 Ch. App. 583; 39 L. J. Ch. 711; 19 W. R. 19.

Where the Public Health Acts Amendment Act, 1890, is in force, a penalty is imposed on persons throwing or placing in any river, stream, or watercourse any cinders, etc., filth, or other matter which is likely to cause annoyance.⁵

By sect. 5 of the Salmon and Freshwater Fisheries Act, 1861 :—" Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur the following penalties : (that is to say,) (1) Upon the first conviction a penalty not exceeding five pounds; (2) Upon the second conviction a penalty not exceeding ten pounds, and a further penalty not exceeding two pounds for every day during which such offence is continued; (3) Upon the third or any subsequent conviction, a penalty not exceeding twenty pounds a day for every day during which such offence is continued, commencing from the date of the third conviction : But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the court before whom he is tried that he has used the best practical means, within a reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this Act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalise any act or default that would but for this Act be deemed to be a nuisance or otherwise be contrary to law."⁶ By the Salmon Fishery Act, 1873,⁷ the above-mentioned penalties may be recovered within six months after the commission of the offence in the manner directed by the Summary Jurisdiction Acts. For the position of the Salmon and Freshwater Fisheries Bill, 1922, at the date of going to press, see "ADDENDA ET CORRIGENDA," *ante*.

A tank waggon belonging to a private owner and running on the defendants' railway was filled with creosote. The tank was examined before the journey and revealed no defect, but during the journey the creosote escaped. On this being noticed the train was stopped, and the defect was remedied. The creosote was carried into a river, and killed the plaintiff's salmon. It was held that the defendants had not "caused" the creosote to flow into the river within the above-quoted section of the Act of 1861.⁸

The owner of the exclusive right of fishery in a non-navigable river was held to be entitled to bring an action for an injunction and damages against a railway contractor for polluting the river whereby the spawning beds in the river were injured.⁹ For a successful action for injury to salmon caused by sewage, see the case cited below.¹⁰

It is a misdemeanour under the Malicious Injuries to Property Act, 1861,¹¹ as amended by the Salmon Fishery Act, 1873,¹² unlawfully and maliciously to put any lime or other noxious material in any salmon river with intent thereby to destroy the fish. The former enactment, apart from the amendment, renders it a misdemeanour to do the like act with respect to any fish pond or water which is private property or in which there is any private right of fishing.¹³

Certain provisions of the Thames Conservancy Act, 1894,¹⁴ which repeals and consolidates the numerous Acts under which the Thames Conservators previously exercised statutory powers, relate specially to the pollution of the river Thames. A local board were indicted under one of those Acts¹⁵ for having "caused or suffered" sewage to flow into the river, but the jury having found that the sewers were not constructed by the board, and that no sewage had been passed into the sewers by them, it was held that the board could not be convicted because persons, who had acquired a right as against the board to drain into the sewers, continued to drain into them and thence into the river.¹⁶ And where some of a farmer's cattle were poisoned by drinking from a stream into which the sewage from a number of cottages belonging to a colliery company was discharged from certain sewage works under the control of the company, it was held that the

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Public Health
Act of 1890.
Salmon and
Freshwater
Fisheries
Acts.

Thames
Conservancy
Acts.

(5) See s. 47, *post*, Part I., Div. II.

(6) 24 & 25 Vict. c. 109, s. 5.

(7) 36 & 37 Vict. c. 71, s. 62.

(8) *Moses v. Midland Ry. Co.* (1915), 84 L. J. K. B. 2181; 113 L. T. 451; 79 J. P. 367.

(9) *Fitzgerald v. Firbank* (C. A.), L. R. 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584.

(10) *Dulverton R.D.C. v. Tracy* (1921, H. L.), 85 J. P. 217; 19 L. G. R. 693.

(11) 24 & 25 Vict. c. 97, s. 32.

(12) 36 & 37 Vict. c. 71, s. 13.

(13) As to these enactments, see *Rex v. Vasey & Lally*, L. R. 1905, 2 K. B. 748; 75 L. J. K. B. 19; 93 L. T. 671; 69 J. P. 455.

(14) See ss. 90-108, *post*, Vol. II., pp. 1754-1758.

(15) 29 & 30 Vict. c. 89, s. 65.

(16) *Reg. v. Staines Loc. Bd.* (1888), 60 L. T. 261; 53 J. P. 358.

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Thames
Conservancy
Acts—cont.

company could not, in defence to an action by the farmer to recover damages, rely upon the fact that the sewage had passed through a sewer vested in the local authority.¹⁷ But with regard to proceedings under the Rivers Pollution Prevention Acts, see sect. 1 of the Act of 1893.¹⁸

The corporation of a borough, whose municipal buildings drained into a sewer constructed more than 100 years ago and discharging into the Thames, were held liable to penalties in respect of such drainage under the Thames Conservancy Act, 1894, for causing or suffering sewage to flow or pass into the river; but they were not held responsible for the drainage into the river of other premises, which did not appear to have been connected with the sewer with their express sanction.¹⁹ The latter part of this decision was followed with reference to the discharge into a tributary of the river Lee of the effluent from sewage disposal works, which had been established by a landowner for a number of houses in the more rural part of an urban district; and the conviction of the district council under the Lee Conservancy Acts²⁰ for failing, after notice, to discontinue the flow or passage of sewage from the effluent sewer into the tributary was accordingly quashed.²¹

Lancashire
and York-
shire Acts.

The Mersey and Irwell Joint Committee Act, 1892,²² and the West Riding of Yorkshire Rivers Act, 1894,²³ contain provisions similar to, but less restricted than, those of the Rivers Pollution Prevention Acts, with respect to certain rivers. The Acts are enforceable by joint committees, consisting in the one case of representatives of the councils of the counties of Lancaster and Chester and of the county boroughs of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, and Stockport, and in the other, of representatives of the councils of the West Riding and of the county boroughs of Bradford, Halifax, Huddersfield, Leeds, and Sheffield.

Local Acts.

Provisions relating to the pollution of the water are also to be found in various special Acts relating to particular rivers and navigations.²⁴

A local improvement Act prohibited under penalties the discharge of trade refuse into any sewer of the local authority, subject to two exceptions. The first was in favour of the persons named in Part I. of the Schedule to the Act, and the second was in favour of the persons named in Part II. of the Schedule "or the successors of any such person." A company that had purchased the business of most of the persons named in Part I. of the Schedule were held not to be entitled to the exemption.²⁵

By sect. 85 of the Mersey Docks Acts Consolidation Act, 1858,²⁶ "No ballast, rubbish, dust, ashes, shingle, stones, or other refuse or things shall be thrown or emptied into any dock, and every person so offending, or doing any other act to prejudice the works of the Board, shall for every such offence be liable to a penalty not exceeding fifty pounds." Water mingled with common petroleum was pumped from the engine-room bilges of a ship into a dock which was subject to this enactment, and water mingled with common petroleum was found on the quay opposite the discharge pipe of the pump. It was held that the mixture of water and oil was "refuse" within the meaning of the enactment.²⁷

Natural Stream or Watercourse.

Stream or
sewer.

A natural flow of water in a defined natural channel is a "natural stream or watercourse" within the present section, although, owing to physical or geological conditions in the lower part of its course, it burrows into the land or is gradually absorbed by it.²⁸

The course taken by the flood known as a "Bourne Flow," which occurs at intervals of some years after exceptional rainfall in districts where the subsoil is chalk, the water flowing over the land in no defined channel, except where artificial channels have been made to prevent the land from being flooded, was held by Walton, J., not to be "a natural stream or watercourse" into which

(17) *Titterton v. Kingsbury Collieries, Ltd.* (1911, K. B. D.), 104 L. T. 569; 75 J. P. 295; 9 L. G. R. 405.

(18) *Post*, Vol. II., p. 1745.

(19) *Thames Conservators v. Gravesend Cpn.*, L. R. 1910, 1 K. B. 442; 79 L. J. K. B. 331; 100 L. T. 964; 73 J. P. 381; 7 L. G. R. 868.

(20) See *post*, Vol. II., p. 1759.

(21) *Waltham Holy Cross U.D.C. v. Lee Conservancy Bd.* (1910, K. B. D.), 103 L. T. 192; 74 J. P. 253; 8 L. G. R. 579.

(22) 55 & 56 Vict. c. cxci.

(23) 57 & 58 Vict. c. clxvi.

(24) *E.g.* River Lee, 49 & 50 Vict. c. cix;

Rivers Trent and Leen, 35 & 36 Vict. c. cv.

(25) *Woolcombers, Ltd. v. Bradford Cpn.* (1906, Ch. D.), 70 J. P. 434; 4 L. G. R. 1038.

(26) 21 & 22 Vict. c. xcii. s. 85.

(27) *Gray v. Heathcote* (1918, K. B. D.), 82 J. P. 211; 16 L. G. R. 557.

(28) *Maxwell-Willshire v. Bromley R.D.C.* (1918), 87 L. J. Ch. 241; 82 J. P. 12; 16 L. G. R. 414.

the rural district council could discharge the surface drainage from their roads without contravening the present section; and the fact that the Bourne Flow itself used as part of its course such artificial channels was held not to make it a sewer.⁶

With regard to a channel, partly open and partly culverted, formed by a natural tidal stream which ordinarily ceased to flow in May and remained dry till October, Swinfen Eady, J., said: "It is clearly established by the evidence that the open channel is in a disgusting condition and a public nuisance, and that the offensive black slime of which the plaintiff complains has been deposited on his land by reason of the dangerous state of disrepair into which the culvert has fallen. But the defendants ask me to say that this is a stream, not a sewer. It is true that mere pollution does not convert a stream into a sewer. On the other hand, the mere fact that clean water flows into a sewer does not make any difference. The question is merely one of fact and degree. In Falconar's case⁷ Lindley, L.J., pointed out that the stream in that case had been a purely agricultural stream, but it had changed its character and become a sewer. In my opinion, that is precisely what has happened in the case of this culvert. . . . I am of opinion that this culvert is a sewer, and the periodical inundations of the lands of the plaintiff constitute a continuing cause of action. I assess the damages up to date at £499. I grant the injunction, but in view of the sewage scheme which the defendants have in hand I restrain the operation thereof for a period of six months."⁸

Eve, J., said, with reference to an open artificial channel already described,⁹ that the present section "deals with a stream, watercourse, canal, pond, or lake, and is directed to the maintenance of the standard of purity of the water in such stream, watercourse, canal, pond, or lake; it contemplates, I think, something in which water is for practical purposes constantly present, and not a mere shallow depression such as I am here dealing with, along which there is no constant flow of water, but which is alternately, in dry weather, a carrier of drainage of effluent only, and, in wet weather, of a mixture of drainage effluent and surface water."¹⁰

A watercourse long ago bottomed, channelled, and covered over was nevertheless held to be a "stream" within the Rivers Pollution Prevention Act, 1876.¹¹

Artificial Streams.

A watercourse, though artificial, may have been originally made under such circumstances as to give all the rights that the riparian proprietors would have had if it had been a natural stream; and therefore in an action by one riparian proprietor against another for the pollution and diversion of a watercourse, it was held to be a misdirection of the judge to tell the jury that if the stream were artificial and made by the hand of man the plaintiff could have no cause of action.¹² In an Irish case, in which the English decisions on the subject were considered, it was laid down that if the watercourse were of a permanent nature, and constructed for lasting purposes, and especially for the general benefit of the parties in its vicinity, and not merely with the temporary and private object of benefiting the property of those by whom it was constructed, such as draining a mine, or a mining district, or the like, riparian rights might be acquired in its water, just as in a natural stream.¹³ Further, with regard to riparian rights, see the Note to sect. 332 of the present Act.

Legal Proceedings.

Apart from the express provision contained in the present section, there is an established principle that general statutory powers conferred for carrying out a certain object must be so exercised as not to create a nuisance;¹⁴ though where special power is given or a special duty imposed to do a particular thing in a

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Stream or
sewer—cont.

Riparian
rights.

Nuisances.

(6) *Pearce v. Croydon R.D.C.* (1910), 74 J. P. 429; 8 L. G. R. 909.

(7) *Ante*, p. 37.

(8) *A.G. v. Lewes Cpn.*, L. R. 1911, 2 Ch. 495; 81 L. J. Ch. 40; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26; see also *Hanley v. Edinburgh Cpn.*, *post*, p. 80.

(9) *Ante*, p. 38.

(10) *Phillimore v. Watford R.D.C.*, *post*, p. 73.

(11) *Airdrie Magistrates v. Lanarkshire C.C.*, *post*, Vol. II., p. 1761.

(12) *Sutcliffe v. Booth* (1863), 32 L. J. Q. B. 136; 9 Jur. (N.S.) 1037; *Magor v. Chadwick* (1840), 11 A. & E. 571.

(13) *Blackburne v. Somers* (1879), 5 L. R. Ir. (Ch.) 1.

(14) *Metropolitan Asylum District Managers v. Hill*, cited in Notes to ss. 126 and 131, *post*.

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Nuisances—
continued.

particular manner, and the thing cannot be so done without necessarily creating a nuisance, the statute must be taken to have legalised the nuisance;¹⁵ and this is so even where there is a discretion with respect to the site to be chosen for establishing that which will cause the nuisance.¹⁶

Per Cozens-Hardy, M.R., "certain principles have been laid down for our guidance in cases of this nature. In the first place, there is a presumption that a public body, whether a trading body or not, is not authorised to create a nuisance or otherwise to affect private rights, unless compensation is provided. In the second place, this presumption must yield where the language of the statute is sufficiently clear to authorise the nuisance without compensation. In the third place, if the statute expressly confers a power, but adds a proviso that no nuisance must be created, it is no defence to say that the work, in truth, cannot be done without creating a nuisance."¹⁷

If a stream, into which sewage is discharged by a local authority or by a private person, is so polluted as to cause a public nuisance, that is to say, to be injurious to the neighbouring inhabitants generally, proceedings may be taken either in the name of the King by indictment, or in the name and with the consent and fiat of the Attorney General for an injunction. If the pollution has been caused by the act of the local authority, and is specially injurious to a particular person, he may, without the Attorney General, bring his action for damages in respect of any injury which he has already sustained, and is also entitled to an injunction to restrain the continuance or commencement of the pollution which has caused or will cause injury to him. Instances of such proceedings are given below, under the heading "Action for Injunction."

Indictment.

Public
nuisance.

Statutory powers, although granted for the public benefit, are only co-extensive with the power to exercise them without an infringement of the general law; and where the exercise of such powers is not compulsory upon those to whom they are granted, and new and unforeseen circumstances subsequently arise which render the exercise of them a nuisance, an indictment will lie in respect thereof,¹ unless the nuisance, the subject of the indictment, is the very thing contemplated by the Legislature.²

Action for Injunction.

Action by
Attorney
General.

When the Legislature imposes certain conditions on a public body for the protection of the public, that body cannot break the conditions and plead in excuse that their works are necessary for the protection of the public, and whenever an illegal act is being committed, which in its nature tends to the injury of the public, the Attorney General can maintain an action, on behalf of the public, to restrain the commission of the act without adducing any evidence of actual injury to the public.³

Where, therefore, a local board had constructed sewage works with an outfall into the river Derwent, and it appeared that they did discharge filthy matter into the river, but that no trace of bad effect on the water was discoverable at W., eight miles below their district, the Master of the Rolls held that they were not entitled to affect the purity of the water at the point of discharge, and granted an injunction on an information at the relation of another local board with costs,—that being a proceeding by the Attorney General to enforce the terms of a public Act against a public body and not requiring evidence of injury to support it—but dismissed the bill with respect to the private injury, which accompanied the information, with costs, the case of nuisance having failed.⁴

An information was filed by the Attorney General at the relation of certain

(15) *Blantyre v. Clyde Navigation Trustees*, 1871 W. N. 69; and see *Jordeson v. Sutton, Southcoates, and Drypool Gas Co.*, L. R. 1898, 2 Ch. 614; 67 L. J. Ch. 666; 79 L. T. 478, in which numerous cases on the subject were considered by North, J., whose decision was upheld in C. A., L. R. 1899, 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815; 63 J. P. 692.

(16) *London, Brighton, and South Coast Ry. Co. v. Truman, Hanbury & Co.*, post, p. 182 (33).

(17) In *Price's Patent Candle Co. v. London C.C.* (C. A.), L. R. 1908, 2 Ch., at

pp. 543, 544; affirmed in H. L., but order varied on agreed terms; see post, p. 72.

(1) *Reg. v. Bradford Navigation* (1865), 6 B. & S. 631; 34 L. J. Q. B. 191; 11 Jur. (N.S.) 766; 29 J. P. 613.

(2) *Rex v. Pease* (1832), 4 B. & Ad. 30.

(3) *A.G. v. Shrewsbury (Kingsland) Bridge Co.* (1882), L. R. 21 Ch. D. 752; 51 L. J. Ch. 746; 46 L. T. 687.

(4) *A.G. v. Cockermouth Loc. Bd.* (1874), L. R. 18 Eq. 172; 44 L. J. Ch. 118; 30 L. T. 590.

inhabitants to restrain a canal company and their lessees from diverting into their canal any filth, sewage, or polluted matter or water, so as to be a nuisance to the inhabitants of Bradford, the company having been empowered by their Act to take water for the purposes of the canal from a stream which, at the time of the passing of the Act, was pure. The company had previously been found guilty on an indictment of creating a nuisance,⁹ and it was held that the inhabitants were not prevented from obtaining relief by the fact that the pollution of the canal had been gradually increasing for some twenty or thirty years, and that they had waited some ten years before filing their bill; nor by the fact that a worse nuisance might be created in the stream from which the polluted water had been diverted.¹⁰

As to the necessity for the fiat of the Attorney General, the effect of delay before obtaining his fiat, his right to an injunction, the relevance of the relator's motives, and other points in relation to this form of action, see the Note to sect. 107 of the present Act.

The action will not lie where there has merely been non-feasance on the part of the local authority,¹ and an injunction to restrain a nuisance created in water-courses in an urban district by sewage from the sewers of a metropolitan vestry was refused on the ground that an action would not lie to compel the vestry to exercise their statutory powers or perform their duty in the matter, the vestry, however, undertaking not to sanction the making of new communications with the sewers until further orders or without the consent of the urban authority.² The Court of Appeal upheld the refusal of an injunction against a rural sanitary authority, where the nuisance arose in an open ditch in the plaintiff's land, on similar grounds.³

Where the defence of non-feasance, though raised in the pleadings, does not appear to have been relied upon, the defendants claiming the right to discharge crude sewage into a creek, although it damaged the plaintiff's oyster beds in an arm of the sea below the point of discharge, an injunction was granted on the ground that the defendants had neither a common law nor a prescriptive right to discharge sewage into the sea so as to cause a nuisance.⁴

Although a river is polluted before it receives the drainage of a town, landowners on the banks are entitled to restrain the further pollution, though it has continued for sixteen years.⁵

The state of a stream previously to the establishment of a sewage farm, which, it was alleged, rendered the nuisance less by collecting and filtering the sewage which was before discharged straight into the stream, was held not to affect a riparian owner's right to an injunction to restrain the local board from polluting the stream by discharging the effluent from their sewage farm into it, when it was proved that a nuisance existed at the time of the commencement of the action, and an injunction was granted accordingly.⁶

Where, however, a plaintiff had (for the purpose of bringing the matter within the jurisdiction of the county court) disclaimed any easement or right to a supply of water from a conduit in the lands of a third party, he was held to have no cause of action against a sewerage board who had interfered with the conduit in a manner which led to the pollution of the water.⁷

If a nuisance is caused to a riparian owner by the fouling of a river by several different persons, it is no answer to an application for an injunction made against any one of them, that the share contributed by him to the nuisance is inappreciable or insufficient to cause damage to the plaintiff.⁸

A riparian owner is entitled to maintain an action for pollution by sewage of the natural stream flowing past his land, although he may not be the owner of any part of the bed of the stream. And he may maintain an action for trespass by deposit of the sewage on land belonging to him, although such land may be in the occupation of a tenant, since the injury is permanent (in the

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Action by
Attorney
General—
continued.

Non-feasance.

Action by
landowner.

(9) *Reg. v. Bradford Navigation*, ante, p. 70.

(10) *A.G. v. Bradford Navigation Co.* (1866), L. R. 2 Eq. 71; 35 L. J. Ch. 619; 14 L. T. 248; 15 L. T. 9.

(1) *A.G. v. Dorking Guardians*, ante, p. 66.

(2) *A.G. v. Clerkenwell Vestry*, L. R. 1891, 3 Ch. 527; 60 L. J. Ch. 788; 65 L. T. 312.

(3) *Ogilvie v. Blything R.D.C.* (1892), 67 L. T. 18. See also *Ireing v. Carlisle*

R.D.C., ante, p. 37; *Stretton's Derby Brewery Co. v. Derby Cpn.*, post, p. 80.

(4) *Owen v. Faversham Cpn.* (1908, C. A.), 73 J. P. 33; following *Foster v. Warblington U.D.C.*, post, p. 78.

(5) *A.G. v. Leeds Cpn.*, post, p. 208.

(6) *Taylor v. East Barnet Valley Loc. Bd.* (1885), 78 L. T. Jo. 282.

(7) *Dickinson v. Shepley, etc., Sewerage Bd.* (1904), 68 J. P. 363.

(8) *Blair v. Deakin* (1887), 57 L. T. 522; 52 J. P. 327.

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Action by
landowner—
continued.

sense that it will continue indefinitely unless something is done to remove it) and therefore extends to his reversion.⁹

An agreement by which a rural sanitary authority were permitted to construct a sewer through certain riparian land was held not to give them or their successors, a rural and eventually an urban district council, the right to discharge sewage into a stream flowing past such land.¹⁰

The Court of Appeal held that the powers of the London County Council under the Metropolis Management Acts did not justify them in pumping the contents of their sewers into the Thames within the limits of the metropolis, in order to relieve the sewers from the pressure of storm water, if by so doing they caused a nuisance; and the grant of an injunction by Neville, J., to restrain them from pumping storm water, dilute sewage, or other artificial discharge into Battersea Creek, so as to cause a nuisance to the plaintiffs or interfere with their rights of navigation, mooring, or berthing, so as to damage the banks and beds of the creek, or infringe the plaintiffs' rights as riparian proprietors, was confirmed on the ground of nuisance, and (Kennedy, L.J., *dubitante*) on the ground of trespass.¹¹ On appeal to the House of Lords, their lordships intimated that they were prepared to affirm the decision of the Court of Appeal, but the injunction was discharged on the county council undertaking to maintain certain new works.¹²

An injunction was refused in an action by a tenant¹³ on the ground that his landlord had already obtained one.

Prescriptive
right to drain
into stream.

There may be a legal right by immemorial custom in an ancient corporation to cause the sewage of a borough to be discharged into a tidal river by such sewers as may from time to time be necessary.¹ But they may be restrained from collecting the whole mass and pouring it into the river at one time so as to cause a nuisance.²

A prescriptive right to drain sewage into a stream to the injury of a riparian owner can only be acquired, if at all, by the continuance of a discharge of sewage prejudicing his estate for the period of twenty years.³ When a paper manufacturer had for that period fouled a stream running past a person's house by discharging into it the refuse from his factory in which paper was made from rags, the Court of Appeal upheld his right as against that person to discharge refuse from making paper from esparto grass, the pollution not being increased by the change in the material.⁴ An order in the nature of an injunction was, however, made against this manufacturer in the county court after the passing of the Rivers Pollution Prevention Act, 1876.⁵

The prescriptive right of owners of certain houses to drain their premises into a river was held not to be vested in a local board, that being a new body created by the statute; and the board were therefore held not to be entitled to carry down any additional sewage into the river without first obtaining the consent of the owners; the local board, as a modern body, having no prescriptive right.⁶

Where a prescriptive right to foul a stream has been acquired, the fouling must not be considerably enlarged to the prejudice of other people, and the fact that the stream is fouled by others would not be a defence to a suit to restrain the fouling by one.⁷

It was held that the prescriptive right (if any) of a fellmonger to foul a stream by the refuse of his premises, would not entitle him to foul it even to a less extent by the refuse of a tannery which he had recently established on the same premises. It was, however, doubted whether the Prescription Act applied at all to the case.⁸

(9) *Jones v. Llanrwst U.D.C.*, L. R. 1911, 1 Ch. 393, 411; 80 L. J. Ch. 338; 75 J. P. 99; 104 L. T. 53; 9 L. G. R. 222; distinguished, as to injury to reversion, in *White v. London General Omnibus Co.*, *post*, p. 189.

(10) *Jones v. Llanrwst U.D.C.*, *supra*.

(11) *Price's Patent Candle Co. v. London C.C.*, L. R. 1908, 2 Ch. 526; 78 L. J. Ch. 1; 99 L. T. 571; 72 J. P. 429; 7 L. G. R. 84.

(12) *Ibid.*, *sub nom. London C.C. v. Price's Patent Candle Co.*, *post*, p. 78.

(13) *Brawn v. Brownhills U.D.C.*, *post*, p. 78.

(1) *Somersetshire Drainage Comrs. v. Bridgewater Cpn. (C. A.)*, 1898 Loc. Gov. Chron. 647.

(2) *A.G. v. Richmond Highway Bd.* (1866). L. R. 2 Eq. 306; 35 L. J. Ch. App. 597;

14 L. T. 398; 12 Jur. (N.S.) 544. See also *A.G. v. Hackney Loc. Bd.*, *ante*, p. 37, on the same point.

(3) *Goldsmid v. Tunbridge Wells Improvement Comrs.*, *post*, p. 73.

(4) *Baxendale v. McMurray* (1867), L. R. 2 Ch. App. 790.

(5) *Watford R.S.A. v. McMurray* (Sept. 14, 1885, Watford C. Ct.) M.S.

(6) *A.G. v. Luton Loc. Bd.* (1856), 2 Jur. (N.S.) 180. See also *Laing v. Whaley*, 3 H. & N. 675, 901; 27 L. J. Ex. 422.

(7) *Blair v. Deakin*, *ante*, p. 71.

(8) *Clark v. Somerset Drainage Comrs.* (1888), 57 L. J. M. C. 96; 59 L. T. 670; 36 W. R. 890; distinguishing *Baxendale v. McMurray*, *supra*.

"Interruption" of an easement in sect. 3 of the Prescription Act, 1832,⁹ means adverse obstruction, and not mere discontinuance of user of the easement.¹⁰ And the mere suspension of a prescriptive right to foul a stream is not sufficient to destroy the right without some evidence of an intention to abandon it; but where works had not been used for more than twenty years, and had been allowed to go to ruin, the court on appeal held that the right of fouling a stream attached to the works was lost. It was also held that the owner of land on the banks of a river can maintain a suit to restrain the fouling of the water of the river without showing that the fouling is actually injurious to him.¹¹ For an unsuccessful claim to a "lost grant,"¹² and as to "secret" enjoyment of an easement to pollute,¹³ see the cases cited below.

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In an action to restrain the discharge of effluent from a sewage farm into an open artificial channel already described,¹⁴ the local authority contended (1) that the plaintiff had sold land to the defendants for the purposes of a sewage farm, that the channel in question was the obvious if not the only outlet for the effluent therefrom, and that therefore the plaintiff had impliedly granted the right to discharge the effluent into the channel; (2) that the plaintiff, having granted to the defendants "the free right of passage and the running of water" from the land conveyed through the channel in question, the defendants "cleaning and repairing or renewing the same whenever necessary and using the same so as not to create a nuisance to the vendor or his tenants," had expressly granted such right. Eve, J., held that the plaintiff had not impliedly or expressly subjected his land to the burden of receiving the effluent, which was not "water."

Implied grant.

A right to have sewage flow into a natural stream, which would, but for such sewage, be pure, would not be acquired by prescription against the person who discharged the sewage into the stream, so as to prevent him from diverting it from the stream.¹⁵

Right to flow of sewage.

Upon an information at the relation of the Thames Conservators to restrain a local authority from altering their drains so as to discharge a greatly increased quantity of sewage into the river, the court, considering upon the evidence that neither present nuisance nor probability of immediate prospective nuisance had been proved, dismissed the information; without prejudice, however, to future proceedings in the event of nuisance being subsequently occasioned.¹

Quia timet action.

The same course was taken in another case by Pearson, J., who said "there are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage, if it comes, will be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action."² But although such a case of prospective nuisance as would by itself have justified the interference of the court may not have been established, yet where some degree of nuisance has been proved to exist, and to have been increasing, the court may have regard to the prospect of its further continuance and increase; the fact of the nuisance having commenced raising a presumption as to its continuance.³

For a *quia timet* action in respect of an apprehended breach of the peace, see the case cited below.⁴

The court will dismiss a claim for an injunction to restrain a local board from discharging sewage into a river if the injury proved be trifling.⁵ And *per*

Trifling nuisance.

(9) 2 & 3 Wm. IV. c. 71, s. 3.

(10) *Per* Stirling, J., in *Smith v. Baxter* (1900), 82 L. T. 650.

(11) *Crossley & Sons v. Lightowler* (1867), L. R. 2 Ch. App. 478; 16 L. T. 438; 36 L. J. Ch. 584.

(12) *Hulley v. Silversprings Bleaching Co.* (1922, Ch. D.), 91 L. J. Ch. 207; 126 L. T. 499; 86 J. P. 30. But see *per* Brett, J., in *Millington v. Griffiths*, *post*, p. 157.

(13) *Liverpool Cpn. v. Coghill, Ltd.*, *post*, Vol. II., p. 1749.

(14) *Phillimore v. Watford R.D.C.*, *ante*, pp. 38, 69.

(15) See *Gaved v. Martyn* (1865), 19 C. B. (N.S.) 732; 34 L. J. C. P. 353; 11 Jur. (N.S.) 1017; 13 L. T. 74.

(1) *A.G. v. Kingston-on-Thames Cpn.* (1865), 34 L. J. Ch. 481; 12 L. T. 665; 11 Jur. (N.S.) 596; 29 J. P. 515.

(2) *Fletcher v. Bealey* (1885), L. R. 28 Ch. D. 688; 54 L. J. Ch. 424; 52 L. T. 541. See also *Meara v. Daly*, *post*, p. 178.

(3) *Per* Turner, L.J., in *Goldsmid v. Tunbridge Wells Improvement Comrs.* (1866), L. R. 1 Ch. App. 354; 35 L. J. Ch. 382; 14 L. T. 154. See also *ante*, p. 72 (3), and *post*, p. 74 (6), as to this case.

(4) *Metropolitan District Ry. Co. v. Earl's Court, Ltd.* (1911, Ch. D.), 55 Sol. J. & W. R. 807; 2 Glen's Loc. Gov. Case Law 180.

(5) *A.G. v. Gee* (1870), L. R. 10 Eq. 131; 23 L. T. 299.

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Trifling
nuisance—
continued.

Turner, L.J.⁶: "I adhere to the opinion which was expressed by me and by the Lord Chancellor,⁷ that it is not in every case of nuisance that the court will interfere. I think it ought not to do so in cases in which the injury is merely temporary and trifling; but I think it ought to do so in cases in which the injury is permanent and serious; and in determining whether the injury is serious or not, regard must be had to all the consequences which may flow from it."⁸

And it is laid down as a settled rule of law that where a work of great public importance cannot be effected without interfering with private rights, the private rights must prevail, and that the public work must be carried out as best it may without interfering with such rights.⁹ But where a great public object is to be attained, as, for example, the drainage of a town, then the court should put no difficulty unnecessarily in the way of carrying such object into effect. In considering questions of nuisance, the court must have regard to the extent of the nuisance, and to the balance of convenience, and if the extent of inconvenience sustained is trifling, and such as may readily be compensated by money, the right of parties creating the nuisance must not be interfered with where the objects which they seek to attain are of considerable importance. The court should not interfere by injunction to prevent a nuisance if the injury is temporary and trifling, but it ought to do so if it is permanent and serious.¹⁰

For instances of offences held to be "trivial" within the Probation of Offenders Act, 1907, see the Note to sect. 251.¹¹

Premature
action.

A declaration as to the plaintiff's water rights was granted, but an injunction was refused as he did not want to use the water at the time of the action.¹²

In matters of injunction to restrain nuisances the court will ascertain the exact state of the law which regulates the relation of the parties, and then act upon it without reference to the difficulties of the case on the part of those against whom it is obliged to decide, leaving those parties, if there be no other mode of escape, to desist from the acts complained of. The exception to this rule is only where there is a physical impossibility of restoring things to their previous condition, as where trees have been actually felled. Where therefore a nuisance by pouring sewage into a brook was clearly established at the hearing, the Court of Appeal discharged an order, referring it to an expert to inquire whether the sewage could be purified or diverted, and at once declared the rights of the relators, and awarded them the injunction they sought, but suspended its operation for a short time that the defendants might consider how they could best obey.¹

Damages
or injunction.

Damages are not given in lieu of an injunction in the case of injury to a right of running water (as they are for instance in the case of obstruction of light and air), since they only represent past injury and are no compensation for future injury proceeding from a cause which varies from day to day, and may cease or increase at any time. In such a case an injunction should be granted, although only nominal damages could have been recovered, by reason of the inconvenience of leaving the parties to repeated and successive actions for damages.² See also the reasons given by Channell, J., for granting an injunction instead of damages in the gas fumes nuisance case cited below.³

Where a sewerage system was constructed which resulted in a gradually increasing nuisance to the plaintiff and the public generally, and it being represented that the evil could only be dealt with effectually by a comprehensive scheme, and that no such scheme could prudently be adopted pending a parliamentary inquiry into the whole subject, the court granted an immediate injunction against any extension of the system, and restrained the continuance of the existing nuisance from and after the expiration of one year from the filing of the bill.⁴

In another case where an information to restrain a nuisance was filed nine

(6) In *Goldsmid v. Tunbridge Wells Improvement Comrs.*, ante, p. 73 (3).

(7) In *A.G. v. Sheffield Gas Consumers Co.*, post, p. 211.

(8) See *A.G. v. Cambridge Gas Consumers Co.*, post, p. 85.

(9) *A.G. v. Birmingham B.C.* (1858), 4 K. & J. 528; 6 W. R. 811; 22 J. P. 561.

(10) *Lillywhite v. Trimmer* (1867), 36 L. J. Ch. 525; 16 L. T. 318.

(11) And *Vigers v. London C.C.*, post, p. 93.

(12) *Hanbury v. Llanfrechfa Upper U.D.C.*, cited in Note to s. 332 (under heading "abstraction of water from watercourse"), post.

(1) *A.G. v. Colney Hatch Lunatic Asylum Committee of Visitors* (1868), L. R. 4 Ch. App. 146; 38 L. J. Ch. 265; 19 L. T. 708. See also *A.G. v. Birmingham, etc., Drainage Bd.*, ante, p. 66, and post, p. 77.

(2) *Pennington v. Brinsop Hall Coal Co.* (1877), L. R. 5 Ch. D. 769; 46 L. J. Ch. 773; 37 L. T. 149; 41 J. P. 758.

(3) *Wood v. Conway Cpn.*, post, Vol. II., p. 1255.

(4) *A.G. v. Halifax Cpn.* (1869), 39 L. J. Ch. 129; 21 L. T. 52; and see *North Staffordshire Ry. Co. v. Tunstall*, 39 L. J. Ch. 131,

months before the hearing, and up to the hearing no steps had been taken to abate the nuisance, a perpetual injunction was granted with liberty to apply.⁵

Where a person cannot physically put an end to a nuisance, and can only stop it by obtaining an injunction (as for instance where he has a sewer passing through his land and cannot stop it up by reason of certain prescriptive rights which others have acquired to the use of it, and persons who have no such prescriptive rights cause a nuisance by increasing the volume of sewage flowing through it), no action lies against him at the suit of those who are injured by the nuisance.⁶ But in one case *Pearson, J.*, granted an injunction against a local authority, on the ground that, although they could not be compelled to construct an improved system of drainage, except by proceedings under sect. 299, or to bring an action for an injunction against a third party, the third party in that case was acting in violation of an agreement entered into with the local authority to pass surface water only through a drain, and the local authority could therefore themselves prevent any nuisance being created, without causing special inconvenience to other neighbours, by stopping up the drain which was used in contravention of the agreement under powers given to them by the present Act, notwithstanding that they would thereby be preventing the third party from exercising his right of passing surface water only through the drain.⁷ With reference to this case, however, *Cozens-Hardy, J.*, said that the agreement might afford a sufficient ground for the decision; but he declined to follow the case so far as *Pearson, J.*, held that the local board could prevent an adjoining owner from connecting with the sewer, and limited the injunction which he granted to restraining the local authority from *directing or authorising* any sewage or foul matter to flow or be discharged from sewers or drains vested in them as such authority on the plaintiff's land.⁸

Buckley, J., refused a mandatory injunction to compel the council of a borough to remove from a person's land foul matter which had been deposited there in consequence of the discharge of sewage into a river by the council, on the ground (amongst others) that the proper remedy (if any) was damages.⁹

In an order for an injunction to restrain the pollution of a stream, it is proper to insert the words, "to the injury of the plaintiff," in order to establish a ground for the interference of the court, and to prevent its authority being invoked for trivial purposes.¹⁰

In a case in which an injunction was granted against a local authority to restrain them from discharging sewage effluent into a lake on private property, the plaintiff was not allowed the costs which he had incurred before the commencement of the action in obtaining an analysis of the effluent.¹¹

An action for an injunction to restrain a local authority from discharging effluent from their sewage works into the plaintiff's dyke was commenced, and on March 12th, 1912, the defendants paid £10 into court with a denial of liability, and on March 14th delivered their defence. The plaintiff applied for discovery and inspection, and the defendants prepared for trial. In answer to interrogatories, the clerk to the defendants admitted that the effluent from the works did overflow into the dyke on two dates before the issue of the writ. On May 6th, 1913, the defendants applied for the dismissal of the action for want of prosecution, and on May 9th the plaintiff applied for liberty to discontinue the action or alternatively that the action be stayed in either case on the terms that the £10 in court be paid out to him and that each party bear their own costs. It was held that, as the plaintiff had elected to continue the action after the payment into court, the money paid in could only be paid out under an order of court, that the court had no jurisdiction to make it a term of discontinuance that the plaintiff should have that money, and that the court had an unfettered discretion as to how the costs were to be borne. It was ordered, accordingly, that each party should pay their own costs down to the date of the payment in, that the

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Damages
or injunction
—continued.

Costs.

(5) *A.G. v. Birmingham Cpn.* (1871), 24 L. T. 224.

(6) *A.G. v. Dorking Guardians*, ante, p. 66.

(7) *Charles v. Finchley Loc. Bd.* (1883), L. R. 23 Ch. D. 767; 52 L. J. Ch. 554; 48 L. T. 569; 47 J. P. 791.

(8) *Brown v. Dunstable Cpn.*, L. R. 1899, 2 Ch. 378; 68 L. J. Ch. 498; 80 L. T. 650; 63 J. P. 519.

(9) *Earl of Harrington v. Derby Cpn.*,

L. R. 1905, 1 Ch. 205; 74 L. J. Ch. 219; 92 L. T. 153; 69 J. P. 62; 3 L. G. R. 321; distinguished in *Hobart v. Southend-on-Sea Cpn.*, post, p. 78; but see *Foster v. Warblington U.D.C.*, post, p. 78.

(10) *Lingwood v. Stowmarket Co.* (1865), L. R. 1 Eq. 77; 13 L. T. 540; 11 Jur. (N.S.) 993.

(11) *Kinnersley v. Easthampstead R.D.C.*, 1902 Loc. Gov. Chron. 254.

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Enforcement
of injunction
by seques-
tration.

plaintiff must pay the defendants' subsequent costs, and that the defendants could take their £10 out again.⁵

On a motion for an interim injunction, the defendant gave an undertaking not to allow any further discharge of oil or tar waste into a stream, but broke the undertaking. It was held that, though this had been a "wilful" breach of the undertaking which would have justified a sequestration order, justice would be met by granting an injunction restraining further pollution until the trial of the action and directing the defendant to pay the costs of the motion as between solicitor and client.⁶

A local board were restrained by a decree of the court, at the suit of an individual, from allowing sewage to flow into a river after a certain date. The board did not stop the sewage, though they tried, but failed, to render it inoffensive. The court held that they had committed a contempt of court, and were not excused by the fact that they were acting in the matter on behalf of the public, and carrying out duties imposed upon them by Act of Parliament. An order for sequestration for contempt will be granted against a public body having property vested in it for various public purposes if it appear to the court that there is property on which the sequestration would operate, and the court has power not only to issue but to enforce a sequestration if its orders be not obeyed.⁷

Where an order of sequestration had been issued against a local board upon an injunction to restrain them from polluting a brook with sewage, and afterwards sewage works had been completed and were in full operation, the defendants applied for the order to be discharged; but the plaintiff, alleging that in consequence of sewage having passed into the brook and a lake on his land after the date of the order, his land had become silted up and he had expended considerable sums in having the brook and lake cleaned, asked for an inquiry as to the damage he had sustained. The Master of the Rolls made a declaration that the defendants were liable to make good all damage occasioned to the S. estate since the date of the order, caused by the discharge or flow from the town of T. into the brook or stream called C. of sewage or other offensive matter, and directed the amount to be ascertained and paid by the defendants to the plaintiff or the persons entitled to the estate.⁸

In a case in which a perpetual injunction had been granted in July, 1901, restraining an urban district council from sending sewage into a stream so as to be a nuisance to the plaintiff, and the council had done nothing to discontinue the nuisance up to July, 1902, the plaintiff applied for a writ of sequestration. The court directed an engineer to inquire and report what, if anything, ought to be done to increase the capacity of the council's works. On his report the court made the order for the sequestration, but directed that it should lie in the office for six months on the council undertaking to carry out the works recommended in the report under the engineer's supervision, with any modifications that the council might suggest and the engineer might approve after hearing the plaintiff.⁹

In ordering the issue of a writ of sequestration against an urban district council for contempt in wilfully disobeying an order restraining them from permitting sewage of their district to pass into a certain stream, and in not performing an undertaking given by them thoroughly to cleanse the bed and banks of the stream from sewage deposits, Warrington, J., said that disobedience, to be "wilful" within the meaning of Order XLII. rule 31 of the Rules of the Supreme Court, so as to justify the issue of the writ, need not be contumacious in the sense of being directly intended to contravene an order; and that it was not the less wilful because committed by an agent or servant through carelessness or neglect or even in dereliction of duty, but that it must be such disobedience as was not merely casual or accidental.¹⁰

An isolated discharge of sewage into a river more than three years after service of a notice under a special Act requiring a district council to discontinue the flow of sewage into the river was held not to constitute a failure to discontinue the flow.¹¹

(5) *Doyle v. Brightlingsea U.D.C.* (1913, Eve, J.), 4 Glen's Loc. Gov. Case Law 158; see R.S.C., Order XXII., rule 6 (b) (c).

(6) *Marsden & Sons v. Old Silkstone Collieries, Ltd.* (1914), 13 L. G. R. 342.

(7) *Spokes v. Banbury Loc. Bd.* (1865), L. R. 1 Eq. 42; 35 L. J. Ch. 105; 11 Jur. (N.S.) 1010. But see *Rex (London C.C. and Metrop. Asylum District Managers) v. Poplar B.C.*, L. R. 1922, 1 K. B. 95; 91 L. J. K. B.

174; 126 L. T. 138; 85 J. P. 259; 19 L. G. R. 731.

(8) *Goldsmid v. Tunbridge Wells Improvement Comrs.*, 1872 W. N. 163.

(9) *Lee v. Aylesbury U.D.C.* (1902), 19 T. L. R. 106.

(10) *Stancomb v. Trowbridge U.D.C.*, L. R. 1910, 2 Ch. 190; 79 L. J. Ch. 519; 102 L. T. 647; 74 J. P. 210; 8 L. G. R. 631.

(11) *Lee Conservancy Bd. v. Leyton U.D.C.*

An action was brought to restrain a drainage board from using any sewer for conveying sewage from their sewage farm into the river Tame until such sewage had been freed from all matter which would affect or deteriorate the purity and quality of the water in that river. The action stood over from time to time in order that the defendants might see what could be done. In October and November, 1907, it was tried by Kekewich, J., who granted the injunction claimed. The defendants appealed, and obtained successive adjournments of the appeal in order that they might complete certain works which they hoped would enable them to comply with the present section. The works were completed at a cost of about £500,000, and the appeal came on for hearing. The evidence as to the sufficiency of these works was so contradictory that the Court of Appeal appointed Sir William Ramsay to report to them upon the effluent discharged. His report ended: "To sum up, my opinion is that the river is not made fouler by the entry of the Birmingham effluent. To adopt the terms of the reference: the sewage effluents . . . are to such an extent freed from excrementitious matter and other foul and noxious matters that they do not affect or deteriorate the 'purity' of the water in such river at the points of entry or within a distance of 600 yards therefrom." At the final hearing of the appeal the plaintiffs contended (1) that when the injunction was granted there was ample justification for it, and that there was no power in the Court of Appeal to discharge or suspend a properly granted injunction; and (2) that the Legislature intended by the present section to prohibit the discharge of any polluting liquid into any natural stream, and that even now, as Sir William Ramsay's report showed, polluting liquid was being discharged. The defendants did not dispute the fact that the injunction had been granted properly, but contended that, though there was no precedent for such a course, the court had power to discharge or suspend such an injunction; that they had spent an enormous sum in endeavouring to discharge their very onerous duties; that in Sir William Ramsay's view they had succeeded; that there was no longer any deterioration of the river water; that the Act only prohibited deterioration; that therefore they were no longer committing any offence; and that there was no reason why they should remain under the stigma of the injunction. The Court of Appeal discharged the injunction, and ultimately the House of Lords made the following order: "Ordered and adjudged that the order of the Court of Appeal of June 22nd, 1909, be affirmed; and this House being satisfied by the report of Sir William Ramsay that the sewage effluents from the defendants' works which enter the river Tame after treatment by the process in use at the date of his report were at that date to such an extent freed from excrementitious matter and other foul or noxious matters that they did not affect or deteriorate the purity of the water in such river (1) at the points of entry, or (2) within a distance of 600 yards therefrom, and this House being of opinion that so long as that result is maintained the operations of the defendants are not in contravention of the requirements of the Public Health Act, 1875, further ordered that the order of the Court of Appeal of November 19th, 1909, be varied by deleting therefrom the words 'and the defendants by their counsel undertaking to use their best endeavours to prevent in future any breach of such statutory provisions,' and inserting in lieu thereof the following words 'and the defendants undertaking that these results shall in the future be secured perpetuated and maintained by them'; and that subject to the said variation, the said order be affirmed and the appeal dismissed: and further ordered that the respondents do pay to the relators three-fourths of the costs of the appeal." The defendants had already been ordered to pay the costs of the trial and of the appeal to the Court of Appeal.¹²

An action to restrain a local authority from pumping storm water overflow into a navigable creek (which was done in times of heavy rain in order to relieve pressure in a low level sewer), and thereby injuring a trader, resulted in the latter obtaining an injunction, which was affirmed by the Court of Appeal. The local authority then applied for suspension of the injunction pending their appeal to the House of Lords on the ground that their statutory powers enabled them to commit this nuisance and trespass, and the suspension was granted till one week after the hearing of the appeal in the House of Lords.¹³ During the argument in the House of Lords it was intimated that the House did not favour the appellants' view, and, after repeated adjournments for the purpose of effecting

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Discharge of
injunction.

(1906, K. B. D.), 95 L. T. 487; 70 J. P. 318;
4 L. G. R. 662.

(12) *A.G. v. Birmingham Tame and Rea*

District Drainage Bd., L. R. 1912 A. C. 788;
82 L. J. Ch. 45; 107 L. T. 353; 75 J. P. 48.

(13) *Times*, October 26th, 1908, p. 3.

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a settlement, and the execution of new works to deal with the cause of the complaint, it was ordered as follows: Appeal dismissed with costs—Order appealed from affirmed with variations—Injunction discharged on undertaking by council to maintain newly-erected sewage works as now existing—Certain items of claim for damages to be paid, and amounts if not agreed to be assessed by Lord Gorell or his nominee.¹⁴

Action for Damages.

Causes of action.

When an action lies against a district council in respect of the pollution of a river (namely, when they have laid new sewers discharging into the river, or have made fresh connections with old sewers so discharging, or invited persons to make such connections, or where privies, or earth-closets, etc., have, with their permission or at their request, been converted into water-closets, and their contents are discharged into the river), damages may be awarded against them to a person in respect of expenses incurred by him in consequence of the pollution either in obtaining water for drinking or for watering cattle from another source, or in obtaining power from another source, and in respect of diminution caused by such pollution in the value of a house belonging to him on the river bank, but not in respect of the silting up of his private lake with foul matter only partly attributable to the acts of the council.¹

Damages were recovered for the pollution of oyster beds by an urban district council, who had themselves made additions to the sewer which discharged sewage near the oyster beds, and had by their own acts increased the quantity of sewage so discharged.²

A stream, which was polluted by matter from the defendants' sewage farm, ran through the plaintiff's dairy farm. The plaintiff alleged that his cows drank from the stream, and that their milk was contaminated, and that some of them had died in consequence of the pollution. The plaintiff's experts said that the sewage-polluted water had an injurious effect upon the cattle that drank it, and made them susceptible to various diseases, including tuberculosis. The defendants' experts, including the Principal of the Royal Veterinary College, said that there was no scientific foundation for the view that sewage was dangerous to cattle, or that milk was contaminated through the drinking of sewage-polluted water, and that in practically every farm ditch in the country there was sewage in a chemical sense. The jury found for the plaintiff, and awarded him £341 as damages. Judgment was entered accordingly, but an injunction was refused, as the plaintiff's landlord had already obtained one.³

A landowner recovered damages from a local authority that discharged somewhat foul liquid on to his land through a culvert, which formed part of an ancient watercourse (into which at irregular intervals flowed underground water from neighbouring saturated chalk hills—the "Bourne Flow"), and was held not to be a "sewer."⁴

An action for damages lies in respect of escape of sewage from natural streams which have become sewers,⁵ and for failure to remove an obstruction to a sewer, if, though the local authority did not know it was a sewer, they ought to have had that knowledge, and if the person suffering the damage gave them notice of the obstruction before it did the damage.⁶

Abatement of Nuisance by Landowner.

Interference with property of others.

Generally with regard to the abatement of a nuisance to property caused by sewage or otherwise, it has been held that in abating a nuisance to his property a man may be justified in interfering (so far as is necessary) with the property of the wrongdoer, but not in interfering with the property of innocent third persons; and consequently, where there are alternative modes of abating the nuisance, he

(14) *London C.C. v. Price's Patent Candle Co.* (1911), 75 J. P. 329; 9 L. G. R. 660.

(1) *Earl of Harrington v. Derby Cpn.*, ante, p. 75.

(2) *Foster v. Warblington U.D.C.* (C. A.), L. R. 1906, 1 K. B. 648; 75 L. J. K. B. 514; 94 L. T. 876; 70 J. P. 233; 4 L. G. R. 735. Followed in *Owen v. Faversham Cpn.*, ante, p. 71. See also *Hobart v. Southend-on-Sea Cpn.* (1906, K. B. D.), 75 L. J. K. B. 305; 94 L. T. 337; 70 J. P. 192; 4 L. G. R. 757; compromised in C. A., 22 T. L. R. 530.

(3) *Brawn v. Brownhills U.D.C.* (1913, Channell, J., at Staffordshire Assizes), 4 Glen's Loc. Gov. Case Law 152, 153.

(4) *Pearce v. Croydon R.D.C.*, ante, p. 69. See also *Phillimore v. Watford R.D.C.*, ante, p. 73; *Rickarby v. New Forest R.D.C.*, ante, p. 37.

(5) See *A.G. v. Lewes Cpn.*, ante, p. 69, and the cases cited therewith.

(6) *Wilson Music Co. v. Finsbury B.C.*, cited in Note to s. 257 (just before heading "Charge on premises"), post.

is bound to choose that mode which may inflict damage, however great, on the wrongdoer, rather than that which would be productive of mischief, however small, to innocent third persons, or to the public.⁷ The case in which it was so held had reference to a watercourse made to carry off the water pumped from a colliery.

Sect. 17, n.

Sect. 18. Any local authority may from time to time enlarge lessen alter the course of cover in or otherwise improve any sewer belonging to them, and may discontinue close up or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the discontinuance closing up or destruction of any sewer shall be so done as not to create a nuisance.

Alteration and discontinuance of sewers.
P.H., s. 45.
S.U. 1865, s. 4.

Note.

As to the construction of a settling tank by a local authority in the course of a sewer running across private land, see the case cited below.⁸
If a sewer or drain interferes with a river, canal, dock, etc., another may in certain cases be substituted for it under sect. 331.
House drains may be disconnected from one sewer and connected with another under sect. 24.
The space occupied by a sewer reverts to the owner of the soil on the discontinuance of the sewer.⁹

Alteration of sewers and drains.

Sect. 19. Every local authority shall cause the sewers belonging to them to be constructed covered ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Cleansing sewers.
P.H., s. 46.
S.U. 1865, s. 4.

Note.

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Construction of Sewers.

Care should be taken to construct the sewers and drains of sufficient capacity or dimensions for the conveyance of the ordinary quantity of sewage of the district; for if new sewers be not so constructed, the local authorities will be liable for damage occasioned by the overflow or bursting, other persons not being bound to incur expense in protecting their premises from the consequences of negligent construction.
A jury found a local authority guilty of negligence (a) in the construction of a sewer, and (b) in not obviating its dangerous condition after notice thereof, but judgment was entered for the defendants in the following circumstances: Notices to provide water-closets for certain houses, and to connect them to a sewer, were served under sects. 23 and 36. The owners by agreement executed work which included a 6-inch sewer, half above and half below ground, across the plaintiff's garden. She fell over this sewer and sustained injuries. It was held by Atkin, J., and the Court of Appeal that, though the work was done in accordance with the directions of the inspector of nuisances, the local authority were not liable in damages under the present section, because there had been no report from their surveyor, and in any case they could themselves have constructed the sewer above ground.¹ In the court below Atkin, J., said that the present section did not impose a duty "to see that the sewer is not a source of danger to the occupants of the land through which it passes," so long as they keep it "as a sewer for the efficient conveyance of the drainage."²
A local authority are not liable for the negligent construction of a highway drain by a previous highway authority.³
As to damage caused to a building by subsidence in consequence of the laying of a sewer without negligence, see the case cited below.⁴

Negligence.

(7) *Roberts v. Rose* (1865), L. R. 1 Ex. 82; 35 L. J. Ex. 62; 12 Jur. (N.S.) 78; 13 L. T. 471; 4 H. & C. 103.
(8) *Hinckley R.D.C. v. Cockerill*, ante, p. 54.
(9) *Rolls v. Southwark Vestry*, ante, p. 53.
(1) *Morris v. Mynyddislwyn U.D.C.*, L. R. 1917, 2 K. B. 309; 86 L. J. K. B. 1094; 117 L. T. 108; 81 J. P. 261; 15 L. G. R. 453.
(2) 81 J. P., at p. 263, col. i.
(3) *Nash v. Rochford R.D.C.*, cited in Note to s. 308 (under heading "Action for damages"), post.
(4) *Place v. Rawtenstall Cpn.*, post, p. 111.

Sect. 19, n.
Vis major.

The fact that a sewer had been connected with and caused to discharge its contents into one of smaller bore was treated as evidence of negligence in the construction of a sewer, and sufficient to make a local authority liable, although the damage complained of arose at the time of an extraordinary storm. But apparently they would not be held liable in case a sewer had stood for some years and then burst, for this would be evidence to show that it had been constructed sufficiently well so far as ordinary seasons were concerned, and the board are not bound to provide against extraordinary storms or other occurrences which they could not reasonably be expected to foresee.⁵ If an accident were caused by such a storm, it would be the act of God, and the authority would not be responsible.⁶

Non-feasance.

An urban authority were held by *Romer, J.*, not to be liable for the flooding of certain cellars by sewage which had been driven up the drains in consequence of a heavy storm having blocked the sewer; for it was found that the flooding did not arise from any want of repair of the sewer, but from the increase in the number of buildings draining into it having been too great for the size of the sewer;⁷ and on an appeal from a county court, the Divisional Court held that another urban authority were not liable for damage caused by their neglect to provide certain improvements (namely, storm-water overflow pipes) which had been necessitated by the connection by the plaintiff of a sewer from a new street with the existing sewer of the local authority in accordance with plans approved by them.⁸

Where, however, a colonial local authority took over a watercourse and made it into a public drain, and from time to time improved it, and made, or gave permission for making, a number of subsidiary channels for running off storm-water and sewage into the main drain, they were held by the Privy Council to be liable for the flooding of low-lying premises by water and sewage, although the work done when they originally took over the drain was sufficient at the time, and although the premises had often been flooded before they took it over. Lord Macnaghten, in delivering judgment, said that "it is not enough to prove that the work done in 1889 was sufficient at the time. It is insufficient now; it has been insufficient for some time past. The mischief grows as building increases, as new roads are made, new channels formed, and more and more of the surface becomes impervious to rainfall."⁹

This was followed by the House of Lords in a Scottish case,¹⁰ in which sewage was discharged into an open burn some distance above the plaintiff's market garden. The burn passed through the garden, and was used for irrigating it. An Act of 1900 authorised the extension of the city so as to include the garden, and prohibited the drainage authority from diminishing the flow of, or deepening or otherwise interfering with, the burn where it passed through the garden. Since 1900 no more sewage had been discharged into the burn, but owing to building and road-making operations the water found its way into the burn more rapidly. In 1906 the water authority obtained from the road authority permission to carry water pipes through the culvert, which took the burn under the highway. This pipe, which was laid "to the satisfaction of the borough engineer," substantially diminished the space in the culvert through which the burn flowed. In 1909, after heavy rainfalls, the garden was twice damaged by water, which flowed on to it from the highway (a) because the culvert did not let the water through fast enough and the water so dammed back flowed on to the highway, and (b) because the highway drains "regurgitated" on to the highway. It was held that the owner of the garden was entitled to damages, and Lord Shaw said: "It being established that the town sewage has thus been emptied upon

(5) *Brown v. Sargent* (1858), 1 F. & F. 112.

(6) *Blyth v. Birmingham Water Co.* (1856), 11 Ex. 781; 25 L. J. Ex. 212; 2 Jur. (N.S.) 333; *Whitehouse v. Birmingham Canal Co.* (1857), 27 L. J. Ex. 25; *Ruck v. Williams* (1858), 3 H. & N. 308; 27 L. J. Ex. 357; *Alston v. Grant* (1854), 3 E. & B. 128; 23 L. J. Q. B. 163; 18 Jur. 332; also *Nichols v. Marsland* (1876, C. A.), L. R. 2 Ex. D. 1; 46 L. J. Ex. 174; 35 L. T. 725, which was the case of a lake which burst its embankments after heavy rains; and *Box v. Jubb* (1879), L. R. 4 Ex. D. 76; 48 L. J. Ex. 417; 41 L. T. 97, which related to an overflow from a reservoir. *Nichols v. Marsland* was distinguished in *Greenock Cpn. v. Caledonian Ry. Co.* (cited in Note to s. 164, under heading

"liability for accidents," *post*), where the natural course of a stream had been altered. Further as to the doctrine of "vis major," see Note to s. 308 (under heading "action for damages"), *post*.

(7) *Stretton's Derby Brewery Co. v. Derby Cpn.*, L. R. 1894, 1 Ch. 431; 63 L. J. Ch. 135; 69 L. T. 791. See also *Robinson v. Workington Cpn.*, cited in Note to s. 299, *post*.

(8) *Jones v. Barking U.D.C.*, 1898 Loc. Gov. Chron. 308.

(9) *Hawthorn Cpn. v. Kannuluik*, L. R. 1906 A. C. 105; 75 L. J. P. C. 7; 93 L. T. 644.

(10) *Hanley v. Edinburgh City Cpn.*, L. R. 1913 A. C. 488; 1913 S. C. (H. L.) 27; 50 Sc. L. R. 521; 77 J. P. 233; 11 L. G. R. 766.

the [plaintiff's] lands by reason of the insufficiency of the culvert, which, instead of accommodating it, dammed it back, there would seem to me to be little doubt that the [plaintiff] is entitled to recover damages in respect of the loss caused by this nuisance, and that at common law. . . . There is nothing peculiar by the law of Scotland in the situation of a corporation in this regard. . . . The effect of [the corresponding provisions of the Scottish Act] appears to be to impose an imperative obligation upon the [defendants] to make and maintain all such sewers and drains as shall be necessary for effectually draining any portion of the borough. It is not a case, my lords, of giving the city an option. Parliament has imposed this obligation, and in order to secure that it should be fulfilled without impediment it gives a statutory power to carry, if needful, sewers and drains through any enclosed or other lands on making compensation. In short, the word of Parliament is a word of command, and the command is to make the drainage effective, with a power compulsorily to achieve that object. . . . It is of no use distinguishing between the capacities of the corporation as drainage authority and road authority, for they were both; and they should have managed both their powers as drainage authority and road authority in such a way as to produce accommodation for the sewage burn."

It is to be noticed, however, that in both the two last-cited cases the local authority did execute work to the conduits in question, so that they were not really cases of "non-feasance"; moreover, no enactment similar to sect. 299 of the present Act appears to have been applicable.

In a case relating to a defective sewer grid,¹¹ the non-feasance doctrine was applied.

Commissioners of sewers who used for the purposes of their sewage an ancient tidal ditch, which ran along the side of a highway, were held to be under no obligation to fence it for the protection of passengers on the highway.¹²

Maintenance and Cleansing of Sewers.

If a local authority neglect to *maintain* existing sewers, any one aggrieved may lay a complaint before the Minister of Health under sect. 299, or, in a rural district, the parish council may lay a complaint before the county council under the Local Government Act, 1894;¹³ and the Minister of Health or the county council, as the case may be, may appoint a person to perform the duty of the defaulting council, or in the case of the Minister of Health may enforce the performance of the duty by mandamus, or in the case of the county council may take such duty upon themselves.

To a writ of mandamus to repair a sewer, the local authority returned that the sewer was so insufficient and badly constructed that they could not mend it, and that if it were made complete it would create a nuisance. At the trial the jury found for the defendants, and on a motion for a new trial the court held that the return was good.¹⁴

In a case in which application was made for a similar writ requiring a metropolitan authority (against whom no such special remedy was given as that which is prescribed by sect. 299 above mentioned) to maintain and repair a line of 4-inch and 6-inch pipes on private property, which only drained premises within the same curtilage, but had formerly taken the drainage of adjoining premises so as to have become a "sewer," the writ was refused on the ground that it was only issued in cases of public importance, and not as a remedy for a small private grievance, for which there was another equally convenient remedy. *Per* Bruce, J., the prosecutors had such a personal right in the matter as would entitle them to maintain an action for a mandamus, or at all events for a declaration of right.¹⁵

"It cannot be doubted that, where a statute provides for the performance by certain persons of a particular duty, and someone belonging to a class of persons for whose benefit and protection the statute imposes the duty is injured by failure to perform it, *prima facie*, and if there be nothing to the contrary, an action by the person so injured will lie against the person who has so failed to perform the duty."¹⁶

Sect. 19, n.

Non-feasance
—continued.

Fencing
existing
open sewer.

Default of
council.

(11) *Papworth v. Battersea B.C.*, cited in Note to s. 308 (under heading "action for damages"), *post*.

(12) *Cornwell v. Metropolitan Comrs. of Sewers* (1855), 10 Ex. 771; 3 C. L. R. 417.

(13) See s. 16, *post*, Vol. II., p. 2018.

(14) *Reg. v. Epsom Guardians* (1863), 8 L. T. 383; 11 W. R. 593; cited by Lord Coleridge, C.J., in *Meader v. West Cowes*

Loc. Bd., ante, p. 39.

(15) *Reg. v. Camberwell Vestry* (1897), 66 L. J. Q. B. 337; 45 W. R. 335; 61 J. P. 217.

(16) *Per* McCardie, J., in *Rex (Whittome) v. Marshland Smeeth Comrs.* (1919), 17 L. G. R., at pp. 691, 692, quoting Vaughan Williams, L.J., in *Groves v. Wimborne*, L. R. 1898, Q. B., at p. 415. Further as to the *Marshland Smeeth Case*, see *post*, p. 201.

Sect. 19, n.
Default of
council—*cont.*

Thus, an action may be maintained against a local authority for not keeping a sewer properly cleansed, whereby it becomes choked up, and the overflow of foul water runs into private premises.¹⁷ So also, in the case of an open sewer, the occupiers of a dwelling-house and agricultural land recovered damages in respect of a nuisance on their land caused by the neglect of the local authority to cleanse the sewer, as they had formerly done at certain intervals, whereby large quantities of sewage were brought on their land. In affirming the judgment of Mathew, J., in this case in the Court of Appeal, Lord Halsbury, L.C., distinguished the cases in which it had been held that the only remedy of a person aggrieved by the neglect of the local authority to provide sewers in pursuance of sect. 15 was by complaint under sect. 299, on the ground that the maintenance of a sewer, mentioned in the latter section, was not the same thing as that which it was the duty of the local authority to do under the present section, and that sect. 299 did not touch this duty to use proper diligence in the management of existing sewers.¹

This duty under the present section, however, only has reference to the condition of the sewer itself, and does not apply to the condition of a river into which the sewage is discharged so as to cause a nuisance by reason of the pollution of the water.²

They are, however, only bound to use reasonable care to keep the sewers vested in them by the Act properly cleansed and emptied, and are not bound so to keep such sewers in all events. Where a jury found that the existence of a sewer causing damage, and the existence of an obstruction thereto, were unknown to the defendants (a vestry constituted under the Metropolis Management Act, 1855), and that the sewer, but not the obstruction, might have become known to them by exercise of reasonable care, the defendants were held not liable, except in the absence of reasonable care. *Per Brett, J.*: "Where a statute imposes a duty on a public body in any but clear and unambiguous terms, such a duty is not absolute, but only a duty to use reasonable care."³

A sewer had been laid by a building society, and a surface-water drain had been connected with it with mortar (in accordance with the then common practice). It was found that rats had worked through the mortar and made a large hole under the road, which eventually gave way and caused an accident. Lord Alverstone, C.J., held, on further consideration, that as there was nothing to warn the defendants that there was anything wrong with the sewer, and as they could not by the exercise of any reasonable care have discovered the existence of the hole under the road before the accident happened, they were not liable to an action.⁴

Premises about sixty years old and badly kept had a bank of soil against the outside wall, which was without a damp-course. For at least seventeen years sewage-polluted water had been repeatedly found inside the premises. An old sewer, nine inches in diameter, which drained thirteen cottages and a school, was of ample size and good gradient, and passed near the premises. When tested by the plaintiffs by the water test, its contents escaped into their premises. When tested by the defendants by the smoke and coloured-water test at considerably more than the ordinary flow, there was no such escape. Geologists testified that the soil was gravel resting on clay; that subterranean water filtered through the gravel and ran along the clay; and that this water was polluted by old closed cesspools. In 1896 the school board paid the then owner of the premises £25 for damages alleged to have been caused by the escape of sewage from this sewer, and the district council relaid part of the sewer. In 1907 the lessee of the premises issued a writ against the district council, who paid £200 into court. This was taken out by the lessee's trustee in bankruptcy. The present owner then commenced this action. The council again relaid part of the sewer, but defended the action in order to stop this litigation. In giving judgment for the defendants Scrutton, J., said: "I hold that the plaintiff must prove, first, that the sewage issued from the defendants' sewer on other land; secondly, through

(17) *Meek v. Whitechapel Bd. of Works* (1860), 2 F. & F. 144.

(1) *Baron v. Portslade U.D.C.*, L. R. 1900, 2 Q. B. 588; 69 L. J. Q. B. 899; 83 L. T. 363; 64 J. P. 675. See also *A.G. v. Lewes Cpn.*, ante, p. 69; *Brawn v. Brownhills U.D.C.*, ante, p. 78.

(2) *Earl of Harrington v. Derby Cpn.*, ante, p. 75.

(3) *Hammond v. St. Pancras Vestry* (1874),

L. R. 9 C. P. 316; 43 J. J. C. P. 157; 30 L. T. 296, distinguished in *Price v. South Metropolitan Gas Co.* (1895), 65 L. J. Q. B. 126, on the ground that in the latter case the defendants were a trading company and not a public body. See also *Morrison v. Sheffield Cpn.*, cited in Note to s. 161, post.

(4) *Lambert v. Lowestoft Cpn.* (K. B. D.), L. R. 1901, 1 Q. B. 590; 70 L. J. K. B. 333; 84 L. T. 237; 65 J. P. 326.

the defendants' negligence; thirdly, doing damage to her reversion. . . . The defendants or their predecessors, in their desire to avoid litigation and abstain from damaging their neighbours, have built up a strong *prima facie* case against themselves. . . . The plaintiff relied very strongly upon the two payments and the two relayings as cogent evidence in her favour. . . . The sewer was of ample size and good gradient. There was no evidence that it had ever been obstructed, and even in heavy rainfall the height of flow was under two inches in the 9-inch pipe, which the gradient soon removed. I am, however, satisfied that, when tested by water pressure, that is, when it was stopped up and then filled with water so as to give the pressure of a head of water, it leaked, and some of the leakage would find its way to the plaintiff's premises. I am also satisfied that the test by water pressure was one to which it was never exposed in working, as the gradient was such that, in the absence of obstruction, the water ran away freely at a low level. I think the witnesses for the defendants were right in saying that the test by water pressure was an excessive and unfair test. The Public Health Act, 1907, section 45, expressly excepts it from those tests which the local authority may apply to the drains of buildings, and the local Act for Acton cited to me contains the same clause. The test by smoke and coloured water applied by the defendants, at considerably more than ordinary flow in the sewer, showed no trace of escape into the plaintiff's premises; and I find that in any use of the sewer which may reasonably be expected its contents do not leak into the plaintiff's premises."⁵

Sect. 19, n.
Default of
council—cont.

The court upheld a conviction and order against a chemical company, on a complaint made under the Nuisances Removal Act, 1855, where sulphuretted hydrogen, arising from the mixture in the local authority's sewer of two liquids flowing through separate drains from the company's premises, escaped into the street and houses, although the sewer had never been flushed or cleansed, and the gas could not have escaped but for its defective construction or trapping.⁶

The fact that a sewer is laid in private land, and even under private houses, does not relieve the local authority from their responsibility for its condition,⁷ though they may be able in certain circumstances to apply the provisions of sect. 19 of the Public Health Acts Amendment Act, 1890,⁸ to it as a "single private drain."

In an action for negligence in the maintenance and ventilation of their sewers a local authority were ordered to pay £125 4s. 6d. damages for the following expenses to which the plaintiff, who had not been ill himself, had been put in connection with the illnesses of his wife and two daughters, one of whom was over twenty-one, and both of whom performed domestic services for him: (a) Doctor's fees; (b) nurses' fees; (c) maintenance of nurses; (d) extra nourishment, medicine, and medical requisites; (e) expenses of patients' travelling and board and lodging during absences from home on doctor's orders; (f) the plaintiff's own expenses of travelling and board and lodging incurred in consequence of such doctor's orders; and (g) extra domestic expenses necessitated by loss of the services of his daughters.⁹

Measure of
damages.

In a case where the plaintiff claimed damages for injury through alleged leakage from a sewer to a house which was sixty years old, badly kept, and without a damp-course, but in which judgment was entered for the defendants,¹⁰ Scrutton, J., said: "Had I found negligence I could have given the plaintiff nothing like the damages she claimed. Her original claim was for repairs to the whole house. At the trial this was reduced to the cost of rebuilding the bakehouse and underpinning certain adjoining walls; but no allowance was made for the old and dilapidated condition of the premises, or for any damage done by underground water or defective roofs."

Sect. 305 enables the local authority to obtain access to their sewers through private lands. In a case in which a sewer was made under a local Act, and the right of access was only implied, it was held that the local authority were not entitled to compensation from a railway company that had rendered the exercise of such right less convenient.¹¹

Access to
sewers.

(5) *Savill v. Acton U.D.C.* (1913), 4 Glen's Loc. Gov. Case Law 156-158. See also *infra* (10).

(6) *St. Helen's Chemical Co. v. St. Helen's Cpn.* (1876), L. R. 1 Ex. D. 196; 45 L. J. M. C. 150; 34 L. T. 397.

(7) See *Travis v. Uttley*, ante, p. 34.

(8) *Post*, Part I., Div. II.

(9) *Russell v. Royston U.D.C.*, post, p. 84.

(10) *Savill v. Acton U.D.C.*, supra.

(11) *Birkenhead Cpn. v. London and North Western Ry. Co.* (1885), L. R. 15 Q. B. D. 572; 55 L. J. Q. B. 48; 50 J. P. 84. See further as to this case, ante, p. 60, and, as to building over sewers, post, p. 92.

Sect. 19, n.**Access to
sewers—cont.**

A local authority purchased certain land for sewage disposal works, and obtained a grant of a right to lay under land retained by the vendor certain specified sewers, and to "from time to time repair maintain renew and improve the same." In accordance with this easement, they laid an iron outfall sewer five feet under the land retained. The vendor's successor in title granted to the defendants a right to deposit refuse on this land. In and after 1910 refuse was deposited over the sewer, and the medical officer of the local authority from time to time inspected the deposit, but not with reference to the sewer underneath. In 1911 the defendants covenanted not to deposit specified materials on the land, and to prevent the tip causing any nuisance, again without reference to the sewer. It was held in 1914 (1) that the action of the medical officer did not amount to "acquiescence" in the raising of the soil over the sewer; (2) that there had been no "laches"; and (3) that though the plaintiffs had made arrangements under which they would shortly discontinue the use of this sewer, they were entitled to a mandatory injunction directing the defendants to remove what they had deposited over the sewer, but this was suspended for six months with liberty to apply for a further suspension.¹²

**Supply of
water for
flushing
sewers.**

If water is supplied to the district by a company and the Waterworks Clauses Act, 1847,¹³ is incorporated with the company's Act, that Act provides for the supply of water by the company for cleansing sewers, drains, and for other public purposes.

*Ventilation of Sewers.***Negligence.**

Damages under Lord Campbell's Act were recovered at a trial before Collins, J., for negligence in the ventilation of a sewer whereby the deceased died of blood-poisoning from sewer-gas. The local authority had shifted a sewer-ventilating shaft from a tree and had run it up inside a stack of chimneys in a dwelling-house by a verbal arrangement with the then owner. They had subsequently ordered the aperture of the shaft in the sewer to be closed, but this was alleged not to have been properly carried out.¹

In 1909 an urban district council, after complaints as to smells from a manhole cover, erected a sewer-ventilating shaft, 19 feet 2 inches high and 136 feet from the nearest corner of the plaintiff's dwelling-house. In 1912, after various members of the plaintiff's family had been suffering from sore throats and one from diphtheria, he complained to the council. Various drains, etc., were tested without disclosing anything to cause ill-health. Sanitary officers of the council then reported to the clerk to the council that "the cause of the complaint would be to a large extent, if not entirely, removed" if the position of the shaft were changed.² Its position was changed, and the smells and illnesses ceased. At the trial of the action for damages for negligence in the maintenance and ventilation of the sewers, experts for the plaintiff attributed the illnesses to sewer gas from the shaft which rendered throats susceptible to diphtheria germs, and said that the shaft was too low, having regard to its proximity to the dwelling-houses, and in a bad position as to emanation of smells, having regard to the level of the sewers and to a discharge near the shaft of hot soapy water from a laundry. Experts for the defendants stated that, though gases perceptible to the nose might reach the plaintiff's house, they could not cause illness, and that any injury would be "psychological rather than physical," and also that the position of the shaft was correct. The jury found (1) that the plaintiff's family had been injured in health by emanations from the shaft; (2) that the injurious emanations were due either to the shaft being improperly erected or to the sewer being so kept as to be a nuisance injurious to health or to a combination of these causes; and (3) that the defendants had acted without reasonable care. It was held that the plaintiff was entitled to judgment.³

**Map of system
of sewerage.
P.H., s. 41.**

Sect. 20. An urban authority may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

(12) *Thurrock Grays and Tilbury Joint Sewerage Bd. v. Goldsmith, Ltd.* (Ch. D.), 79 J. P. 17; 5 Glen's Loc. Gov. Case Law 173.

(13) See s. 37, *post*, Vol. II., p. 1222.

(1) *Smith v. King's Norton R.D.C.* (1896), 60 J. P. 520.

(2) Further as to this report, see *post*,

Vol. II., p. 2093.

(3) *Russell v. Royston U.D.C.* (1913, Phillimore, J., at Hertford Assizes), 4 Glen's Loc. Gov. Case Law 155, 156. See further as to this case, *ante*, p. 83; and see also *Fulham Vestry v. London C.C.*, *post*, p. 180; *Barnett v. Woolwich B.C.*, *post*, Vol. II., p. 1979.

Note.

The Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883,⁴ which incorporates certain provisions of the Waterworks Clauses Act, 1847, with reference to interference by mining operations with the works of the undertakers, enacts that, as regards sanitary works (which include works of sewerage), existing at the passing of the Act, the local authority shall cause the survey and map referred to in sect. 19 of the Waterworks Clauses Act, 1847,⁵ to be made within twelve months after the passing of the Act.

Sect. 20, n.
Map of sewers.

Sect. 21. The owner or occupier of any premises within the district of a local authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications.

Power of owners and occupiers within district to drain into sewers of local authority. San. 1866, s. 8; and see P.H., s. 47.

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds, and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section.

Note.

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Right to drain into Sewers.

The present section gives the owners and occupiers of premises within the district the right to drain into the public sewers. It does not limit the right to sewers within any particular distance of the premises, but on the other hand it gives no express power to the owners or occupiers to carry their connecting drains through any land which is not in their own ownership or occupation. They might no doubt break up the surface of a highway passing over their own land for the purpose of making the connections, so far as they could do so without creating an obstruction to the traffic or other nuisance;⁶ but they would not be entitled to break up the soil, or enter upon the private lands, of other persons for that purpose.⁷ Thus, in a case where a line of pipes was a "sewer" by virtue of the definition in sect. 4, and was vested in the district council, though it had not been made by them, and the council, at the request of the owner of neighbouring premises, laid a drain from those premises to the sewer without the consent of the owner of the soil in which the sewer was, and through which the connecting drain was made, the drain was removed by the owner of the soil; and a county court action for trespass brought against him by the owner of the premises from which the drain was laid was dismissed, and its dismissal was confirmed by the Divisional Court on appeal.⁸

Laying connecting drain.

In another case the owner of a house already drained into a sewer in the adjoining street was also the owner of the subsoil of the street. The sewer and the street were vested in the urban district council. The owner was held by Joyce, J., not to be entitled, either by virtue of such ownership or by virtue of his rights under the present section, to break up the footway of the street in order to construct an inspection chamber in connection with fresh drains proposed to be laid for the drainage of the same house. The learned judge accordingly remarked that he saw no reason why the owner should not put in an inspection chamber when he was making his drain, but granted an injunction restraining him from breaking up the street, except for the purpose of exercising his rights under the section. The owner appealed; and after it had appeared

(4) See s. 3 (3), set out in Note to s. 16, ante, p. 64.
(5) *Post*, Vol. II., p. 1213.
(6) *A.G. v. Cambridge Gas Consumers Co.* (1868), L. R. 4 Ch. 71; 38 L. J. Ch. 94; 19 L. T. 508.
(7) See *Russell v. Knight and McDonald*, Times, May 9th, 1894, p. 3, col. vi.; and *Bathard v. London Comrs. of Sewers* (1889), 54 J. P. 135.
(8) *Wood v. Ealing Tenants, Ltd.*, L. R. 1907, 2 K. B. 390; 76 L. J. K. B. 764; 71 J. P. 456; 5 L. G. R. 1055.

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that the suggestion on the part of the council was that the inspection chamber should be placed in the backyard and the drain carried under the house, Vaughan Williams, L.J., intimated that, if the respondents were not prepared to go as far as to contend that they could compel the appellant to make the drain pass under the house, whether that would be insanitary or not, he was not prepared to hold that the injunction had been properly granted. The case was then adjourned with a view to a settlement, and the parties eventually agreed that the appeal should stand dismissed on terms which were not disclosed.⁴

Causing drain to empty into sewer.

It was held by Byrne, J., that "causing drains to empty into the sewer" includes joining drains to an old drain which already empties into a sewer.⁵ As to causing a drain to "communicate with" a sewer, see the case cited below.⁶

Premises without the district.

The right given by the present section does not enable the owner of premises to drain them into a sewer belonging to the council of a district which does not include such premises, even though the sewer may be within the same district as the premises; but the following section allows him to do so on making terms with the council to whom the sewer belongs.

Insufficiency of sewer.

Where a corporation were entitled under a local Act to discharge the sewage of their borough into the intercepting sewer of a sewers board constituted under that Act, and the borough was extended, the fact that the sewer might not be large enough to take the sewage of the extended area was held by the House of Lords to be no answer to a claim for a declaration of the right to discharge such sewage into the sewer, though it might afford ground for giving the board time to make provision for receiving it.⁷

Surveyor's certificate.

After sect. 38 of the Public Health Acts Amendment Act, 1907,⁸ has been put in force in any district or contributory place, no previously existing drain is to be connected with a sewer of the council until the surveyor has certified that it may be properly made to communicate with the sewer.

Connections made by local authority.

Sect. 18 of the Public Health Acts Amendment Act, 1890,⁹ where Part III. of that Act has been adopted, enables the owner or occupier of any premises to have the communication between his drain and the sewer made, and, when made, altered or enlarged, by the local authority on payment of the cost.

Drainage of Trade Effluent.

Manufacturers' refuse.

Charles, J., held that the right given by the present section included the right to drain into the sewers trade effluents from a manufactory, provided that they were not injurious to health;¹⁰ but according to the opinion of Lord Halsbury, L.C., in the same case on appeal,¹¹ and of Moulton and Buckley, L.JJ., in a subsequent case,¹² the only right of draining effluents from manufactories into the sewers is that given by sect. 7 of the Rivers Pollution Prevention Act, 1876,¹³ which (subject to certain limitations) requires the local authority to give facilities to manufacturers for carrying liquids from their factories or manufacturing processes into the sewers.

Byrne, J., granted an injunction to restrain an urban district council from disconnecting a drain which discharged the trade effluent from a woollen and worsted manufactory into a sewer with which it had been connected some years previously by the workmen of the then local board;¹⁴ and the Court of Appeal affirmed his judgment on the ground that the proviso to sect. 7 of the Act of 1876, did not apply, and the plaintiffs had the right to continue to discharge their effluent into the sewer.¹⁵

But this case was distinguished in one in which manufacturers applied to a county court judge for an order requiring the district council to give them, for the first time, facilities for enabling the applicants to carry the refuse liquids from their manufactories into the council's sewers, the decision of Charles, J., being

(4) *A.G. v. Ashby* (1907, Ch. D.), 71 J. P. 387; 5 L. G. R. 1192; (1908, C. A.), 72 J. P. 449; 6 L. G. R. 1058.

(5) *Graham v. Wroughton*, *post*, p. 88; see L. R. 1901, 2 Ch., at p. 454.

(6) *East Barnet Valley U.D.C. v. Stallard*, *post*, p. 89.

(7) *Hove Cpn. v. Brighton, etc., Sewers Bd.* (1904), 68 J. P. 565; 2 L. G. R. 1255.

(8) *Post*, Part I., Div. III.

(9) *Post*, Part I., Div. II.

(10) *Peebles v. Oswaldtwistle U.D.C.*, *post*,

Vol. II., p. 1748.

(11) *Pasmore v. Oswaldtwistle U.D.C.*, *ante*, p. 60.

(12) *Brook, Ltd. v. Meltham U.D.C.*, *post*, p. 87.

(13) *Post*, Vol. II., p. 1748.

(14) *Eastwood Bros., Ltd. v. Honley U.D.C.*, L. R. 1900, 1 Ch. 781; 69 L. J. Ch. 470; 83 L. T. 22; 64 J. P. 792.

(15) *Ibid.*, L. R. 1901, 1 Ch. 645; 70 L. J. Ch. 313; 84 L. T. 169.

expressly dissented from by Moulton and Buckley, L.JJ.,¹⁶ whose judgment was approved by the House of Lords.¹⁷

The Public Health Acts Amendment Act, 1890, where it has been adopted, provides against the discharge of injurious matter into the sewers.¹⁸

A drain from certain cottages and malt kilns had been connected with the sewer of a local board with their consent. On a drain from a third kiln being connected with it, the board, being under an interim injunction restraining them from connecting new drains with the sewer or increasing the volume of the existing sewers, stopped up the drain so as to cut off, not only the flow of refuse from the third kiln, but also from the other two and the cottages. Bacon, V.-C., describing the proceeding of the board as wanton and outrageous, granted a perpetual injunction to restrain the board from continuing the obstruction, and an inquiry as to damages.¹⁹

Nuisance at Outfall of Sewer.

An owner is entitled to connect his drains with the sewer of a local authority under the present section, although the sewer may discharge into a stream in contravention of sect. 17, that being a matter for which the local authority only are responsible. An injunction was therefore granted to restrain a local board from disconnecting a drain which had been connected with a sewer discharging into a stream.²⁰ Proceedings were subsequently taken by the local board under the Rivers Pollution Prevention Act, 1876, when it was held that, as the owners had connected the drain without the express sanction of the board, they were liable to such proceedings, but the granting of an injunction under the Act being discretionary, an injunction that had been granted by the county court judge was discharged by the Divisional Court, and its discharge was upheld by the Court of Appeal on the ground that the mere act of sending sewage into the sewer was by itself not wrongful, that when sent there the board could have dealt with it, and they had not shown that they could not have done so without unreasonable expense.²¹

Having regard to the rights given by the present section, Cozens-Hardy, J., refused an injunction to restrain a local authority from allowing fresh connections to be made with a sewer which discharged on private property and there created a nuisance, though he granted one to restrain the authority from "directing or authorising" sewage to be so discharged.²²

In an Irish case the court quashed an order of justices by which the owner and occupier of a house was ordered to disconnect the soil pipe of his water-closet from the sewer in the street, a nuisance having arisen from the sewer, which was only intended to carry off surface water, being unsuited to receive and carry off faecal matter. The sanitary authority had arranged for carting away sewage weekly, and there was no other sewer into which the house sewage could be discharged.²³

In a case in which no notice had been given to the local authority under the present section, Darling, J., expressed the opinion that a house owner was not entitled under that section to empty all kinds of filth into a small roadside drain and leave the local authority to deal with it as best they could; but Channell, J., merely declined to say that there would have been a right to empty slop and scullery water into the surface water drain, if such notice had been given. The owner's predecessor in title, who built the houses, had not made cesspools for them in accordance with his deposited plans, but after he had obtained permission from the corporation to turn the rain water from the houses into a surface water drain at the side of the highway, the slop and scullery water was turned into it as well, and ran thence into an open ditch, where it created a nuisance. It was held that although the surface water drain was for some purposes a "sewer," an

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Injurious matter.

Stopping of drain.

Discharge into stream.

Nuisance on private land.

Discharge into surface water sewer.

(16) *Brook, Ltd. v. Meltham U.D.C.* (1908, C. A.), L. R. 1908, 2 K. B. 780; 77 L. J. K. B. 1079; 99 L. T. 641; 72 J. P. 409; 6 L. G. R. 997.

(17) *Ibid.*, L. R. 1909 A. C. 438; 78 L. J. K. B. 719; 100 L. T. 818; 73 J. P. 353; 7 L. G. R. 770.

(18) See ss. 16, 17, *post*, Part I., Div. II.

(19) *Clegg v. Castleford Loc. Bd.*, 1874 W. N. 229. See also the *Hinckley Case*, *ante*, p. 54.

(20) *Ainley v. Kirkheaton Loc. Bd.* (1891), 60 L. J. Ch. 734; 55 J. P. 230.

(21) *Kirkheaton Loc. Bd. v. Ainley & Co.*, L. R. 1892, 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 57 J. P. 36; distinguished in *Waltham Holy Cross U.D.C. v. Lea Conservancy Bd.*, *post*, Vol. II., p. 1745.

(22) *Brown v. Dunstable Cpn.*, *ante*, p. 75.

(23) *Molloy v. Gray* (1889), 24 L. R. Ir. 258.

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order to abate the nuisance was properly made against the house owner under sect. 96.⁶

This case was followed in one in which an injunction was granted against persons who had recently connected water-closets with the drains by which they and others had for many years conveyed slop water and surface water into a covered conduit (originally a highway drain) running along the highway and discharging into a disused quarry, restraining them from continuing to discharge the water-closet drainage through the conduit upon the plaintiff's land.⁷

*Notice of Intention to connect Drain.***Disconnection of drain.**

An urban sanitary authority were held by Cave, J., to have been entitled to cut off the connection between the drains of a house and their sewer, because the owner had not given the two days' notice of his intention to make the drains, which the bye-laws required, the learned judge holding that the surveyor had no power to waive or dispense with such notice: the surveyor had not expressed his satisfaction with the drains, and the owner had disregarded a notice to uncover the drains for the surveyor's inspection.⁸

Regulations as to notice.

In a case above cited,⁹ Stirling, J., said that it was not made out that the communication between the drain and the sewer had been made in contravention of the present section, because it was not shown that the local authority prescribed any notice, or required any particular notice, to be given of the intention of the party to make the communication in question. This, however, has been in effect overruled by the Court of Appeal,¹⁰ and a person intending to exercise the right conferred by the present section should therefore give some notice of his intention to the local authority before he proceeds to exercise the right, even though the local authority may not, by their regulations or otherwise, have expressly required any notice to be given to them.

*Regulations as to Communications.***Communications.**

It is to be noticed that these regulations can only relate to the mode in which the communications are to be made between the drains and the sewers. They cannot extend to the mode of draining the premises or the construction of the drains between the premises and the place of communication with the sewer; these matters can only be dealt with by bye-laws made under sect. 157 of the present Act. But *per* Stirling, L.J.,¹¹ "In my opinion the local authority may define by regulation the particular sewer with which the communication is to be made."

Use of sewers by owners and occupiers without district. San. 1866, s. 9. P.H., s. 48.

Sect. 22. The owner or occupier of any premises without the district of a local authority may cause any sewer or drain from such premises to communicate with any sewer of the local authority on such terms and conditions as may be agreed on between such owner or occupier and such local authority, or as in case of dispute may be settled, at the option of the owner or occupier, by a court of summary jurisdiction or by arbitration in manner provided by this Act.

Note.*Right to drain into Sewers.***Right of drainage.**

Sect. 21 gives the owner or occupier the right to drain into the sewers belonging to the local authority of his own district without any restriction except as regards the mode of making the communications between his drains and the sewers. The present section also gives a right of drainage into the sewers to which it applies, and does not give the local authority the power to refuse to permit such drainage at their absolute discretion, if the owner or occupier is willing to abide by such terms and conditions as may be settled in the manner provided by the Act.¹²

Unlike sect. 21, the present section gives a right to connect "sewers" as well as "drains" with the sewers of the local authority.

(6) *Kinson Pottery Co. v. Poole Cpn.*, L. R. 1899, 2 Q. B. 41; 68 L. J. Q. B. 819; 81 L. T. 24; 63 J. P. 580. See also *ante*, p. 39, as to this case.

(7) *Graham v. Wroughton* (C. A.), L. R. 1901, 2 Ch. 451; 70 L. J. Ch. 673; 84 L. T. 744; 65 J. P. 401, 710.

(8) *Baxter v. Bedford Cpn.* (1885, Ch. D.), 1 T. L. R. 424.

(9) *Ainley v. Kirkheaton Loc. Bd.*, *ante*, p. 87.

(10) In *Graham v. Wroughton*, *supra*.

(11) In *Wilkinson v. Llandaff and Dinas Powis R.D.C.*, *ante*, p. 39.

(12) *Newington Loc. Bd. v. Cottingham Loc. Bd.* (1879), L. R. 12 Ch. D. 725; 48 L. J. Ch. 226; 40 L. T. 58; *East Barnet Valley U.D.C. v. Stallard*, *post*, p. 89.

Swinfen Eady, J., in a judgment affirmed by the Court of Appeal,² held that the connection of some new water-closets with the house drain leading to a sewer was not causing a new drain "to communicate with the sewer," and did not apply the dictum of Byrne, J.,³ as to the meaning of causing a drain "to empty into a sewer."

The last clause of sect. 14 provides for the continuance of the rights of persons to use a sewer after the purchase of the sewer by the local authority; and sect. 337 contains a saving with reference to cases where yearly sums are payable under the Local Government Act, 1858, Amendment Act, 1861,⁴ for the drainage of premises without the district. See also section 28 of the present Act as to connection of sewers of adjoining districts.

Malins, V.-C., considered that the sewer of the "local authority" meant sewer of the local authority of the adjoining district; and that where the sewers of one local authority were connected with the sewers of another, an owner of premises not within the district of either authority was only required to make terms with the authority to whose sewers he intended to connect his drains.⁵

Where premises without the district have been connected with a sewer of the local authority, by such authority themselves or with their permission, terms cannot be imposed under the present section upon the owner for the time being of the premises when he has enlarged some of the buildings and added some baths and water-closets, and pulled down other buildings, the total amount of drainage not being increased. Putting up the new closets, and taking advantage of the connection already made between the owner's drains and the local authority's sewer, was not causing the drains to communicate with the sewer, so as to come within the present section.⁶

An agreement made with the owner of an estate under the corresponding section of the Public Health Act, 1848,⁷ was held to be binding upon the corporation who were the successors of the local board of health that had entered into the agreement, even though it related to the sewage from houses which did not exist at the date of the agreement, and although the corporation were, under a new Act of Parliament, prevented from passing the sewage into the river Thames.⁸

A motion for a declaration that the plaintiff was entitled under the present section to connect the proposed sewers from his building estate with a sewer of a local authority, was refused as premature where no houses had yet been built or drains constructed on the estate, and it was uncertain what would be the consequences of making the connection.⁹

Sect. 23. Where any house within the district of a local authority is without a drain sufficient for effectual drainage, the local authority shall by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size, and to be laid at such level, and with such fall as on the report of their surveyor may appear to them to be necessary.

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.

Provided that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers of such houses to cause their

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Right of drainage—
continued.

Indirect communication with sewers.

Houses subsequently erected.

Power of local authority to enforce drainage of undrained houses.
P.H., s. 49.
San. 1866, s. 10.

(2) *East Barnet Valley U.D.C. v. Stallard*, *infra*.

101 L. T. 642; 74 J. P. 9; 8 L. G. R. 192.

(7) 11 & 12 Vict. c. 63, s. 48.

(8) *New Windsor Cpn. v. Stovell* (1884), L. R. 27 Ch. D. 665; 54 L. J. Ch. 113; 51 L. T. 626.

(3) In *Graham v. Wroughton*, *ante*, p. 86.

(9) *Faber v. Gosforth U.D.C.* (1903), 88 L. T. 549; 67 J. P. 197; 1 L. G. R. 579.

(4) 24 & 25 Vict. c. 61, s. 8.

(5) *Newington Loc. Bd. v. Cottingham Loc. Bd.*, *ante*, p. 88.

(6) *East Barnet U.D.C. v. Stallard* (C. A.), L. R. 1909, 2 Ch. 555; 79 L. J. Ch. 103;

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drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.

Note.

Existing houses in-sufficiently drained.

The present section applies to all houses for the time being in existence, and sect. 25 contains a corresponding provision with respect to new and rebuilt houses; but neither of these sections gives the council such power, with respect to the details of the construction of drains, as they may acquire in relation to the drains of modern buildings by making bye-laws under sect. 157. The present section can only be put in force where there is no drain and a drain is needed, or where the existing drain is not in fact sufficient to drain the house effectually, and it has been held that under it the local authority can only require the construction of a "drain," not a "sewer."¹

"House" and "drain" are defined in sect. 4.

The present section and sect. 24 apply to rural as well as urban districts; but sect. 25 is only applicable to the latter.

The "sufficiency" of an existing house drain for the purpose mentioned in the section has reference to the drain itself, and not to the sewer into which it may discharge.²

"Effectual" drainage.

Where drainage commissioners were required by statute to "effectually drain" their district, McCardie, J., said:³ "This imposition of an imperative obligation is not unjust to the defendants. They are not required to do anything which is legally or physically impossible. They are not required to take absurd or unreasonable steps. They are not bound to provide for events of a wholly extraordinary character, *lex non cogit ad impossibilia aut inutilia*. But they are bound, in my opinion, to take all such steps as are required to provide for the drainage of the district in a reasonably effectual manner."⁴

Distance from site of house.

A sewer ran through the gardens of houses fronting street A. The local authority required the owner of a house fronting street B. to convert a privy into a water-closet and connect a new drain to this sewer. A space of 4ft. 3ins. separated the privy and washhouse or kitchen from the house. The privy and washhouse were within 100 feet of the sewer. The house was not within 100 feet of the sewer. The owner of the house also owned houses in street A, but subject to leases. The owner did not tell the local authority of the leases. The requirements were not complied with, and the work was executed by the local authority. The local authority took summary proceedings for the recovery of the expenses. The justices found that the sewer was within 100 feet of the "premises to be drained," and ordered that the expenses be paid. It was held (1) that, as the privy and washhouse were used as a part of the house, the sewer was within 100 feet of the "site of such house" within the present section, and (2) that, as the owner had not proved that he would in fact be treated as a trespasser if he entered the gardens to lay a connecting drain, he had not discharged the onus of proof that he had no right of entry. The order of the justices was accordingly upheld.⁵

Trespass.

Report of surveyor.

A sanitary inspector has "no right in law to give directions" as to the level, etc., of drains constructed in pursuance of the present section.⁶

Drainage works as "repairs."

The construction of drainage works under the section of the Public Health Act, 1848,⁷ which corresponded to the present section, was held not to come within a provision in a will for keeping the premises in good and absolute repair.⁸

Construction of cesspools.

If a house is not within 100 feet of a sewer and has no cesspool, the local authority can, under the present section, require the construction of a drain

(1) See *per* Swinfen-Eady, L.J., in *Morris v. Mynyddislwyn U.D.C.*, *ante*, pp. 62, 79. On this point, see 81 J. P., at p. 264, col. i., bottom.

(2) See *St. Marylebone Vestry v. Viret* (1865), 19 C. B. (N.S.) 424; 34 L. J. M. C. 214; 11 Jur. (N.S.) 907; 12 L. T. 673. See also sect. 24.

(3) In *Rex v. Marshland Smeeth Comrs.*, 17 L. G. R., at p. 688. See also *ante*, p. 81, and *post*, p. 201, as to this case.

(4) See also *Boynton v. Ancholme Comrs.*, *ante*, p. 56.

(5) *Meyrick v. Pembroke Cpn.* (1912, K. B. D.), 76 J. P. 365; 10 L. G. R. 710.

(6) *Morris v. Mynyddislwyn U.D.C.*, *ante*, pp. 62, 79, and *supra*. On this point, see 80 J. P., at p. 265, col. ii.

(7) 11 & 12 Vict. c. 63, s. 49.

(8) *Harrison v. Barney*, L. R. 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180.

and a cesspool and recover the cost of constructing both if the owner fails to comply.⁹

Where sect. 49 of the Public Health Acts Amendment Act, 1907,¹⁰ is in force the provision of proper sinks, drains, or other necessary appliances may be required.

Sects. 36 and 37 of the Act of 1907,¹⁰ where they are in force, prohibit the use of rainwater pipes for carrying off the drainage of water-closets or privies, or for the ventilation of drains.

The last clause of the present section will be available in cases where, for the purpose of enforcing the drainage of a row of undrained houses, it would be less expensive to construct a new sewer than to drain the houses into an existing sewer. That clause does not (like the provisions with respect to "combined drainage" in the Metropolis Management Act, 1855¹¹) declare that the "new sewer" made in lieu of separate drains shall be treated as a "drain," and not as a "sewer" vested in the council.

Where a sanitary authority constructed a drain by arrangement with the owner, but did the work negligently, they were liable for damage thereby occasioned to his building.¹² See also the Note to sect. 19.

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Sink, &c.

Use of rain-water pipes.

Combined drain.

Negligence in executing work.

Sect. 24. Where any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable, the local authority may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or drains provided by them under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act.

Power of local authority to require houses to be drained into new sewers.

Note.

Sect. 18 enables a district council to discontinue existing sewers, and to substitute new sewers for old. The present section is not confined to cases in which they have already acted upon sect. 18, but where they have acted on that section, the present section shows that the alteration of house drains which is thereby rendered necessary must be carried out at the expense of the district and is not recoverable from the owner or occupier of the house. On this point the Local Government Board made the following observations:—"It has happened that a local authority, after enforcing the communication of house drains with a particular system of sewers, have found it necessary to change their general scheme of sewerage, and to construct fresh sewers; but the Sanitary Acts contained no provision under which the local authority could compel fresh junctions, or defray their cost. Sect. 24 now empowers a local authority, under these circumstances, to close any such existing drains, on condition of providing others equally effectual and communicating with the new system."¹³

A person who had a right by deed to the use of a drain passing through another person's land, with the right to repair the drain, was held to be entitled, not only under the terms of the deed, but also independently of such deed, to relay the drain at a lower level than that at which it had been originally constructed for the purpose of adapting it to the level of a new sewer which the local board of the district had substituted for the outfall of the original drain.¹⁴

The Metropolis Management Act, 1855, contains a somewhat similar provision for the discontinuance of sewers and the substitution of others,¹⁵ and also a provision similar to sect. 23 for requiring the owner of a house which is not drained by a "sufficient" drain to construct a new drain.¹⁶ In a case where both the sewer into which the defendant's house drained and the house drain itself were found to be improperly constructed and "insufficient," and the vestry constructed a new sewer in place of the old, it was held by the Court of Appeal

Alteration of drains.

Right to alter level of drain.

Insufficiency of drain.

(9) *Chelmsford Cpn. v. Bradridge*, L. R. 1916, 2 K. B. 38; 85 L. J. K. B. 1024; 114 L. T. 1175; 80 J. P. 318; 14 L. G. R. 670. See also *Simmonds v. Malling R.D.C.*, cited in Note to s. 157 (under heading "drainage of buildings"), *post*.

(10) *Post*, Part I., Div. III.

(11) See *ante*, p. 34.

(12) *Hall v. Batley Cpn.* (1877), 47 L. J. Q. B. 148; 37 L. T. 710; 48 J. P. 151.

(13) L. G. Bd. Circular, Sept. 30th, 1875.

(14) *Finlinson v. Porter* (1875), L. R. 10 Q. B. 188; 44 L. J. Q. B. 56; 32 L. T. 391.

(15) 18 & 19 Vict. c. 120, s. 69.

(16) *Ibid.*, s. 73.

Sect. 24, n.

that they could not require the defendant to pay the cost of making a new house drain to the new sewer.⁵

Penalty on building house without drains in urban district.
P.H., s. 49.

Sect. 25. It shall not be lawful in any urban district newly to erect any house or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor may appear to the urban authority to be necessary for the effectual drainage of such house; and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance, then shall empty into such covered cesspool or other place, not being under any house, as the urban authority direct.

Any person who causes any house to be erected or rebuilt or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

Note.

Undrained houses.

As to insufficiently drained existing houses, see sect. 23 and Note.

Separate surface water drain.

The present section and sect. 26 do not apply to rural district councils, unless they are invested with urban powers.

In deciding what is "necessary for the effectual drainage of such house," under the present section, the urban district council can only consider what is necessary for the particular house in question, and cannot require separate drains to be made for sewage and surface water on the ground that such separate drains would be to the interest of the district.¹

In the last-cited case, however, Ridley, J., suggested² that such separate drainage might be required by bye-law, and the Local Government Board frequently sanctioned bye-laws containing such requirements.

Combined drainage.

The council can, however, under the present section, disapprove of a combined drain being made for two or more houses.³

Site of cesspool.

Where a local authority disapproved of plans on the ground that the situation of a building and its cesspool for slop water would be so close to the seashore that the cesspool would be filled by the sea water at spring tides, the Divisional Court directed the approval of the plans, Lord Alverstone, C.J., saying that the present section did not give the authority any right to refuse to approve the plans "because they do not like the site of the cesspool."⁴

Penalty on unauthorised building over sewers and under streets in urban district.
P.H., s. 47.

Sect. 26. Any person who in any urban district, without the written consent of the urban authority,—

(1.) Causes any building to be newly erected over any sewer of the urban authority; or,

(2.) Causes any vault arch or cellar to be newly built or constructed under the carriageway of any street,

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority; and the urban authority may cause any building vault arch or cellar erected or constructed in contravention of this section to be altered pulled down or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender.

Note.

Building over Sewer.

Rural districts.

The present section does not apply in a rural district, unless it has been put in force by the Local Government Board or Minister of Health under sect. 276 of the present Act, or sect. 25 (5) of the Local Government Act, 1894, and, even

(5) *St. Martin-in-the-Fields Vestry v. Ward*, L. R. 1897, 1 Q. B. 40; 66 L. J. Q. B. 97; 75 L. T. 349; 61 J. P. 19. See also *Glasgow Cpn. v. M'Omish*, L. R. 1898 A. C. 432, *post*, p. 117.

(1) See *Matthews v. Strachan* (K. B. D.), L. R. 1901, 2 K. B. 540; 70 L. J. K. B. 806;

85 L. T. 68; 65 J. P. 789.

(2) *Ibid.*, L. R. 1901, 2 K. B., at p. 548.

(3) *Woodford U.D.C. v. Stark* (1902), 86 L. T. 685; 66 J. P. 290, 536.

(4) *Rex (Cornell) v. Bexhill Cpn.*, cited in Note to s. 158, *post*.

when it has been so put in force in such a district, it would not enable the rural district council to prevent building over a sewer situated in the rural district but belonging to the local authority of another district, nor would it enable the local authority of another district (urban or rural) to prevent building over one of its own sewers situated in a rural district. That authority would have to rely upon its general power to protect its property from unauthorised interference, as to which see the Note to sect. 13.¹⁰

Sect. 26, n.

With regard to the meaning of the terms "building," "new building," "erection of a new building," see the Note to sect. 157 of the present Act.

Meaning of terms.

A house built on the surface of the ground without foundations in the ordinary sense, that is, without any digging out of the soil, would be a building within the section. Lord Campbell, C.J.,¹ said that all houses stand on a foundation within the Metropolis Management Act.

Where the Public Health Acts Amendment Act, 1890, is adopted, rooms over privies, cesspools, or ashpits are not to be used for habitation.²

Rooms over privies, etc.

A mandatory injunction to compel the owner to remove a building erected over a sewer was refused where there was an agreement (apparently made between the local board and a former owner of the land) that he would not set up buildings "so as to prevent reasonable access to the sewer," there having been no substantial interference with the board's access to the sewer.³ This case was distinguished in an action brought to restrain the building of houses over a conduit or pipe by which water had for upwards of 100 years been supplied to the house of the plaintiff, North, J., being of opinion that the plaintiff had a right to the easement, and as incident thereto a right to go on the land and repair the pipe when necessary. Repairing would, if not impossible, be much more inconvenient and expensive than before, and the plaintiff ought not to be deprived of his ancient right. An injunction was granted accordingly.⁴

Access to sewer.

A metropolitan police magistrate was held to have properly dismissed, under sect. 1 of the Probation of Offenders Act, 1907,⁵ a summons for "placing an obstruction or encroachment over" a sewer without the licence of the London County Council,⁶ where the sewer was twenty-six feet below the surface and the timber stack of the defendants could be removed from its position over the sewer in a few hours, though he had rightly held that there had been a contravention of the statute.⁷

Trivial offence.

A person agreed to purchase a dwelling-house and grounds, with notice that by reason of existing covenants other buildings could not be erected on the premises without the consent of adjoining owners. The conditions of sale provided that any error or omission which might be discovered in the particulars of sale affecting the nature of the property should not annul the sale, but should be matter for compensation. The fact that a sewer of the local authority, of which the vendor was ignorant, ran under the garden at some distance from the house, did not, under the circumstances, allow the purchaser to refuse to complete the purchase on the ground that the vendor could not make a good title, but was only matter for compensation.⁸ On the other hand, land, under which a culvert for water ran, was sold as suitable for building with a condition that, the property being open for inspection, the purchaser should be deemed to buy with full knowledge of the actual quantities and condition thereof. The vendor had no knowledge of and consequently did not disclose the existence of the culvert, and in the opinion of the court no reasonable inspection would have enabled the purchaser to discover it. It was held that the vendor had not shown a good title.⁹

Sale of land with sewer under it.

Constructing Vault under Street.

This provision is not confined to streets repairable by the inhabitants at large, or even to public streets, and is therefore applicable to private streets.

Private streets.

(10) *Ante*, pp. 53, 54.

(1) *Poplar Dist. Bd. of Works v. Knight* (1858), 28 L. J. M. C. 37; E. B. & E. 408; 5 Jur. (N.S.) 196.

(2) See s. 24, *post*, Part I., Div. II.

(3) *Sandgate Loc. Bd. v. Leney* (1883), L. R. 25 Ch. D. 183 n.

(4) *Goodhart v. Hyett* (1883), L. R. 25 Ch. D. 182; 53 L. J. Ch. 219; 50 L. T. 95; 48 J. P. 293.

(5) Quoted in Note to s. 251 (under heading "procedure"), *post*.

(6) Under 25 & 26 Vict. c. 102, s. 68.

(7) *Vigers Bros. v. London C.C.*, L. R. 1919, 1 K. B. 56; 88 L. J. K. B. 256; 120 L. T. 29; 83 J. P. 6; 16 L. G. R. 898.

(8) *In re Brewer and Hankin's Contract* (1899, C. A.), 80 L. T. 127.

(9) *In re Puckett and Smith's Contract* (C. A.), L. R. 1902, 2 Ch. 258; 71 L. J. Ch. 666; 87 L. T. 189. See also *Molyneux v. Hawtrey* (C. A.), L. R. 1903, 2 K. B. 487; 72 L. J. K. B. 873; 89 L. T. 350; and *Pemsel and Wilson v. Tucker*, L. R. 1907, 2 Ch. 191; 76 L. J. Ch. 621; 97 L. T. 86; 71 J. P. 547.

Sect. 26, n.
Repair of
vaults, &c.

As to the repair of vaults, arches, and cellars under streets, and openings into them in the surface of the street, see sect. 35 of the Public Health Acts Amendment Act, 1890.¹⁰

See also sect. 73 of the Towns Improvement Clauses Act, 1847,¹¹ with respect to the doors and coverings of vaults and cellars, and sect. 28 of the Towns Police Clauses Act, 1847,¹² with respect to leaving vaults and cellars open so as to be dangerous to passengers.

Sect. 30 of the Public Health Acts Amendment Act, 1907,¹³ contains further provisions with respect to guarding dangerous places near streets.

Removal of Building, Vault, etc.

Bona fides
of local
authority.

A company, who were owners of the soil on both sides of a street vested in the urban district council, constructed a brick arched tunnel with side-walls and a concrete floor under the street without the consent of the council, and embedded electric mains in the floor. On the council serving notice on them under the present section, the company broke away the top of the brick arch and filled in the tunnel with ballast and concrete. In an action by the council a declaration was made that they were entitled to alter, pull down or otherwise deal with the tunnel as they might think fit, but in a cross-action by the company an injunction was granted to restrain the council from cutting, disturbing, or injuring the company's pipes or mains or electrical wires under the street or otherwise trespassing on their land under the street. It appeared that the council themselves supplied electricity, while the company got theirs from a rival source, and Farwell, J., said, "it is not necessary to consider the question of *bona fides*, but a serious question may hereafter arise as to how far a local authority is entitled to use its powers against rival traders." ¹⁴

(10) *Post*, Part I., Div. II.

(11) *Post*, Vol. II., p. 1625.

(12) See clause [28], *post*, Vol. II., p. 1649.

(13) *Post*, Part I., Div. III.

(14) *Walker U.D.C. v. Wigham & Co.*; and
Wigham & Co. v. Walker U.D.C. (1902),
85 L. T. 579; 66 J. P. 51, 152.

DISPOSAL OF SEWAGE.

Sect. 27. For the purpose of receiving storing disinfecting distributing or otherwise disposing of sewage any local authority may—

(1.) Construct any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the local authority) without their district; and

(2.) Contract for the use of purchase or take on lease any land buildings engines materials or apparatus either within or without their district; and

(3.) Contract to supply for any period not exceeding twenty-five years any person with sewage, and as to the execution and costs of works either within or without their district for the purposes of such supply :

Provided that no nuisance be created in the exercise of any of the powers given by this section.

Note.

“ The moment that the sewage has gone through the drain into the sewer, the property in it is taken out of the landowner who made the sewer, and is vested in the local authority, and the landowner has lost all control over it.”¹

This does not, however, prevent a person on whose land a nuisance is caused by sewage wrongfully discharged upon it by the owner of a house through a surface water sewer of the local authority, from taking proceedings against the owner of the house.²

The present section enables the local authority to provide for the storage of sewage. The provision of the Public Health Act, 1848,³ with respect to the construction of reservoirs and works for clearing, cleansing, and emptying the sewers, had been held not to give that power.⁴

Where sludge boats are used by local authorities for disposing of sewage, they may, in certain circumstances, be liable to compulsory pilotage under the Pilotage Act, 1913.⁵

The provisions as to sewage works without the district will be found in sects. 32-34. See also sect. 285, with regard to the execution of works by a district council in an adjoining district.

With respect to the making of contracts by district councils, see sects. 173 and 174 of the present Act, *post*.

Powers for the purchase of land or taking land on lease, by agreement or compulsorily, are given by sects. 175 and 176 of the present Act, *post*.

A plaintiff alleged in his statement of claim that the defendants, a local authority, who were under the present Act promoting a scheme for the erection of works for a system of sewage disposal, and intending to take a part of his land, situate eligibly for building purposes, were exercising the powers given by the statute not in a *bonâ fide* manner, but for the collateral object of injuring the condition of his land, and diminishing its value, so that they might have less money to pay for compensation when a further part of the land would be required for a *bonâ fide* sewage scheme; and he claimed an injunction to restrain the defendants from proceeding further with their scheme. The defendants demurred, on the ground that the relief sought by the plaintiff could be obtained by him in any inquiry which might be instituted by the Local Government Board, when a provisional order should be applied for to confirm the scheme; and the demurrer was allowed.⁶

The Tithe Act, 1878, enacts that “ in all cases where land charged with rentcharge in lieu of tithes is taken for any of the following purposes : that is to say, the building of any church, chapel, or other place of public worship; the making of any cemetery or other place of burial; the erection of any school under the Elementary Education Act; the erection of any town hall, court of assize, gaol, lunatic asylum, hospital, or any other building used for public purposes, or

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Powers for disposing of sewage.
P.H., s. 46.
L.G., s. 30.
S.U. 1865, s. 14.
S.U. 1867, ss. 3, 4.

Ownership of sewage.

Storage of sewage.

Sludge boats.

Works without the district.

Contracts.

Power to purchase land.

Redemption of tithe rentcharge.

(1) *Per Lord Esher in Ferrand v. Hallas Land and Building Co.*, L. R. 1893, 2 Q. B. 140. See also *Ainley v. Kirkheaton Loc. Bd.* and *Kirkheaton Loc. Bd. v. Ainley & Co.*, *ante*, p. 87.

(2) See *Graham v. Wroughton*, *ante*, p. 89.

(3) 11 & 12 Vict. c. 63, s. 46.

(4) *Sutton v. Norwich Cpn.* (1858), 27 L. J. Ch. 739; 6 W. R. 432.

(5) 2 & 3 Geo. V. c. 31, s. 12.

(6) *Barker v. King's Norton R.S.A.*, 1882 W. N. 14; see also the Note to s. 297 of the present Act, *post*.

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Redemption
of tithe rent-
charge—*cont.*

in the carrying out of any improvements under the Artizans' Dwellings Act, 1875 [now Part I. of the Housing of the Working Classes Act, 1890⁷]; the formation of any *sewage farm* under the provisions of the Sanitary Acts, or the construction of any *sewers*, or *sewage works*, or any gas or water works; or the enlarging and improving of the premises or buildings occupied or used for any of the above-mentioned purposes—the person or persons proposing to carry out the above-mentioned works, buildings, or improvements shall, as soon as the said person or persons are in possession of the land, and before the land is applied to any of the purposes aforesaid, apply to [the Minister of Agriculture and Fisheries⁸] to order the redemption of the rentcharge for a sum of money equal to twenty-five times the amount thereof; and the redemption money, with the expenses incident to the redemption, shall be paid to the [Minister] within a time to be fixed by such order, or within any enlarged time the [Minister] may appoint, and the [Minister] shall apply such redemption money in the manner provided by the said Acts"⁹ (that is, the Tithe Acts, 1836 to 1860).

As to the compulsory redemption of tithe rentcharges now, see the Tithe Act, 1918, the Instructions of the Board of Agriculture and Fisheries thereunder, and the Circular of the Local Government Board thereon.¹⁰

Nuisance.

The nuisance clauses of the present Act (sect. 91 and following sections), were held not to apply to the sewage works of a local authority situate outside their district.¹¹

As to nuisances from refuse tips, see the Note to sect. 42, *post*.

An injunction was granted restraining a local authority from causing a nuisance by smells from their sewage farm.¹² And in an Irish case,¹³ the plaintiff obtained a mandatory injunction ordering a local authority to abate a nuisance from a septic tank at their sewage disposal works. The local authority made no structural alteration to the tank, but appointed a permanent and more efficient caretaker at the works. Wylie, J., appointed an independent engineer to report upon the steps necessary to abate the nuisance. But in an English case,¹⁴ Stirling, J., said: "It has been established that down to the commencement of the action and for some time subsequently the defendants adopted a mode of dealing with the sewage which was likely to cause a nuisance. I cannot doubt that in the autumn of 1894 the smells caused considerable discomfort to some people in the enjoyment of their houses, but the evidence shows that during the years of 1895 and 1896 this interference with comfort has been much less serious than in 1894, and from whatever source it may have proceeded it has not during those years exceeded that which is frequently caused by some very ordinary agricultural operations." The action was accordingly dismissed, but without costs, on the ground that the nuisance was "temporary and occasional only."

Damages were awarded to the owner of a factory whose turbine became clogged with sewage from the defendants' sewers, these discharging into the stream from which he obtained the water for driving the turbine.¹⁵

Negligent
exercise of
powers.

In constructing a sewer care must be taken that it does not create a nuisance by its discharge. A local authority as a body are liable to an action for negligently carrying out works within their powers, so as to cause an injury to any person,¹⁶—and it seems that an injury so caused could not be compensated as "damages sustained by reason of the exercise of the powers of the Act."¹⁷ But the sanitary authority may be restrained by injunction from proceeding with the works. It is a general rule that in the exercise of their statutory powers they must observe the maxim, "*Sic utere tuo ut alienum non lædas.*"¹⁸ Though as regards nuisances resulting from the exercise of statutory powers, it is to be observed that if a statute authorises particular operations which create a nuisance without providing means

(7) See ss. 2-28, *post*, Part II., Div. III.

(8) Formerly the Tithe Commissioners.

(9) 41 & 42 Vict. c. 42, s. 1.

(10) 8 & 9 Geo. V. c. 54; 17 L. G. R. (Orders), 87, 74.

(11) *Reg. v. Parlby*, *post*, p. 180.

(12) *Bainbridge v. Chertsey U.D.C.* (1914, Ch. D.), 84 L. J. Ch. 626; 79 J. P. 134; 13 L. G. R. 935. See also *A.G. v. Dorchester Cpn.*, cited in Note to s. 299 (under heading "Order of Local Government Board"), *post*.

(13) *Russell v. Mitchelstown U.D.C.* (1911, K. B. D., Ir.), 2 Glen's Loc. Gov. Case Law 217.

(14) *A.G. v. Preston Cpn.* (1896), 13 T. L. R. 14.

(15) *James v. Bedwelty U.D.C.* (1916, Ch. D.), 80 J. P. Jo. 192. See also the cases cited in the Note to s. 17, *ante*.

(16) See *Touzeau v. Slough U.D.C.*, cited in Note to s. 308 (under heading "Action for Damages"), *post*.

(17) *Southampton and Itchin Floating Bridge Co. v. Southampton Loc. Bd.* (1858), 8 E. & B. 801; 28 L. J. Q. B. 41; 4 Jur. (N.S.) 1298.

(18) *A.G. v. Acton Loc. Bd.*, *post*, p. 99; *London, Brighton, and South Coast Ry. Co. v. Truman*, *post*, p. 182.

for removing it, a remedy must be sought from Parliament, for otherwise it is irremediable.¹⁹

It was held that a sanitary authority were not justified in attempting to carry out a project for sewerage which by the description contained in the notices would cause a nuisance; and that the Court would by injunction restrain them from doing so even at the commencement of their operations.²⁰

In laying down a scheme of drainage, care should be taken that the sewage will not be conveyed into any stream or canal, so as to pollute the water which other persons have a right to enjoy, as the local authority cannot, under cover of their legislative powers, make a sewer which will have the effect of polluting the water, and they may be restrained by injunction from permitting the discharge of sewage into the stream: see sect. 17 and Note.

On a *prima facie* case being made out that certain works for the deodorisation of night soil for agricultural purposes constituted a nuisance, and that the effluvium arising therefrom was injurious to the health of the plaintiff and his family, who resided in the immediate neighbourhood of the works, an injunction was granted till the hearing of the cause restraining the defendant from bringing the night soil to the premises for the purpose of manufacture.²¹ And an injunction was granted to restrain a corporation from continuing to commit a nuisance caused by the deposit of unpurified sewage matter on land near the plaintiff's estate, though it was contended that the mud in the tidal estuary into which the sewage effluent was discharged had always smelt offensively, and that the effluent was rendered innocuous by the salt water, the judge being of opinion on the evidence that when there was a very large amount of sewage, there was no time for precipitation in the tanks at the sewage works, that some of the suspended solids were carried away from them, and that the nuisance was caused thereby.²²

And an action lies for the *unreasonable* as distinguished from the *negligent* exercise of statutory powers.²³

If sewage percolates from a cesspool through the soil into a well on an adjoining property, the Court will restrain the use of the cesspool in such a manner as to pollute the water in the well.²⁴ It was held, on the ground that there is no property in water percolating underground in natural undefined channels,²⁵ that the owner of a deep well, polluted by sewage which another person had poured into a deep well on his own land, whence it found its way into the water supplying the first-mentioned well, had no legal cause of action, and the last-cited case²⁴ was distinguished because it was not a case dealing with underground water.²⁶ Kay, J., however, in a subsequent case, declined to follow this decision, referring to the maxim, "*Sic utere tuo ut alienum non lædas*," and considering that it was inconsistent with authorities of great weight, and not only of considerable antiquity, but also of higher tribunals;²⁷ and shortly afterwards the decision in question was reversed by the Court of Appeal.²⁸

The owner of a paper-mill used a stream of water which flowed from a cavern in his lands; and the owner of a lead mine on a higher elevation, after washing his lead ore, discharged the refuse into a drain which found its way through rocky ground into the cavern, and thus polluted the stream of water used by the owner of the paper-mill. It was held that the latter had a right of action, for the owner on the higher ground was bound to see that his refuse water did no injury to his neighbour.²⁹

The local authority are required by the Rivers Pollution Prevention Act, 1876,³⁰ to give facilities for enabling manufacturers to drain their refuse liquids into the sewers, provided that nothing injurious is so discharged.

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Negligent
exercise of
powers—cont.Unreasonable
exercise of
powers.

Percolation.

Facilities for
manu-
facturers.

(19) See *ante*, pp. 69, 70, and *Blantyre v. Clyde Navigation Trustees*, 1871 W. N. 69.

(20) *Lamacraft v. St. Thomas R.S.A.* (1880), 42 L. T. 365; 44 J. P. 441.

(21) *Knight v. Gardner* (1869), 19 L. T. 673. See also *Cardell v. New Quay Loc. Bd.* (1875), 39 J. P. 742.

(22) *Lord Gifford v. Chichester Cpn.* (1901), Loc. Gov. Chron. 699.

(23) See *Roberts v. Charing Cross Ry. Co.*, cited in Note to s. 308 (under heading "Action for Damages"), *post*.

(24) *Womersley v. Church* (1867), 17 L. T. 190.

(25) *Chasemore v. Richards*, cited in Note to s. 332 (under heading "Abstraction of

Water Percolating Underground"), *post*.

(26) *Ballard v. Tomlinson* (1884), L. R. 26 Ch. D. 194; 50 L. T. 230; subsequently reversed, see *infra*.

(27) *Snow v. Whitehead* (1884), L. R. 27 Ch. D. 588; 53 L. J. Ch. 885; 51 L. T. 253. See also *Tenant v. Goldwin*, *post*, p. 128.

(28) *Ballard v. Tomlinson* (1885, C. A.), L. R. 29 Ch. D. 115; 54 L. J. Ch. 454; 52 L. T. 942; 49 J. P. 692.

(29) *Hodgkinson v. Ennor* (1863), 4 B. & S. 229; 32 L. J. Q. B. 231; 9 Jur. (N.S.) 1152; 8 L. T. 451.

(30) See s. 7, *post*, Vol. II., p. 1748.

Sect. 27, n.

Further, with regard to the mode of construction of works by local authorities, and the restraining of nuisances caused thereby, see the Notes to sects. 15 and 17.

Compensation to workman at sewage farm.

A person employed by a local authority to remove obstructions from a sewage ejector pump was appointed and paid by them, but his appointment and wages were subject to the approval of the Local Government Board. He died from typhoid fever. It was held (1) that he was a "servant" of the local authority, but (2) that his death was not caused by an "accident" within the Act of 1906.³¹

Rating.

As to the rating of sewage disposal works, see the Note to sect. 29 of the present Act, and, as to the rating of "sewers," the Note to sect. 13.

Power to agree for communication of sewers with sewers of adjoining district.

P.H. 1872, s. 32.

Sect. 28. The local authority of any district may, by agreement with the local authority of any adjoining district, and with the sanction of the [Minister of Health], cause their sewers to communicate with the sewers of such last-mentioned authority, in such manner, and on such terms and subject to such conditions as may be agreed on between the local authorities, or, in case of dispute, may be settled by the [Minister of Health]:

Provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into their sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority.

Note.**Construction of works outside district.**

The local authority may themselves construct sewage works beyond the limits of their district under sect. 27, subject to the provisions of sects. 32-34; and under sect. 285 they may combine with an adjoining local authority for the execution of works.

Powers of Ministry of Health.

The powers of the Minister of Health under the present section are (according to an opinion expressed by the Local Government Board) only exerciseable where there has been a preliminary agreement by the two authorities concerned that there shall in fact be communication between their sewers, and it is therefore essential that this agreement be entered into before the Minister can act; but it rests with the authorities themselves to determine whether the agreement shall further provide as to the manner, terms, and conditions in, on, and subject to which the communication shall be made, or whether such provision shall be subsequently settled by the Minister.

Effect of statute on existing agreement.

An agreement was made in 1874, in pursuance of the provision of the Public Health Act, 1872,³² which corresponded to the present section, between the N. Local Board and the C. Local Board, the former board undertaking to make a certain sewer and allow the sewers of the latter to drain into it, and the latter board covenanting not to permit the sewage of any other places or districts to pass into their sewers so as to be discharged into the sewer of the N. Board. At that time owners of premises beyond the limits of a sanitary district had the same right as they now have under sect. 22 of the present Act, to drain their premises into the sewer of such district upon terms. On the drainage of premises beyond the limits of the C. District being discharged into the sewers of the C. Board, the N. Board brought an action for an injunction against the C. Board and the owner of the premises. Each of the defendants demurred, and Malins, V.-C., allowed the demurrers, holding that the agreement must be taken to have been made subject to the provisions of the law then existing, and that the covenant was overruled by sect. 22 of the present Act.³³

Right to connect sewers.

In the absence, however, of express enactment or agreement a local authority has no greater right to send the sewage of its district, directly or indirectly, into the sewers of the local authority of an adjoining district, than one landowner has to send drainage from his land on to the land or into the drains of his neighbour; and if the one local authority has acquired a right to send some sewage into the sewers of a neighbouring local authority, the burden cannot be increased without the consent of the latter authority. An injunction was therefore granted by Fry, J., restraining the Acton Local Board from *authorising or directing* sewage from their district to flow into the Stamford Brook, or otherwise indirectly or directly

(31) 6 Edw. VII. c. 58, ss. 1 (1), 13: *Finlay v. Tullamore Guardians* (C. A., Ir.), 1914 Ir. K. B. 233; 48 Ir. L. T. 110; 5 Glen's Loc. Gov. Case Law 127.

(32) 35 & 36 Vict. c. 79, s. 32.

(33) *Newington Loc. Bd. v. Cottingham Loc. Bd.* (1879), L. R. 12 Ch. D. 725; 48 L. J. Ch. 226; 40 L. T. 58.

into the metropolitan main drainage system; but an injunction to restrain them from *permitting* sewage so to flow, or to compel them to stop up existing drains communicating with such sewers, was refused, not only by reason of the serious inconvenience which it would cause to the district, but also by reason of the power of the board to stop up a drain, which they had once authorised, being doubtful.³⁴ The Acton Urban District Council were subsequently required by a special Act of 1898 to pay to the London County Council in respect of the use of the metropolitan main drainage system a sum based on the rateable value of the property in their district which drained into that system other than buildings which had acquired a prescriptive right to drain into the Stamford Brook sewer; and it was then held by the Court of Appeal that, as no building could, after the passing of the Metropolitan Management Act, 1855, acquire such a prescriptive right, only the buildings connected with the Stamford Brook sewer before the Act of 1855 could be treated as within the exception.³⁵

Sect. 28, n.

The same Court subsequently held that neither the Metropolitan Board of Works (now the London County Council) nor a metropolitan vestry (now a borough council) could make a valid contract with a local authority outside the metropolis (now the County of London) to receive into the metropolitan sewers sewage from outside the metropolis; and they therefore made a declaration to that effect with liberty to the plaintiffs to apply at the end of twelve months (as an immediate injunction would have given rise to a nuisance) for an injunction to enforce their right to exclude the defendants' sewage from their sewers.³⁶ And where such an invalid contract had been made, the Court held that the doctrine of estoppel did not apply, on the ground that a public body with limited powers conferred by statute could not exceed those powers.³⁷

Where builders sent the drainage of houses built by them into a sewer in the district in which the buildings were situate, and the sewer was, with the knowledge of and without objection by the sanitary authority of that district, made to discharge into a road drain under the control of the county authority which was not constructed for taking and was unfit to take sewage, and this drain conveyed the drainage into the sewers of the adjoining district, the sanitary authority of the latter district obtained an injunction against the first-mentioned sanitary authority.³⁸

Indirect connection.

Further, as to the effect of the unlawful connection of drainage pipes with sewers, see the Note to sect. 4.³⁹

Sect. 29. Any local authority may deal with any lands held by them for the purpose of receiving storing disinfecting or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding twenty-one years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.

Power to deal with land appropriated to sewage purposes. S.U. 1867, s. 5.

Note.

Land may be purchased by the local authority for the above-mentioned purposes under sects. 175 and 176. It may be mortgaged under sect. 235. Surplus land may be sold under sect. 175, or let under sect. 177.

Sewage land.

Under the Sewage Utilization Act, 1867, a local authority were formerly not empowered to let, for more than seven years, land held by them for purposes connected with sewage distribution; the period is extended by the present section to twenty-one years.

Leases.

Where a sewage farm was leased and improperly managed by the lessee, and as a result some of the plaintiff's horses died from drinking sewage-polluted water, the local authority were held liable in damages.⁴⁰

(34) *A.G. v. Acton Loc. Bd.* (1882), L. R. 22 Ch. D. 221; 52 L. J. Ch. 112; 47 L. T. 510, following *Metropolitan Bd. of Works v. London and North Western Ry. Co.*, ante, p. 59.
(35) *London C.C. v. Acton U.D.C.* (1902), 18 T. L. R. 689.
(36) *Islington Vestry v. Hornsey U.D.C.*, L. R. 1900, 1 Ch. 695; 69 L. J. Ch. 324; 82 L. T. 580. See now Part III. of the London County Council (General Powers)

Act, 1906, 6 Edw. VII. c. cl.
(37) *Ibid.*; following *Fairtitle v. Gilbert* (1787), 2 T. R. 169; *Great North-West Central Ry. Co. v. Charlebois*, L. R. 1899 A. C. 114; 68 L. J. P. C. 25; 79 L. T. 35.
(38) *Rathmines Improvement Comrs. v. S. Dublin Guardians*, 1899 Ir. Ch. 157.
(39) *Ante*, p. 35.
(40) *Hewinson v. Cheltenham R.D.C.* (Bruce, J., at Gloucester Assizes), Times, July 8th, 1903, p. 14, col. v.

Sect. 29, n.

Rateable
occupation
of sewage
works.Valuation of
sewage farm.

A drainage board let their sewage farm to an agricultural tenant, reserving the right to enter and alter the sewage carriers and other works. The tenant was admittedly the rateable occupier of the land apart from such carriers and works. On an appeal to quarter sessions by the board against a rate in which they were assessed as occupiers of the carriers and works, the sessions held that they were not so rateable, and the Court refused to interfere with their decision.⁴¹

For the purpose of valuing a sewage farm or works, the owners may be considered to be possible hypothetical tenants.⁴²

A main sewerage board, having purchased certain land, expended nearly £9,000 in constructing carriers, sluices, and other works thereon in order to convert it into a sewage farm, and then let the farm to an agricultural tenant at the annual rent of £490, which was found as a fact to be a fair rent for the advantages obtained by him under the lease, including the value of the sewage as manure. The tenant covenanted to receive and dispose of all sewage delivered at the farm by the board so as to satisfy the statutory obligations of the board as regards sewage disposal; and the terms of the lease were such that it had been decided⁴³ that he was the rateable occupier of the carriers and works, as well as of the agricultural land. The quarter sessions held that the actual sum paid under the lease by the tenant (without regard to the annual value of the advantages and facilities accruing to the board in connection with their plant) was the basis on which the sewage farm ought to be assessed, and the King's Bench Division affirmed their decision; but the Court of Appeal, and finally the House of Lords, reversed that decision, holding that, beyond that sum, the position of the board as possible hypothetical tenants, and the fact that the sewage farm afforded them a means of disposing of their sewage, and thereby enabled them to fulfil their statutory duties, ought to have been taken into consideration in order to arrive at the rateable value of the sewage farm.⁴⁴

The occupier of a sewage farm appealed to quarter sessions against the assessment of the farm. Though the sewerage board had never formulated any alternative system of treatment, he put forward figures, based on approximate estimates, showing that if the bacterial system were adopted a great saving would be effected, and contended that the cost and capital value of the existing land and works did not form a true basis of valuation for rating purposes. It was held that this evidence was relevant, but that, as the justices had dismissed the appeal on the ground that it was too uncertain for them to act upon it, the Court could not interfere with such dismissal.⁴⁵

As to the rating of "sewers," see the Note to sect. 13.

Disqualifica-
tion.

A lease granted to a councillor under the present section would not result in his disqualification.⁴⁶

Infringement
of patent.

The description of a patent process for treating sewage chemically, so that it might be applicable to agricultural and other purposes, stated that, for the purpose of precipitating the matter, the patentee preferred to employ hydrate of lime, and that the invention consisted in the use and application of a chemical agent for the purpose of precipitating the solid animal and vegetable matter contained in sewage water. A local board applied hydrate of lime for the purpose of deodorising sewage, whereby some precipitate of animal and vegetable matter was produced, which, however, they did not use as an article of value, but *bonâ fide* rejected as an article accidentally produced. It was held that there was no evidence of infringement of the patent.⁴⁷

Local Govern-
ment Board
requirements.

The Local Government Board stated that, generally speaking, in the case of schemes of sewage disposal which provide for the preliminary treatment of the sewage in septic tanks and double contact beds, they considered that the septic tanks should have a total capacity equal to at least three-fourths of the volume of the ordinary daily dry-weather flow to the outfall, and that each set of contact beds, primary and secondary, should be capable of dealing in a day of twenty-four hours with a total volume equal to three times the daily dry-weather flow where

(41) *Stourbridge Main Drainage Bd. v. Seisdon U.A.C.* (1902), 86 L. T. 415; 66 J. P. 372.

(42) *Burton-on-Trent Cpn. v. Burton-on-Trent U.A.C.* (1889), L. R. 24 Q. B. D. 197; *London C.C. v. Erith Overseers*, L. R. 1893 A. C. 562; 63 L. J. M. C. 176. See also *Leicester Cpn. v. Beaumont Overseers*, ante, p. 57.

(43) See *Stourbridge Main Drainage Bd. v. Seisdon U.D.C.*, *supra*.

(44) *Davies v. Seisdon U.A.C.*, L. R. 1908 A. C. 315; 77 L. J. K. B. 742; 99 L. T. 30; 72 J. P. 305; 6 L. G. P. 764.

(45) *Hall v. Seisdon U.A.C.* (1912, K. B. D.), 77 J. P. 17; 11 L. G. R. 48.

(46) *Reg. v. Gaskarth*, post, Vol. II., p. 2077. See also *L. G. Bd. for Ireland v. Eivers*, 1902 Ir. K. B. 262.

(47) *Higgs v. Goodwin* (1858), E. B. & E. 529; 27 L. J. Q. B. 421; 5 Jur. (N.S.) 97.

the sewers receive all storm water, or with a total volume equal to twice the dry-weather flow where the separate system of sewers is adopted. The working capacity of contact beds where the sewage is first treated in septic tanks is regarded as being equal to one-third of the water capacity of the beds before the filtering material is put in. Further, the beds must not be worked more than three times in a day of twenty-four hours, *i.e.*, a cycle of not less than eight hours must be allowed for each filling. The scheme must also provide for the final purification of the sewage on a sufficient area of suitable land. The Board further considered that, in addition to provision as above mentioned for the full treatment of sewage up to three times the dry-weather flow, as the case may be, provision should also be made in the scheme for dealing with excess liquid beyond that volume up to at least six times the dry-weather flow, either by distributing such excess liquid on an area of land specially reserved for the purpose, or by passing it through a separate filter not less than three feet in depth, and of sufficient area to admit of a rate of filtration not exceeding 500 gallons per square yard per day of twenty-four hours.

Sect. 29, n.
Local Govern-
ment Board
requirements
—continued.

Sect. 30. Where any local authority agree with any person as to the supply of sewage and as to works to be made for the purpose of such supply, they may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested.

Contribution to
works under
agreement for
supply or
distribution of
sewage.
S.U. 1867, s. 15.

Note.

The present section enables the local authority as a body corporate to hold shares in the company.

Shares in
company.

Sect. 31. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an “improvement of land” authorised by “The Improvement of Land Act, 1864,” and the provisions of that Act shall apply accordingly.

Application of
27 & 28 Vict.
c. 114, to works
for supply of
sewage.
S.U. 1865, s. 15

Note.

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Improvement of Land Acts.

The Improvement of Land Act, 1864, which is amended by the Improvement of Land Act, 1899,⁴⁸ provides a method for charging upon lands the expenses of any “improvements” effected upon it under the superintendence of the Minister of Agriculture and Fisheries, who now exercises the powers given by the Act to the Inclosure Commissioners.⁴⁹

Improve-
ments.

Sect. 9 of the Act of 1864⁵⁰ defines “the improvement of land,” and includes in the term, amongst other improvements, “(1) The drainage of land, and the straitening, widening, deepening or otherwise improving the drains, streams, and watercourses of any land : (2) The irrigation and warping of land : (3) The embank- ing and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams, in a permanent manner : . . . and (10) The constructing or erecting of any engine-houses, water-wheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, flood-gates, or hatches, which will increase the value of any lands for agricultural purposes. . . .”

Under sect. 5 of the Limited Owners, etc., Facilities Act, 1877,⁵¹ the construction of reservoirs and other waterworks is also to be deemed an “improvement of land” within the above Acts. See also the District Councils (Water Supply Facilities) Act, 1897,⁵² and the Law of Property Act, 1922.⁵³

(48) 62 & 63 Vict. c. 46.

(49) See 52 & 53 Vict. c. 30; 3 Edw. VII. c. 31, s. 1; and Act of 1919, *post*, Vol. II., p. 2344.

(50) 27 & 28 Vict. c. 114, s. 9.

(51) *Post*, Vol. II., p. 1265.

(52) *Post*, Vol. II., p. 1274.

(53) *Post*, Vol. II., p. 2355.

Sect. 31, n.
Private street
works.

The cost of sewerage, paving, etc., in streets, which are not repairable by the inhabitants at large, may be charged on the adjoining premises under sects. 150 and 257 of the present Act and under the Private Street Works Act, 1892.³

Settled Land Acts.

Improve-
ments.

The Settled Land Act, 1882, extends the provisions of the Improvement of Land Act, 1864, "so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners [now the Minister of Agriculture and Fisheries ¹⁵] after the commencement of this Act, all improvements authorised by this Act."⁴

The improvements referred to (which may, independently of the Improvement of Land Acts, be made under the Settled Land Acts with capital trust money) are the making or execution on, or in connection with, and for the benefit of, "settled land," of any of the following (amongst other) works, or of any works incidental thereto: "(1) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses: (2) Irrigation; warping: (3) Drains, pipes, and machinery for supply and distribution of sewage as manure: (4) Embanking or weiring from a river or lake, or from the sea, or a tidal water: (5) Groynes; sea walls; defences against water: (13) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption: (18) Sewers, drains, watercourses, . . . and other works necessary or proper in connection with any of the objects aforesaid: (20) Reconstruction, enlargement, or improvement of any of those works."⁵ To these (amongst other things) bridges, and erection of buildings in substitution for buildings in an urban district taken by a local or public authority, or for buildings taken under compulsory powers, are added by the Settled Land Act, 1890;⁶ and the erection of dwellings for the working classes is added by the Housing of the Working Classes Act, 1890.⁷ See also the provisions of the Settled Estates Act, 1877, with regard to laying out streets and constructing sewers and other works on settled estates,⁸ and the provisions of the Law of Property Act, 1922, quoted elsewhere.⁹

The cost of reconstructing the drainage system of leasehold houses was held to be payable out of capital as an improvement of land under the Settled Land Acts.¹⁰ So also was the cost of the installation of a new water supply system for the principal mansion house on a settled estate, and of the provision of a complete equipment for extinguishing fire.¹¹

A tenant for life agreed with a local authority to sell settled land for waterworks, subject to the sanction of Parliament being given to the purchase of the land, the execution of the works, and the agreement. The price was to be fixed by arbitration under the Lands Clauses Acts. By a local Act obtained by the authority the agreement was "confirmed and made binding on the parties thereto respectively and the same shall and may be carried into effect accordingly." It was held that the tenant for life could convey the fee simple so as to bind all persons interested under the settlement, though the remaindermen were not parties to the agreement or the Act, and though the sale by the tenant for life at a price to be fixed by someone other than himself amounted to a breach of trust.¹²

The Court has a discretion to refuse to sanction as an improvement under these Acts the construction of new roads over an estate.¹³

Land Drainage Acts.

Commission
of sewers.

In connection with the above-mentioned Acts, the provisions of the Land Drainage Acts, 1861 and 1918, may here be noticed. Sect. 4 of the Act of 1861 ¹⁴ enacts that "it shall be lawful for [His] Majesty, upon the recommendation of the

(3) As to borrowing by "limited owners" of such premises, see s. 17 of Act of 1892, quoted at end of Note to s. 150 of the present Act, *post*.

(4) 45 & 46 Vict. c. 38, s. 30.

(5) *Ibid.*, s. 25.

(6) 53 & 54 Vict. c. 69, s. 13.

(7) See s. 74, *post*, Part II., Div. III.

(8) See ss. 20, 21, cited in Note to s. 146, *post*.

(9) *Post*, Vol. II., p. 2355.

(10) *Weatherall v. Thomas* (Ch. D.), L. R. 1900, 1 Ch. 319; 69 L. J. Ch. 198; 48 W. R. 409.

(11) *Re Earl of Dunraven's Settled Estates*, L. R. 1907, 2 Ch. 417; 76 L. J. Ch. 591; 97 L. T. 336; *Re Kensington Settled Estates* (1905, Ch. D.), 21 T. L. R. 351. See also *In re Dunham Massey Settled Estates* (1906, Ch. D.), 22 T. L. R. 595.

(12) *In re Earl Wilton's Estates*, L. R. 1907, 1 Ch. 50; 76 L. J. Ch. 37; 96 L. T. 193.

(13) *Re Keck's Settlement*, L. R. 1904, 2 Ch. 22; 73 L. J. Ch. 262; 90 L. T. 113.

(14) 24 & 25 Vict. c. 133, s. 4.

(15) See footnote (49), *ante*, p. 101.

Inclosure Commissioners [now the Minister of Agriculture and Fisheries ¹⁵], to be obtained on such application and subject to such conditions as are hereinafter mentioned, to direct commissions of sewers into all parts of England, inland as well as maritime, and to assign as the limits for the jurisdiction of such commissions any areas that may be thought most expedient, having regard to the levels and other facilities for drainage within such areas, with power for [His] Majesty to include within the limits of any commission of sewers any area to which a commission of sewers may not hitherto have been assigned, or any area either wholly or partially within the limits of an existing commission of sewers; subject to this proviso, that no alteration shall be made affecting the jurisdiction of any commissioners of sewers without the consent of a special meeting of such commissioners."

Sect. 31, n.

Commission of
sewers—*cont.*

Under Part II. of the Act of 1861, as amended by Part I. of the Act of 1918, ¹⁶ 'the superintendence of matters relating to drainage within a drainage district' is vested in a "drainage board." Such drainage districts are now ¹⁷ constituted by order of the Minister of Agriculture and Fisheries, subject in the case of opposed orders to confirmation by Parliament. The Minister may confer various powers on "drainage authorities" (which expression "means any commission of sewers, any drainage board constituted under the principal Act or this Act, and any body of persons authorised by any local Act or any award under any such Act to make or maintain works for the drainage of land"), ¹⁸ and alter local Acts and awards thereunder, and may transfer the powers of such authorities to the councils of counties and county boroughs. Two or more county or county borough councils may act jointly. ¹⁹ Power is given to levy "drainage rates on the basis of acreage or on the basis of annual value." ²⁰ "Where it is shown to the satisfaction of the [Minister of Health] that the execution or maintenance of any drainage works is desirable in the interests of the public health of any area, or for the protection or better enjoyment of any highways, the [Minister] may authorise the local authority of the district for the purposes of the Public Health Act, 1875, in which the area to be benefited is situated, or the highway authority, as the case may be, to contribute or undertake to contribute to the expenses of the execution or maintenance of the drainage works by a drainage authority, such an amount as the [Minister], having regard to the public benefit derived therefrom, may sanction, and may direct how and out of what fund or rate such contributions may be defrayed." ²¹

The expression "drainage" in the Act of 1918 "includes defence against water." ²²

Under Part III. of the Act of 1861 ²³ private persons interested in land, and desirous of draining it, may make or improve drains in the lands of adjoining owners, either by consent and under agreement with such owners, or, if they do not consent, on payment of compensation to be settled by two justices, unless such justices decide that the works will cause injury which cannot be compensated by money: natural watercourses may be diverted under these powers, subject also to payment of compensation, if necessary. ²⁴

Under sect. 16 of the Act of 1861 ²⁵ the general powers of the commissioners of sewers acting within their jurisdiction under the Act extend to the following acts:—"(1.) To cleansing, repairing, or otherwise maintaining in a due state of efficiency any existing watercourse or outfall for water, or any existing wall or other defence against water, hereinafter referred to under the expression 'maintenance of existing works': (2.) To deepening, widening, straightening, or otherwise improving any existing watercourse or outfall for water, or removing mill-dams, weirs, or other obstructions to watercourses or outfalls for water, or raising, widening, or otherwise altering any existing wall or other defence against water, hereinafter referred to under the expression 'improvement of existing works': (3.) To making any new watercourse or new outfall for water, or erecting any new defence against water, to erecting any machinery or doing any other act not

Powers of
commis-
sioners.(15) See footnote (49), *ante*, p. 101.(16) 24 & 25 Vict. c. 133, ss. 66-71 (ss. 63-65 repealed by Act of 1918, 8 & 9 Geo. V. c. 17, s. 14, Sched. II., Part II., and ss. 67, 71, amended by *ibid.*, Sched. II., Part I.); 8 & 9 Geo. V. c. 17, ss. 1-14.

(17) 8 & 9 Geo. V. c. 17, ss. 1-3, Sched. I.

(18) *Ibid.*, s. 13.(19) *Ibid.*, s. 10.(20) *Ibid.*, s. 4.(21) *Ibid.*, s. 5.(22) *Ibid.*, s. 23 (3).

(23) 24 & 25 Vict. c. 133, ss. 72-83.

(24) See *Hedley v. Bates* (1880), L. R. 13 Ch. D. 498; 49 L. J. Ch. 170; 42 L. T. 41, as to these provisions.

(25) 24 & 25 Vict. c. 133, s. 16.

Sect. 31, n.
Powers of
commissioners
—continued.

hereinbefore referred to, required for the drainage, necessary supply of water for cattle, warping or irrigation of the area comprised within the limits of their jurisdiction, hereinafter referred to under the expression 'the construction of new works.' "

The Land Drainage Act, 1914,²⁶ conferred power on the Board of Agriculture and Fisheries to make provisional orders constituting bodies, corporate or unincorporate, for the purpose of executing works of drainage, embankment, or defence against water, for the improvement or protection of any area. But the power to make such orders was not to be exercised after the expiration of two years from November 27th, 1914, except for the purpose of amending orders made before the expiration of that period.²⁷ See also the Land Drainage Act, 1847.²⁸

Part II. of the Act of 1918²⁹ contains "further provisions for the improvement of the drainage of agricultural land," including a power given to the Minister of Agriculture and Fisheries to enforce the performance by drainage authorities of their duties, and to make schemes for the drainage of small areas. Sanitary authorities under the present Act may be required to collect, as private improvement rates, certain rates levied in respect of such schemes.³⁰ The powers of the Minister under Part II. of the Act of 1918 may be transferred to agricultural committees under sect. 8 (1) of the Ministry of Agriculture Act, 1919.³¹

Liability of
landowners.

An Inclosure Act required the allottees of certain fen lands enclosed under the Act to maintain the drains which were necessary for the drainage of the lands. The landowners being unable to come to an agreement in the matter, the Crown, as the principal allottee of the lands enclosed, repaired certain drains which had been made by the commissioners of sewers of some contiguous lands, and which had for more than 150 years provided for the drainage of the fen lands. On an information moved for by the Attorney General to enforce payment by the other owners of the fen land of contributions towards the expense incurred by the Crown, it was held that there was no joint liability on the part of the allottees to execute the works carried out by the Crown, and that the Crown was not warranted in undertaking it at the joint cost of the different owners.³²

Further, with regard to commissioners of sewers, see the Note to sect. 13.³³

Inundations.

Thames
Floods Act.

Provisions for protection against inundations in the metropolis are contained in the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879.³⁴

Malicious
Damage Act.

The Malicious Damage Act, 1861, renders it felony to remove piles or other materials placed for securing sea or river banks, or to obstruct the navigation of a river or canal;³⁵ also to maliciously damage sea or river banks, so as to cause an overflow or other injury to lands or buildings, or destroy any lock, sluice, watercourse, or other work belonging to any port, harbour, dock, navigable river, or canal, etc.³⁶

Maintenance
of sea-walls.

The lands of the plaintiff and defendant, which adjoined each other, fronted a tidal creek, and were protected by a continuous sea-bank or wall. These walls were subject to a gradual subsidence, and had always been repaired or topped with fresh material by the owners of the adjoining lands. On the occasion of an unusually high tide, the sea burst over the wall in front of the defendant's land, and thence flowed on to the plaintiff's farm, and there did damage. The jury found that the defendant had neglected to keep his wall to the proper level, and that through his default the mischief was caused; but it was held that he was not bound either by prescription or at common law to maintain the wall for the protection of adjoining landowners as well as of himself, the proper remedy being to procure the issuing of a Royal Commission, in which, by an equitable adjustment, the interest of all parties may be secured.³⁷

(26) 5 Geo. V. c. 4, s. 1 (1).

(27) *Ibid.*, s. 4 (2). This subsection has now been repealed by the Expiring Laws Act, 1922, 12 & 13 Geo. V. c. 50, s. 2, Sched. II.

(28) 10 & 11 Vict. c. 38. Ss. 16 and 17 of this Act were repealed by 47 & 48 Vict. c. 43, s. 4, and s. 21 by S. L. R. Act, 1875.

(29) 8 & 9 Geo. V. c. 17, ss. 15-19.

(30) *Ibid.*, s. 16 (5), quoted in Note to s. 213, *post*.

(31) *Post*, Vol. II., p. 2346.

(32) *A.G. v. De Burton* (Q. B. D.), 1892 Loc. Gov. Chron. 413.

(33) *Ante*, p. 56. See also "Glen's District Councillor's Guide," Chap. I., § 18.

(34) 42 & 43 Vict. c. cxcviii. As to this Act, see *London C.C. v. London, Brighton, etc., Ry. Co.* (K. B. D.), L. R. 1906, 2 K. B. 72; 75 L. J. K. B. 613; 94 L. T. 773; 70 J. P. 298; 4 L. G. R. 721.

(35) 24 & 25 Vict. c. 97, s. 31.

(36) *Ibid.*, s. 30.

(37) *Hudson v. Tabor* (1877, C. A.), L. R. 2 Q. B. D. 290; 46 L. J. Q. B. 463; 36 L. T. 492.

The liability of a frontager to keep the sea wall on his land in repair *ratione tenuræ*, or by custom or otherwise, may be presumed from its having been submitted to for a long time, unless it is proved impossible for it to have had a legal origin. If it were necessary in such a case to presume a grant from the Crown, the grant would be presumed.³⁸

A dock company, required by their Act to maintain the bank round the dock at four feet above Trinity high-water mark, had constructed the dock in 1853, but the bank was for some distance six or eight inches lower than the required height. The only previous overflow from the Thames had occurred in 1874, when the tide rose four feet above high-water mark; but on November 15th, 1875, the tide rose to four feet three inches, and caused damage on the plaintiffs' adjoining premises. The defendants were held liable to pay a sufficient sum to reinstate those premises, and were restrained by injunction from allowing their bank to remain at less than the height specified in the Act: Fry, J., holding that they could not plead the act of God as a defence if they had themselves failed in discharging the obligation cast upon them. The Court of Appeal subsequently decided in the same case that, independently of this Act, the defendants were bound as riparian owners to keep the bank up to the level of four feet two inches, the height of the rest of the river wall, and that they were liable to the plaintiffs for negligence in not doing so.³⁹

But where there is no evidence that the prescriptive liability of the frontagers extends to the repair of damage caused by extraordinary violence of the sea, the repair of such damage does not fall on the frontagers, but, if there is a commission of sewers, on the whole level.⁴⁰ Persons liable to repair the natural banks of a river were held not to be liable to repair flood banks outside the natural banks, in the absence of some express or implied obligation to repair them.⁴¹

Further as to the repair of banks, see sect. 30 of the Public Health Acts Amendment Act, 1907, and the Note thereto.⁴²

It is the duty of the Crown to maintain the defences of the land against the inroads of the water, and, therefore, no subject is entitled to destroy a natural barrier against the sea. An injunction was accordingly granted to restrain the owner of the foreshore from so digging or removing shingle as to endanger the land behind.⁴³ The doctrine laid down in this case was subsequently explained to be applicable only to the natural protecting banks against the sea, or to banks erected by the Crown, either under the Crown itself or through the agency of commissioners of sewers.⁴⁴

Commissioners of sewers, acting *bonâ fide* for the benefit of the levels for which they were appointed, were held not to be liable in damages although by having erected certain defences against the inroads of the sea they had caused the sea to flow with greater violence against and injure adjoining land not within the limits of the level.⁴⁵

A man has a right to protect his own property against an extraordinary flood, which is a common enemy, although the damage inflicted by such flood upon his neighbour be thereby increased, provided that he does so without interfering with the natural outlet of a stream.⁴⁶ In that case he does nothing by his own act to injure his neighbour, and is not answerable because the danger which has been diverted from him has done mischief to somebody else; but he is not entitled by some positive act of his, in order to get rid of a mischief existing on his own land by no act of his, to do something which causes misfortune to his neighbour. Thus, an unprecedented rainfall caused an accumulation of water at the side of a railway embankment so as to endanger the embankment, and the railway company cut trenches through which the water flowed, and land near the railway was thereby flooded and injured to a greater extent than it would have been had the trenches not been cut. And although a jury had found that the cutting of the trenches

Sect. 31, n.

Maintenance
of sea-walls
—continued.Duty of the
Crown.Damage
caused by
protective
works.

(38) *L. and N.W. Ry. Co. v. Fobbing Level Comrs. of Sewers* (1896), 66 L. J. Q. B. 127; 75 L. T. 629.

(39) *Nitro-Phosphate and Odams' Chemical Manure Co. v. London and St. Katharine's Dock Co.* (1877), L. R. 9 Ch. D. 503; 39 L. T. 433; 27 W. R. 267. See also the *Marshland Smeeth and Ancholme Cases*, ante, p. 90.

(40) *Fobbing Level Comrs. of Sewers v. The Queen* (1886), L. R. 11 A. C. 449.

(41) *Vyner v. North Eastern Ry. Co.* (1903, K. B. D.), 19 T. L. R. 265; affirmed in C. A. (1904), 20 T. L. R. 192. See also *Vyner v.*

North Eastern Ry. Co. (1898, H. L.), 14 T. L. R. 554.

(42) *Post*, Part I., Div. III.

(43) *A.G. v. Tomline* (1880, C. A.), L. R. 14 Ch. D. 58; 49 L. J. Ch. 377; 42 L. T. 880; 44 J. P. 617.

(44) *West Norfolk Farmers' Manure Co. v. Archdale*, ante, p. 56.

(45) *Reg. v. Pagham Level Comrs. of Sewers* (1828), 8 B. & C. 355.

(46) *Nield v. L. and N.W. Ry. Co.* (1874), L. R. 10 Ex. 4; 44 L. J. Ex. 15; 23 W. R. 60.

Sect. 31, n.**Submerged land.**

was reasonably necessary for the protection of the railway, and was not done negligently, the company were liable for the damage.⁴⁷

Possession of land is determined by its submergence, and it then becomes derelict; but so long as it remains in that state no title can be acquired against the true owner. On dispossession by a flood, or otherwise by *vis major*, constructive possession is (if anywhere) in the true owner.⁴⁸

AS TO SEWAGE WORKS WITHOUT DISTRICT.

Notice to be given before commencing sewage works without district. L.G. Am., s. 5. S.U. 1867, s. 3.

Sect. 32. A local authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the [*turnpike roads and* ¹] streets, and other lands (if any) through across under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the [*trustees,* ¹] surveyors of highways, or other persons having the care of such roads or streets.

Note.**Works without the district.**

Sect. 27 gives power to local authorities to construct works for the disposal of sewage without their district, and sect. 285 gives them a general power to execute works in an adjoining district with the consent of the local authority of the district, and also to combine with other local authorities for the execution of works for the benefit of the several districts concerned. The consent, however, of the adjoining authority, given under sect. 285, does not relieve the local authority from the necessity to comply with the requirements of sects. 32-34.²

If the works are to pass under the roads of any urban district, a copy of the notice must be served on the urban authority, who are the surveyors of highways in such district by virtue of sect. 144: except as regards main roads not retained by them, the county council being the body having the care of such roads.

Loan for the works.

In accordance with the practice of the Local Government Board, when the district council apply to the Minister of Health for sanction to a loan for the works, at the end of three months a statutory declaration, duly stamped with an impressed stamp, showing that the requirements of the present section have been complied with, must be furnished, and a copy of the newspaper containing the advertisement, and of the form of notice served on the owners, lessees, and occupiers, and on the overseers and road authorities (if any), should be annexed to the declaration as exhibits. The Minister must also be furnished with a copy of any notice of objection served under sect. 33. If no such objection has been served, this should be stated in the declaration; but if an objection has been made and not withdrawn, the council should pass a resolution asking the Minister to appoint an inspector to make the inquiry and report mentioned in sect. 34, and a copy of the resolution should be forwarded to the Minister.

Work for sewage purposes.

The cleansing and cementing of the bottom of a pool, in which sewage fungus had collected by reason of the discharge into it of the effluent from a sewage farm, and had caused a nuisance, was held by the Court of Appeal to be "work for sewage purposes" within the meaning of the present section.³

Interference with easement.

An easement or right to the flow of water through a goit or small stream to a mill was in one case considered, in consequence of the definition in sect. 4, to be "lands" through, across, under, or on which an adjoining local authority were not entitled to construct a sewer without giving notice under the present section to the owner of such easement. In this case the owner of the easement was deprived of costs in an action brought against him by the local authority to restrain him from interfering with the sewer which they had reconstructed after the owner had cut the sewer which they had originally constructed without notice to him, because

(47) *Whalley v. Lancashire and Yorkshire Ry. Co.* (1884, C. A.), L. R. 13 Q. B. D. 131; 53 L. J. Q. B. 285; 50 L. T. 472.

(48) *Secretary of State for India v. Krishnamoni* (1902), 18 T. L. R. 540.

(1) Repealed by S. L. R. Act, 1898.

(2) *Jones v. Conway and Colwyn Bay Joint Water Supply Bd.*, post, p. 140.

(3) *Wimbledon Loc. Bd. v. Croydon R.S.A.* (1886), L. R. 32 Ch. D. 421; 56 L. J. Ch. 159; 55 L. T. 106.

he had caused great inconvenience to the public, and had run the risk of spreading disease among them by taking the law into his own hands.⁴

Sect. 16 and the present and two following sections are applied to the laying of water mains without the district by sect. 54; and by sect. 2 (2) of the Public Health (Interments) Act, 1879,⁵ they are extended to the establishment of cemeteries.

Sect. 32, n.
Water mains.
Cemeteries.

Sect. 33. If any such owner, lessee, or occupier, or any such overseer, [*trustee*,⁶] surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the [Minister of Health] after such inquiry as herein-after mentioned, unless such objection is withdrawn.⁷

In case of objection, works not to be commenced without sanction of [Minister of Health].
L.G. Am., s. 6.

Sect. 34. The [Minister of Health] may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the [Minister of Health] on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector, the [Minister of Health] may make an order disallowing or allowing with such modifications (if any) as [he] may deem necessary, the intended work.⁷

Inspector to hold inquiry and report to [Minister of Health].
L.G. Am., s. 7.

PRIVIES, WATER-CLOSETS, ETC.

Sect. 35. It shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the ground floor, without a sufficient watercloset earthcloset or privy and an ashpit furnished with proper doors and coverings.

Any person who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a penalty not exceeding twenty pounds.

Penalty on building houses without privy accommodation.
P.H., s. 51.
San. 1868, ss. 4, 7.

Note.

The present section applies only to houses built or rebuilt after the passing of the Act. Sect. 36 applies to all houses, whether old or new.

Application of enactment.

Sect. 157 authorises urban authorities to make bye-laws as to the construction of water-closets, earth-closets, privies, ashpits, and cesspools; and sect. 44 authorises them to make bye-laws as to cleansing earth-closets, etc., and removing refuse.

Per Cockburn, C.J. : “ The 35th and 36th sections are in my opinion entirely distinct, with specific objects respectively of a different character. The 35th relates to the building and rebuilding of houses without a sufficient water-closet, etc., and imposes a penalty in respect thereof. If the justices think there is no sufficient water-closet, and impose a penalty, there is an end of the matter under that section. In the 36th section there is no reference to a penalty, but power is given to the sanitary authority at any time, whether proceedings have taken place under the 35th section or not, and quite irrespective of the result of such proceedings, to examine the premises, and if they are of opinion that the house is without a sufficient water-closet, etc., they may require the owner or occupier to provide one, and if he does not comply with their requirement, may do the work themselves.” ⁸

Where sects. 39 to 41 of the Public Health Acts Amendment Act, 1907,⁹ are in force, the district council may, if a sufficient sewer and supply of water are available, enforce the provision of such number of water-closets and slop-closets for a building as the circumstances may render necessary, subject to a right of appeal to a court of summary jurisdiction under sect. 42 of the same Act.

Water and slop closets.

It is not intended by the present section that there shall be a separate water-closet for each house; but if a water-closet common to two cottages is sufficient for the use of the occupiers of both, it satisfies the Act.¹⁰

Closets used in common.

Sect. 21 of the Public Health Acts Amendment Act, 1890, contains provisions for the maintenance in proper condition of sanitary conveniences used in common by the occupiers of two or more separate dwelling-houses.¹¹

With regard to the provision of such conveniences for manufactories, see sect. 38, and the Note to that section.

(4) *Cleckheaton U.D.C. v. Firth* (1898), 62 J. P. 536.

(5) *Post*, Vol. II., p. 1635.

(6) Repealed by S. L. R. Act, 1898.

(7) As to local inquiries and inspectors of the Ministry of Health, see ss. 293-296, *post*

(8) *Clutton Guardians v. Pointing* (1879), L. R. 4 Q. B. D. 340; 48 L. J. M. C. 135; 40 L. T. 844; 43 J. P. 686.

(9) *Post*, Part I., Div. III.

(10) *Clutton Guardians v. Pointing*, *supra*.

(11) See *post*, Part I., Div. II.

Sect. 35, n.**Privies.****Ashpits.****Doors and coverings.****Rainwater pipes as soil pipes.**

Tub-closets were held to be "privies" within the meaning of sect. 34 of the Local Government Act, 1858.⁵

By sect. 11 of the Public Health Acts Amendment Act, 1890, "the expression 'ashpit' in the Public Health Acts and in this Act shall for the purposes of the execution of those Acts and of this Act include any ash-tub or other receptacle for the deposit of ashes, fæcal matter, or refuse."

With reference to a metropolitan enactment, Lord Esher, M.R., considered that the words "furnished with proper doors and coverings," had reference to the water-closet or privy as well as to the ash-pit.⁶

Where sect. 36 of the Public Health Acts Amendment Act, 1907, is in force, a penalty is imposed on any person using a rainwater pipe for carrying off the soil or drainage from a privy or water-closet.

Power of local authority to enforce provision of privy accommodation for houses.

P.H., s. 51.
San. 1868, s. 4.

Sect. 36. If a house within the district of a local authority appears to such authority by the report of their surveyor or inspector of nuisances to be without a sufficient watercloset, earthcloset or privy and an ashpit furnished with proper doors and coverings, the local authority shall, by written notice, require the owner or occupier of the house, within a reasonable time therein specified, to provide a sufficient watercloset earthcloset or privy and an ashpit furnished as aforesaid, or either of them, as the case may require.

If such notice is not complied with, the local authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses: Provided that where a watercloset earthcloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the local authority a watercloset earthcloset or privy may be so used, they need not require the same to be provided for each house.

Note.**Application of enactment.**

The present section applies to all houses, whether built before or after the passing of the Act: see the Note to the preceding section.

In the words of P. O. Lawrence, J.,⁷ it has no application where the sanitary convenience is "structurally perfect, and is only unusable or in an insanitary condition owing to some temporary cause . . . for example, in the case of a privy where the midden is so full as to render the privy incapable of use," or, "if there be only some minor mechanical or even structural defect which could easily be remedied"; but only where "the convenience has become structurally defective and insanitary to such an extent that it requires some substantial structural work to be executed in order to render it again fit for use"; or where, as Lord Sterndale, M.R., put it, "the thing could not be put right from a practicable and reasonable point of view by amendment of the existing privy."

Other enactments.

As to summary proceedings for recovery of expenses, see sects. 251, *et seq.*, and Notes; and as to private improvement expenses, see sects. 213-215. As to privies, etc., in such a state as to be a nuisance, see sects. 47 and 91. By sect. 157 urban sanitary authorities may make bye-laws with respect to privies, etc.

The powers of the present section, and sects. 41 and 94-96, *post*, "are cumulative and not mutually exclusive."⁸

Where sect. 39 of the Public Health Acts Amendment Act, 1907,⁹ is in force, further powers of dealing with unsatisfactory sanitary conveniences are available, and whether the present section may be utilised instead of that enactment depends upon (1) the absence of any sanitary convenience at all, or (2) the insufficiency in fact of the existing "sanitary convenience" as distinguished from the existing "closet accommodation."¹⁰

Report.

The report referred to at the commencement of the present section may also be made by the medical officer of health, see sect. 191, *post*.

(5) 21 & 22 Vict. c. 98, s. 34. *Burton v. Acton* (1887), 51 J. P. 566.

(6) *Clerkenwell Vestry v. Feary* (1890), L. R. 24 Q. B. D. 703; 59 L. J. M. C. 82; 62 L. T. 697; 54 J. P. 676.

(7) In the *Hemsworth Case*, *post*, p. 110 (20). See 20 L. G. R., at p. 239 (Ch. D.), and *ibid.*, at p. 643 (C. A.).

(8) *Per* P. O. Lawrence, J., in the *Hemsworth Case*, *post*, p. 110 (20).

(9) *Post*, Part I., Div. III.

(10) See *per* Sterndale, M.R., in the *Hemsworth Case*, *post*, p. 110 (20), 20 L. G. R., at pp. 642, 643; and *per* Warrington, L.J., at p. 650. An extract from the judgment of the Master of the Rolls on this point is given in the Note to s. 39 of the Act of 1907, *post*, Part I., Div. III.

By the proviso to the present section there need not necessarily be a separate water-closet, etc., for each house.⁵

In an Irish case it was held that there need not be a separate water-closet for each of two tenants of a house let in separate tenements, though the top floor tenant had to pass through the kitchen of the ground floor tenant to reach the single water-closet in the yard, no restriction having been placed upon such access.⁶

In one case the justices were upheld in having divided the cost of the work of converting the existing closet accommodation in certain buildings into water-closets between the local authority and the owner, but this was under a provisional order (amending a local Act) which authorised the justices to make such order in the matter as to them might seem equitable.⁷

A local board had incurred expenses in making effective the water-closets of certain houses which a person had built, without, it was alleged, proper "flushing" apparatus. The board directed a surveyor to inspect the closets, and he reported that they were insufficient for want of a proper flushing apparatus. They then directed the owner to execute the necessary works, and, on his not doing so, directed it to be done, and obtained from the magistrates an order upon him to repay the expenses. The magistrates, without entering into evidence on the question of nuisance, made the order. Application was made to set aside the order on the grounds that the local board had no power to interfere, unless there was a nuisance, or something certain to cause a nuisance, on which the justices should hear evidence, and that, in such a case as this, a mere supposed defect in construction or defect of supply of water, there was no power to interfere in this manner. On the other side, it was contended that the board had to judge as to the tendency of a thing to produce or cause a nuisance, and that here, upon a proper inquiry and inspection by their officer, the surveyor, they had formed a judgment on which they were entitled to act. The latter view prevailed, the court holding that they could not review the discretion of the local board, as it was entirely for the board to exercise their judgment in the particular case upon the report of their surveyor.⁸

But evidence as to the actual condition of the existing conveniences was admitted by P. O. Lawrence, J., in an action in the Chancery Division to restrain a local authority from proceeding with a notice under the present section, the contention of the plaintiffs being that the action of the local authority had not been *bonâ fide*.⁹

It had been held that a vestry in the Metropolis were authorised to require a water-closet to be provided for premises in lieu of a privy already existing thereon;¹⁰ and this decision was followed by Stirling, J., under the present section.¹¹ A similar decision was arrived at in a case arising under local Acts.¹²

Another local enactment authorised the local authority to require a privy, water-closet, earth-closet, or ash-pit to be provided, or alteration of the existing privy, etc., to be made, where a dwelling-house was without one altogether or was without a privy, water-closet, or ash-pit of a construction and size approved by them. This was held to enable the local authority to require the substitution of a water-closet for a privy, and to specify the manner of carrying out the work, although the privy was of good construction, and (apart from the local authority's right to insist upon a water-closet) sufficient for the accommodation of the house. And the fact that the work was required to be done in accordance with a standard specification did not itself show that the local authority had acted without due regard to the exigencies of the particular property.¹³

Sect. 36, n.

Closets used in common.

Division of cost.

Discretion of local authority.

(5) See also *Clutton Guardians v. Pointing*, ante, p. 107.

(6) *Belfast Cpn. v. Thompson* (1908), 42 Ir. L. T. 215.

(7) *Bootle Cpn. v. Owens* (1898), 87 L. T. 74; 66 J. P. 357.

(8) *Reg. v. Sherborne Loc. Bd.*, 1880 Loc. Gov. Chron. 355; *Times*, 20th March, 1880; s.c. nom. *Bogle v. Sherborne Loc. Bd.*, 46 J. P. 675. See a decision to the same effect under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 37), *Hackney Vestry v. Hutton*, L. R. 1897, 1 Q. B. 210; 75 L. T. 686; 61 J. P. 54; also *Clerkenwell Vestry v. Feary*, ante, p. 108, and *Stroud v. Wandsworth Dist. Bd.*, cited in Note to s. 150, post.

(9) See the *Hemsworth Case*, post, p. 110, and 20 L. G. R., at p. 240. In the C. A., in the same case (see 20 L. G. R., at p. 644), Lord

Sterndale, M.R., said: "The person who objects to the notice cannot come to this court to have the question decided whether the particular convenience was insufficient and whether the circumstances were such as to require a water-closet." But the Court of Appeal did not decide that the admission of the above evidence in the court below was wrong.

(10) 18 & 19 Vict. c. 120, s. 81. *Middlesex Vestry v. Lewis* (1862), 1 B. & S. 865; 31 L. J. M. C. 73; 5 L. T. 608; 8 Jur. (N.S.) 432.

(11) *Nicholl v. Epping U.D.C.*, L. R. 1899, 1 Ch. 844; 68 L. J. Ch. 393; 80 L. T. 515; 63 J. P. 600.

(12) *Agnew v. Manchester Cpn.*, post, p. 110.

(13) *Smith v. Greenwood*, L. R. 1907, 2 K. B. 385; 76 L. J. K. B. 1129; 96 L. T. 730; 71 J. P. 353; 5 L. G. R. 660.

Sect. 36, n.
Discretion
of local
authority
—continued.

In the last cited case, Lord Alverstone, C.J., pointed out the distinction between the local Act with which his lordship was dealing and the present section, saying "under the latter all that the local authority can require is that the particular convenience provided by the owner shall be sufficient, but, subject to the requirement that it must be sufficient, it is left to the owner to select which of the several kinds of conveniences, privies, water-closets, or earth-closets he will adopt."¹⁴

This statement of the general law, however, was *obiter*, and has now been held to have been wrong so far as the present section is concerned, though it is correct as regards sect. 35.¹⁵

Laying down
general rule.

The Local Government Board in 1912 pointed out that a district council have no authority to incur expense in attempting to induce owners to undertake a general substitution of a water-closet system for a privy system. In a metropolitan case it was held that the local authority must exercise their discretion in each particular instance, and that it was not competent to them to lay down a general rule requiring that in all cases water-closets should be provided in lieu of privies.¹⁶ So also under the present section it has been held that the local authority cannot enforce a general resolution that in all cases arising under the section a particular form of water-closet shall be adopted, nor even a notice requiring specific works instead of "a sufficient water-closet."¹⁷ When, however, the particular cases had been considered by a sub-committee, who recommended that the substitution of water-closets for privies should be ordered under certain local Improvement Acts, and their recommendation was adopted by the committee and by the council without discussion, it was held that the substitution could be enforced.¹⁸

The undisputed evidence of the surveyor of a rural district council that he had reported to their sanitary committee the insanitary condition of certain houses, that his report was considered by the council, and that he was directed to enforce the substitution of earth-closets for privies in some of the houses (together with the production of the minutes recording resolutions of the committee recommending that the work be carried out and the expenses recovered from the owners in default, and of a minute of a resolution of the council adopting the recommendation of the committee), was held to be sufficient evidence that the condition of the houses and the means to be taken to improve it had been properly considered by the council, so as to enable them to recover the expenses under the present section.¹⁹

In 1917 a local authority resolved that at the end of the war they would carry out a scheme for the conversion of all privies in their district into water-closets. In 1918 they resolved (1) that defective privies should be considered separately on their merits, (2) that if any water-closet was considered defective a notice should be served under the present section, (3) that insufficiency in number should be dealt with under sect. 39 of the Act of 1907, and (4) that the conversion into water-closets of privies in fair repair should be carried out under the latter enactment at the joint expense of the authority and the owners. In 1920, no action having been taken under sect. 39 in the meantime, notices were served on the plaintiffs under the present section after their tenants had complained of the existing sanitary accommodation, and the inspector had reported that it was insufficient. A contention that the action of the local authority was not *bonâ fide* was overruled,²⁰ though Younger, L.J., expressed some doubt on the point.²¹

Notice.

On an application for an order under section 305 authorising the local authority to enter upon premises to execute works under the present section, objection may be taken to the validity of the notice to the owner or occupier. But a notice stating that certain premises, which were in fact provided with privies, were without sufficient water-closets (without mentioning the insufficiency of the privies) and requiring sufficient water-closets to be provided, was held valid, the owner having previously offered to substitute tub closets for the privies, and having thereby admitted the insufficiency of the existing privies. *Per Lord*

(14) *Smith v. Greenwood*, L. R. 1907, 2 K. B., at pp. 389, 390.

(15) As to the present section, see *per* Warrington, L.J., in the *Hemsworth Case*, *infra* (20), 20 L. G. R., at pp. 648, 649; and, as to s. 35, *per* Lord Sterndale, M.R., 20 L. G. R., at p. 638.

(16) *Tinkler v. Wandsworth Bd. of Works*, *post*, p. 203.

(17) *Wood v. Widnes Cpn.*, L. R. 1898, 1 Q. B. 463; 67 L. J. Q. B. 254; 77 L. T. 779; 62 J. P. 117; *Robinson v. Sunderland Cpn.* (1898), 78 L. T. 194; 62 J. P. 216.

(18) *Agnew v. Manchester Cpn.* (1902), 67 J. P. 174; 1 L. G. R. 9. See also *Frost v. Fulham Vestry*, cited in Note to s. 157, *post*.

(19) *Bower v. Caistor R.D.C.* (1911, K. B. D.), 75 J. P. 186; 9 L. G. R. 448.

(20) *Carlton Main Colliery Co. v. Hemsworth R.D.C.*, L. R. 1922, 1 Ch. 521; 126 L. T. 753; 20 L. G. R. 227; affirmed in C. A., 20 L. G. R. 632; 1922 W. N. 218. Cf. *Macdougall's Trustees v. Perth Cpn.* (1920, Sc., S.), 58 Sc. L. R. 1.

(21) See 20 L. G. R., at p. 650.

Alverstone, C.J., "in order to raise a proper objection to a notice, you must show that the notice which is given by the local authority is inconsistent with the case which is raised on the merits. When once it is shown on the report of the surveyor that the existing appliance is to be done away with, and that the new appliance is to be substituted, it, in my judgment, is only necessary to give sufficient notice to the owner or occupier as to work which he has to do."²²

It is not necessary for a notice demanding expenses under the present section to be authenticated by the signature of the clerk, surveyor, or inspector of nuisances.²³

A local authority served a notice under provisions of a local Act corresponding to the present section and sect. 23, and, in executing the work on the owner's default, constructed a sewer for other houses as well, and the construction of this sewer (without negligence) caused a subsidence of the plaintiff's house for which the local authority were held liable to pay compensation.²⁴

The Divisional Court held that an appeal to the Local Government Board under sect. 268 of the present Act as to the sufficiency of existing sanitary accommodation does not lie until after the local authority have, under the present section, done the work in default of the owner and decided whether to recover the expenses summarily or to declare them private improvement expenses.²⁵ A rule *nisi* for a writ of mandamus directing the Board to hear the appeal had been granted on the grounds (1) that their refusal to hear it was a breach of the duty imposed on them by sect. 268, (2) that it was essential in the interests of natural justice that the appeal should be heard before the subject-matter thereof was destroyed, and that the Board's inspector should be enabled (a) to examine the existing sanitary accommodation before it was altered by the local authority, and (b) to make his report to the Board as to the sufficiency or otherwise of such accommodation with the assistance of such actual examination; and (3) that, if the ultimate decision of the Board should be that the existing accommodation was sufficient, its alteration by the local authority before the hearing of the appeal would have been unjustified.²⁶ After the rule *nisi* had been obtained, the Divisional Court refused an *ex parte* application for a stay against the local authority altering the *status quo* until the hearing of the argument on the rule or further order, and the Court of Appeal dismissed an appeal against this refusal. Phillimore, L.J., pointed out that the Divisional Court, when granting the rule, might have made it returnable *instanter*; and said that, as they had not done so, the court had no power to order a non-party to the rule to refrain from doing something even though their doing that thing would render the order *nisi* nugatory, and even though the party applying for the rule could not have urged, as a reason for making the rule returnable *instanter*, that the local authority would be likely to render the rule nugatory.²⁷ The court, however, discharged the rule, feeling bound by the *Penarth Case*,²⁸ though this case seems distinguishable on the grounds fully pointed out by Lush, J., in his practically dissenting judgment.²⁹

As to the provision of a drain for the substituted water-closet, see the case cited below.³⁰

As to the "provision of standardised w.c.s and fittings for privy conversion," see the Circular of the Minister of Health of the 5th January, 1920, referring to the "National Housing Scheme."³¹

As to the meaning of "ash-pit," see the Note to sect. 35.

Pickford, M.R., considered that the present section "must be construed so as to give the local authority powers to deal with an ash-pit although they are not dealing with it in connection with the privy."³²

Sect. 37. Any enactment in force within the district of any local authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the local authority, of an earthcloset.

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Work outside notice.

Appeal to Minister of Health.

Drain for new closet.

Standardised fittings.

Ashpit.

As to earth-closets. San. 1868, s. 7.

(22) *Sutcliffe v. Sowerby Bridge U.D.C.* (1909, K. B. D.), 100 L. T. 697; 73 J. P. 385; 7 L. G. R. 822.

(23) *Willis v. Rotherham Cpn.*, cited in Note to s. 266, *post*.

(24) *Place v. Rawtenstall Cpn.* (1916, C. A.), 80 J. P. 433; 14 L. G. R. 901.

(25) *Rex (Thorpe) v. Local Government Bd.* (1914), 84 L. J. K. B. 1184; 112 L. T. 860; 79 J. P. 248; 13 L. G. R. 402.

(26) See 1914 Loc. Gov. Chron. 719.

(27) 5 Glen's Loc. Gov. Case Law 146.

(28) *Reg. (Penarth Loc. Bd.) v. Local Government Bd.*, cited in Note to s. 268, *post*.

(29) An appeal was abandoned for financial reasons. 5 Glen's Loc. Gov. Case Law 148. For the report of an appeal to the Local Government Board which was dismissed, see "Sanitary Record," March 19th, 1915, p. 207.

(30) *Meyrick v. Pembroke Cpn.*, *ante*, p. 90.

(31) 18 L. G. R. (Orders) 129, 130.

(32) In the *Hemsworth Case*, *supra*. See 20 L. G. R., at p. 644.

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Any local authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorising substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes any place for the reception and deodorisation of fæcal matter constructed to the satisfaction of the local authority.

Note.**Bye-laws.**

Bye-laws with respect to the construction of earth-closets may be made under sect. 157 by an urban district council, or by a rural district council if the Local Government Board or Minister of Health have conferred urban powers for the purpose upon them.

Contracts.

With regard to contracts of local authorities, see sects. 173 and 174.

Deodorisation.

See the Note to sect. 120 with reference to deodorisation and the use of disinfectants; and sects. 42-44 with reference to the cleansing of earth-closets.

Privy accommodation for factories.

P.H., s. 52.

Sect. 38. Where it appears to any local authority by the report of their surveyor that any house is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture trade or business, the local authority may, if they think fit, by written notice require the owner or occupier of such house, within the time therein specified, to construct a sufficient number of waterclosets earthclosets or privies and ashpits for the separate use of each sex.

Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a further penalty not exceeding forty shillings for every day during which the default is continued.

Note.**Factories.**

It will be observed that this provision extends to rural authorities, and that it applies to factories, etc., in which any number of persons may be employed; and not only to those in which more than twenty are employed, the restriction as to number, which was contained in the definition of "house" in sect 4, having been removed: see the Note to that definition.³³

With regard to the cleansing of earth-closets, privies and ashpits, see sects. 42-44; and see sects. 47 and 91 as to nuisances in factories, etc.

Where the Public Health Acts Amendment Act, 1890, Part III.,³⁴ has been adopted, sect. 22 of that Act is substituted for the present section. Where Part III. of that Act has not been adopted, the neglect to provide sufficient and suitable sanitary conveniences for a factory or workshop, in accordance with the order of the Secretary of State, whether or not persons of both sexes are employed, is an offence under the Factory and Workshop Act, 1901,³⁵ the factory or workshop being in such case to be treated as not kept in conformity with that Act.

Mines.

By sect. 76 of the Coal Mines Act, 1911,³⁶ "general regulations shall be made under this Act with respect to the provision and use of sanitary conveniences in mines, both above and below ground."

Public necessities.

P.H., s. 57.

Sect. 39. Any urban authority may, if they think fit, provide and maintain, in proper and convenient situations, urinals waterclosets earthclosets privies and ashpits, and other similar conveniences for public accommodation.

Note.**Public sanitary conveniences.**

If a rural district council desire to provide such public conveniences as are mentioned in the present section, they must apply to the Minister of Health for urban powers under the section: they should pass a resolution that such application be made, and forward a copy of the resolution to the Minister, accompanied in the case, for instance, of a proposed public urinal, by information as to the arrangements proposed for its drainage and the supply of water for flushing and cleansing.

(33) *Ante*, p. 29.

(34) *Post*, Part I., Div. II.

(35) See s. 9, *post*, Vol. II., p. 2144.

(36) 1 & 2 Geo. V. c. 50, s. 76. As to such general regulations, see s. 86 of that Act.

Receptacles for the temporary deposit, and other places for the more permanent deposit of dust, ashes, and rubbish, may be provided by urban sanitary authorities under sect. 45.

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The Public Health Acts Amendment Acts, 1890 and 1907,³⁷ contain further provisions with respect to public and semi-public sanitary conveniences.

A corporation, having power under a local Act to erect lavatories, urinals, etc., for the use of the public in any street or public place, or on land belonging to them, or on land belonging to any person, with the consent of the owner, lessee, or occupier, built some lavatories under a public promenade which had been enlarged and made by the corporation some years previously with the consent of the owner of the soil. But the Court of Appeal, having come to the conclusion that the promenade was not repairable by the inhabitants at large, held that the soil under the surface was not a "street or public place" within the Act, and declared the plaintiff entitled to the soil, and the defendants not entitled to the lavatories or to the use of them, without his consent.³⁹ And on appeal to the House of Lords it was held that, even if the place was a "street," the corporation were not justified.⁴⁰

Conveniences in or under streets.

And under the Public Health (London) Act, 1891,⁴¹ which vests "the subsoil of any road, exclusive of the footway adjoining any building or the curtilage of a building," in the local authority for certain specified purposes, including the provision of public lavatories and sanitary conveniences, a metropolitan borough council were held not to be entitled to make part of the subway or underground approach to certain lavatories, etc., which they were constructing under the road, in and under a strip of ground which had formed part of the carriage-way, but had been added to the footway shortly before the works were commenced; and a mandatory injunction was granted by Joyce, J., requiring the council to remove that part of the subway or approach. It was, however, held that the absence of power to make a subway across the street did not prevent the council from making approaches to the lavatories from each side of the street, although such approaches could be used merely for the purpose of crossing the road.⁴² On an appeal, the Court of Appeal came to the conclusion that the approaches were primarily intended to be used as subways for crossing the road, and extended the injunction;⁴³ but the House of Lords restored the judgment of Joyce, J., Lord Macnaghten saying that "in order to make out a case of bad faith it must be shown that the corporation constructed the subway as a means of crossing the street under colour and pretence of providing public conveniences, which were not really wanted at that particular place."⁴⁴

The above-mentioned vesting of the subsoil in the local authority by the Public Health (London) Act, 1891, was held by the Court of Appeal (Mathew, L.J., dissenting) to give them such a right of ownership in public lavatories, maintained by them under a street in pursuance of that Act, as to render them liable to be charged with land tax in respect of them. These lavatories were constructed in made ground placed there in making up the level of the street, and the local authority were authorised to charge fees for the use of them, or to let them.⁴⁵

Land tax.

The construction of an underground urinal, the roof of which projected very slightly above the surface of the ground, was held not to contravene a covenant that a certain garden or open space should for ever be kept "open and unbuilt upon." Nor would the Court grant a *quia timet* injunction to restrain the construction of such a urinal on the ground of apprehended nuisance.⁴⁶

Restrictive covenants.

But where a local authority bought land for a public pleasure-ground, "subject to no buildings or erections of any kind being put thereupon except such structures as summer-houses, a band-stand, or shelters not exceeding twelve feet in height for the accommodation and convenience of the public," the Court of Appeal held

(37) See s. 20 of Act of 1890, *post*, Part I., Div. II., and ss. 43, 44, and 47 of Act of 1907, *post*, Part I., Div. III.

(39) *Baird v. Tunbridge Wells Cpn.*, L. R. 1894, 2 Q. B. 867; 64 L. J. Q. B. 145; 71 L. T. 201.

(40) *Tunbridge Wells Cpn. v. Baird*, *post*, p. 294 (27).

(41) 54 & 55 Vict. c. 76, s. 44.

(42) *London and N.W. Ry. Co. v. Westminster Cpn.*, L. R. 1902, 1 Ch. 269; 71 L. J. Ch. 34; 85 L. T. 544; 66 J. P. 343.

(43) *Ibid.* (C. A.), L. R. 1904, 1 Ch. 759; 73 L. J. Ch. 386; 90 L. T. 461; 68 J. P. 249;

2 L. G. R. 638.

(44) *Westminster Cpn. v. L. and N.W. Ry. Co.*, L. R. 1905 A. C. 426; 74 L. J. Ch. 629; 93 L. T. 143; 69 J. P. 425; 3 L. G. R. 1120.

(45) *Westminster Cpn. v. Johnson*, L. R. 1904, 2 K. B. 737; 73 L. J. K. B. 774; 91 L. T. 334; 68 J. P. 549; 2 L. G. R. 1378. See also *City of London Land Tax Comrs. v. Central London Ry. Co.*, L. R. 1913 A. C. 364; 82 L. J. Ch. 274; 108 L. T. 690; 77 J. P. 289; 11 L. G. R. 693; as to land tax on tube railway.

(46) *Graham v. Newcastle-on-Tyne Cpn.* (1892), 67 L. T. 790.

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that a combined shelter and public lavatory was not *ejusdem generis* with the excepted structures, and restrained its erection.⁴⁷

Building-line.

A urinal, which was indented in the front wall of a public-house, and did not project beyond the line of such wall, but formed part of the house, though it had no internal communication with it, was held not to be "in front" of the house within an enactment empowering a local authority to cause urinals in front of public-houses to be removed.⁴⁸

Obstruction of highway.

It was held that a *châlet* or kiosk for a public urinal and water-closets placed on a highway was not necessarily a nuisance; but it was doubted whether a metropolitan vestry had power to grant the use of the highway for the erection of the *châlet* to a company who might make a profit from it.⁴⁹

On an indictment for a common nuisance by placing and keeping a coffee-stall on a public carriage-way so as to obstruct it, the jury returned a special verdict, finding that "the coffee-stall was an obstruction, but that it did not appreciably interfere with the traffic in the street." The judge thereupon, without further question to or finding by the jury, directed a verdict of guilty to be entered. The Court for Crown Cases Reserved, however, considered that the special verdict did not amount to the finding of a nuisance, and quashed the conviction. *Per* Lord Alverstone, C.J.: "When that answer was returned, the jury ought to have been asked what they meant by it, and whether they meant that, although there was an obstruction, so few people wanted to use the street that it did not matter, or whether they meant that, situated as it was, it was no appreciable obstruction." *Per* Darling, J.: "In effect it is found to be an obstruction, but that it does not in fact obstruct the only thing the obstruction, of which would amount in law to a nuisance, and therefore it is found not to be a nuisance at all, and that was the gist of the indictment." And *per* Channell, J.: "This finding of the jury was a very ambiguous one. If understood one way, it would justify a verdict of guilty, but if understood in another way, it would not justify a verdict of guilty."⁵⁰

Nuisance caused by conveniences.

With respect to the power conferred by the present section to provide conveniences for public accommodation, in proper and convenient situations, it is to be observed that public bodies, although acting under the general powers given them by statute, have not therefore a licence to do whatever they think right, and if the Court is called upon to interfere it is its duty first to consider whether the proposed exercise of the power is or is not *bonâ fide*. In one case the Court of Appeal, being satisfied that a public urinal intended to be erected would not of necessity be a public nuisance, and, further, that it was neither certain nor probable that the public body were exceeding or would exceed their powers, and that they were not influenced by any improper motive, dissolved an interlocutory injunction which Stuart, V.-C., had issued to restrain the construction of the work.¹

On the other hand, a urinal was proposed to be erected by a metropolitan vestry in a mews, which was found to be a "street," within eight feet of the back door of a shop and close to the entrance of wine vaults, and, moreover, in such a position that numerous young women and girls in employment in the immediate neighbourhood would constantly pass very close to it. This, it was held, would be an intolerable nuisance, and an injunction was granted to restrain the erection of the urinal.² And under the present Act, Denman, J., granted a mandatory injunction to restrain the continuance of a urinal upon the plaintiff's land or so near thereto as to cause injury or annoyance to her or her tenants, holding that this was not a matter for compensation under sect. 308, the urinal having been erected, not "in a proper and convenient situation," but by trespass on private land.³ A similar injunction was granted by Joyce, J., in a case arising under the City of London Sewers Act, 1848,⁴ which authorises the sanitary authority to erect urinals "in such situations as they shall think proper," the improvement in the sanitary condition of the passage in which the urinal was

(47) *Stourcliffe Estate Co. v. Bournemouth Cpn.*, L. R. 1910, 2 Ch. 12; 79 L. J. Ch. 455; 102 L. T. 629; 74 J. P. 289; 8 L. G. R. 595.

(48) *Wellstead v. Paddington Vestry* (1891), 66 L. T. 194; 40 W. R. 254; 56 J. P. 295.

(49) *Mogg v. Bocker* (1889, Loc. Gov. Chron. 135) or *Bocken* (5 T. L. R. 22).

(50) *Rex v. Bartholomew* (C. C. R.), L. R. 1908, 1 K. B. 555; 77 L. J. K. B. 275; 98 L. T. 284; 72 J. P. 79; 6 L. G. R. 262.

(1) *Biddulph v. St. George, Hanover Square, Vestry* (1863), 3 De G. J. & S. 493;

33 L. J. Ch. 411; 8 L. T. 44, 558; 9 Jur. (N.S.) 953. See also *Goldberg & Son v. Liverpool Cpn.*, cited in Note to s. 308, under heading "Action for Damages," *post*.

(2) *Vernon v. Westminster Vestry* (1879, C. A.), L. R. 16 Ch. D. 449; 50 L. J. Ch. 81; 44 L. T. 229.

(3) *Sellors v. Matlock Bath Loc. Bd. of Health* (1885), L. R. 14 Q. B. D. 928; 52 L. T. 762.

(4) 11 & 12 Vict. c. clxiii., s. 104.

erected being held to be no answer to the complaint of the lessee of the premises against which, and near to the door of which, the urinal had been placed.⁵ The same learned judge subsequently granted a mandatory injunction requiring an urban district council to remove a urinal which they had erected under the present section near the front entrance gates to a person's house, on the ground that it materially interfered with his ordinary comfort and convenience in the enjoyment of his property.⁶

But an injunction to restrain an urban authority from using a urinal erected by them was refused by Pollock, B., on the ground of the balance of convenience, and because there was strong evidence that there was no appreciable nuisance.⁷ And an interim injunction to restrain a local authority from maintaining a public urinal against the wall of a ladies' club was refused, as the erection had been there since 1863, and was there when the premises were taken as a ladies' club.⁸ So also Kekewich, J., refused an injunction to restrain an urban district council from erecting public conveniences for ladies on a steep slope between the residences of the plaintiffs and the sea, distant about forty feet from the nearest part of such residences, and on a level about ten feet lower, on the grounds that it was the duty of the council under the circumstances of the case to provide something of the kind, that they adopted the site in question in the *bonâ fide* exercise of their discretion after due inquiry, that such site was not manifestly improper, and that there would not necessarily be any nuisance, public or private; although there were other proper and convenient sites available, although it was suggested that the council were affected by the fact that a councillor had offered the site in question gratuitously, and although there might be some detriment to the value of the residences of the plaintiffs.⁹

The onus of showing that the site selected by the local authority for a urinal is not "proper and convenient" is on the person complaining of it.¹⁰

Water supplied to railway companies for their station lavatories is supplied for "railway," and not for "domestic" purposes.¹¹

Sect. 40. Every local authority shall provide that all drains waterclosets earth-closets privies ashpits and cesspools within their district be constructed and kept so as not to be a nuisance or injurious to health.

Note.

See sects. 41, 47, and 91 *et seq.*, as to abating such nuisances.

Under sects. 42 and 43, the local authority may themselves undertake the cleansing of earth-closets, privies, ashpits, and cesspools, or, if they do not undertake this duty, they may, under sect. 44, make bye-laws imposing the duty on the occupiers of premises.

Under sect. 46 of the Public Health Acts Amendment Act, 1907,¹² cesspools, wells, or ashpits may be required to be filled up, removed, or altered.

With regard to infectious refuse placed in ashpits, etc., see sects. 13 and 14 of the Infectious Disease (Prevention) Act, 1890.¹³

Sect. 41. On the written application of any person to a local authority, stating that any drain watercloset earthcloset privy ashpit or cesspool on or belonging to any premises within their district is a nuisance or injurious to health (but not otherwise), the local authority may, by writing, empower their surveyor or inspector of nuisances, after twenty-four hours' written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain watercloset earthcloset privy ashpit or cesspool.

If the drain watercloset earthcloset privy ashpit or cesspool on examination is found to be in proper condition, he shall cause the ground to be closed, and any

Sect. 39, n.
Nuisance
caused by
conveniences
—continued.

Onus
probandi.

Water supply
to railway
urinals.

Drains, privies,
&c., to be
properly kept.
P.H., s. 54.

Nuisances.

Examination of
drains, privies,
&c., on
complaint of
nuisance.
P.H., s. 54.
L.G., s. 33.
San. 1868, s. 4.

(5) *Parish v. London City Cpn.* (1903), 67 J. P. 55.

(6) *Leyman v. Hessle U.D.C.* (1902), 67 J. P. 56; 1 L. G. R. 78. See also *Mudge v. Penge U.D.C.* (1916, Ch. D.), 86 L. J. Ch. 126; 80 J. P. 441; 15 L. G. R. 33.

(7) *Spicer v. Margate Cpn.* (1880), 24 Sol. J. 821; 69 L. T. Jo. 329, col. iii.

(8) *Halcyon Club, Ltd. v. Westminster City Council* (1911, Ch. D.), 2 Glen's Loc. Gov. Case Law 238.

(9) *Mayo v. Seaton U.D.C.* (1904), 68 J. P.

7; 2 L. G. R. 127; and see *Goldberg & Son v. Liverpool Cpn.*, cited in Note to s. 308 (under heading "Action for Damages"), *post*.

(10) *Pethick v. Plymouth Cpn.* (1894), 70 L. T. 304; 42 W. R. 246; 58 J. P. 476; and *Mason v. Wallasey Loc. Bd.* (1876), 58 J. P. 477; 42 W. R. 246, n.

(11) *Metropolitan Water Bd. v. London Brighton & S.C. Ry. Co.*, *post*, Vol. II., p. 1241.

(12) *Post*, Part I., Div. III.

(13) *Post*, Part II., Div. I.

Sect. 41.

damage done to be made good as soon as can be, and the expenses of the work shall be defrayed by the local authority.

If the drain watercloset earthcloset privy ashpit or cesspool on examination appear to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses.

Note.**Written application.**

Lord Alverstone, C.J., expressed the opinion that the "written application of any person" might be made by an officer of the district council.¹⁴

An anonymous postcard was held sufficient foundation for proceedings under the Public Health (London) Act, 1891, which, however, does not require the "written application" specified in the present section.¹⁵

As to whether the application need be "written," Channell, J.,¹⁶ said: "I do not lay any stress on the fact that the complaint of the nuisance was not in writing in the first instance, and was only put into writing by the local authority when received," and held that such a defect could be "waived."

Where, however, sect. 34 of the Public Health Acts Amendment Act, 1907,¹⁷ is in force, the words "or where on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain, water-closet, earth-closet, privy, ashpit, or cesspool is a nuisance or injurious to health" are substituted for the words "(but not otherwise)" in the first sentence of the present section.

Nuisances.

A drain, privy, ashpit, or cesspool, which is so foul or in such a state as to be a nuisance or injurious to health, may be dealt with under the nuisance clauses of the Act, sects. 91 *et seq.*, instead of under the present section.

Sect. 45 of the Public Health Acts Amendment Act, 1907,¹⁷ contains further provisions with reference to the testing and remedying of defects in drains.

The cleansing of earth-closets, privies, ashpits, and cesspools may be undertaken by the local authority themselves under sects. 42 and 43, or enforced under bye-laws made in pursuance of sect. 44.

Single private drain.

The application of the present section to drains is confined to drains as defined in sect. 4, except that it is applied by sect. 19 of the Public Health Acts Amendment Act, 1890,¹⁸ where that Act has been adopted, to a "single private drain" by which two or more houses belonging to different owners are connected with a public sewer.

Notice.

As to whether the notice should be sent to the owner or occupier, see the Notes to sects. 94 and 97, *post*.

The object of the twenty-four hours' notice mentioned in the first part of the present section is to enable the surveyor to enter premises when his entry would, but for the notice, be a trespass, and the service of such a notice, before applying a smoke test to a single private drain on the premises of a person who had applied for the test to be made, was held not to be a condition precedent to the recovery of the expenses of relaying a single private drain from the owner of other premises served by the drain.¹⁹

Trespass.

It is doubtful whether a person can be required to repair that part of a pipe draining his premises which is on an adjoining owner's land if he has no right, and cannot obtain a right, to enter that land for this purpose.²⁰

Admission to premises.

Sect. 305 of the present Act contains a provision under which a local authority may obtain an order of justices authorising them to enter premises for the purpose

(14) *Wood Green U.D.C. v. Joseph* (1905), L. R. 1907, 1 K. B., at p. 189; 74 L. J. K. B. 954; 93 L. T. 434; 3 L. G. R. 1147; affirmed in H. L. on other grounds, see Note to P. H. Act, 1890, s. 19, *post*, Part I., Div. II.
(15) 54 & 55 Vict. c. 76, s. 2 (b); *Farmer v. Long* (1907, K. B. D.), 72 J. P. 91; 6 L. G. R. 368.

(16) In *Haedicke v. Friern Barnet U.D.C.* See, on this point, L. R. 1904, 2 K. B., at

p. 822.

(17) *Post*, Part I., Div. III.

(18) *Post*, Part I., Div. II.

(19) *Bromley Cpn. v. Cheshire*, L. R. 1908, 1 K. B. 680; 77 L. J. K. B. 332; 98 L. T. 243; 72 J. P. 34; 6 L. G. R. 156.

(20) See *Haedicke v. Friern Barnet U.D.C.*, and other cases cited in the Note to P.H. Act, 1890, s. 19, *post*, Part I., Div. II.

(amongst others) of examining works when the owner or occupier refuses them admission.

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The power to determine the nature and extent of the works required is vested in the local authority; and when proceedings are taken to recover penalties for non-compliance with their notices, the justices have no power to review their determination.²¹ And it would seem that the local authority have the exclusive power to determine whether their directions have been carried out with regard to the materials to be used in the construction of the drain.²²

Nature of works.

On a summons for non-compliance with a notice to make structural alterations in a water-closet, under similar provisions in the Public Health (London) Act, 1891,²³ it was held that the magistrate had jurisdiction to inquire into the validity of the notice, notwithstanding that there was a right of appeal to the county council against such a notice; for the directions to be given by the sanitary authority are required to be in accordance with the bye-laws of the county council, and are declared to be void if they are not,²⁴ and the bye-laws which had been made by the county council did not apply to existing water-closets.²⁵

In the foregoing case, Kennedy, J., said that the power to require "alteration or amendment" did not comprise structural alteration; but in a subsequent case it was pointed out that this remark only had reference to an alteration which the local authority required by reason of the original structure having been improperly constructed; and it was held that, under the present section and sect. 19 of the Public Health Acts Amendment Act, 1890, structural work might be executed when it had been rendered necessary by the original structure having been broken.²⁶

Meaning of alteration.

Under an Act which authorised the Glasgow Police Commissioners, on finding the drains of any house to be defective, to order the owner to carry out all necessary operations for removing defects of structure, or doing such acts as might be requisite to prevent risk to health, and on his default, to execute the work and recover the expenses from him, the Second Division of the Court of Session held that as the commissioners, on the owner's default in complying with their order, had disregarded the existing structure and laid an entirely new drain in a different site and with a different outflow, they could not recover the expenses incurred thereby. On appeal to the House of Lords the case was remitted for a finding on the question whether the work in question was in fact or in the opinion of the commissioners necessary; and it having been found that it was not proved that the commissioners were of opinion that the work was necessary and that their investigations had given them no reasonable ground for thinking that it was so, the House of Lords disallowed the expenses of those works on the ground that they did more than was necessary.²⁷

As to the right to appeal to Quarter Sessions against an order of justices under the present section, see the case referred to below.²⁸

Appeal.

With regard to the ultimate liability for the cost of the works, under covenants and otherwise, as between landlord and tenant, see the Note to sect. 257.

Landlord and tenant.

(21) *Hargreaves v. Taylor* (1863), 3 B. & S. 613; 32 L. J. M. C. 111; 8 L. T. 149; 9 Jur. (N.S.) 1053.

(22) *Austin v. Lambeth Vestry* (1858), 27 L. J. Ch. 388, 677; 4 Jur. (N.S.) 274, 1032.

(23) 54 & 55 Vict. c. 76, s. 41 (2).

(24) *Ibid.*, s. 39 (3).

(25) *Fulham Vestry v. Solomon*, L. R. 1896,

1 Q. B. 198; 65 L. J. M. C. 33; 60 J. P. 72.

(26) *Southwold Cpn. v. Crowdy* (1903), 67 J. P. 278; 1 L. G. R. 899.

(27) *Glasgow Cpn. v. M'Omish*, L. R. 1898 A. C. 432.

(28) *Hornsey B.C. v. Kershaw*, cited in Note to P.H. Act, 1890, s. 19, *post*, Part I., Div. II.

Sect. 42.

SCAVENGING AND CLEANSING.

REGULATIONS AS TO STREETS AND HOUSES.

Local authority to provide for cleansing of streets and removal of refuse.

L.G., s. 32.
P.H. 1874, s. 21.
San. 1868, s. 5.

Sect. 42. Every local authority may, and when required by order of the [Minister of Health] shall, themselves undertake or contract for—

The removal of house refuse from premises;

The cleansing of earthclosets privies ashpits and cesspools; either for the whole or any part of their district:

Moreover every urban authority and any rural authority invested by the [Minister of Health] with the requisite powers may, and when required by order of the said [Minister] shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the mean time kept so as not to be a nuisance.

Note.

Contracts.

With regard to the mode in which contracts are to be made by district councils, see sects. 173 and 174, and the Notes to those sections.¹

Undertaking by district council.

The "undertaking" may be an undertaking by the practice of the council, without any express resolution.²

Although the word "and" is used in authorising district councils to undertake the cleansing of "earthclosets, privies, ashpits, and cesspools," the Divisional Court held that the provision may be read disjunctively, so that the council or the Minister of Health have an option as to whether all or only some of these duties shall be undertaken by the council.³ But the words "any part of" their district do not enable a local authority to pick out certain privies, etc., for cleansing and to leave the others, even though the others are not constructed with their approval and a local Act may require such approval to be obtained.⁴

The local authority may not demand payment for removing refuse, etc., except in special circumstances.⁵

Failure to perform an order of the Minister of Health under the present section would no doubt be indictable.⁶

In a case in which a local authority had, in pursuance of the present section, undertaken the cleansing of privies, a nuisance arose in certain privies from an outbreak of fever in the houses to which they belonged. The local authority took proceedings, under sects. 94 and 95, to compel the owner to substitute water-closets and make other alterations, and obtained an order of justices for the purpose; but on a special case being stated the order was quashed on the ground that the local authority were responsible, the nuisance having arisen by reason of their default in carrying out their duty under the present section.⁷

A local authority were restrained by injunction from throwing into a river snow

(1) *Moon v. Camberwell B.C.*, cited in the Note to s. 173, related to a contract for the supply of horses for scavenging work.

(2) *Pegg & Jones, Ltd. v. Derby Cpn.*, *infra*; *Leck v. Epsom R.D.C.*, *post*, p. 121.

(3) *Stainland and Holywell Green Industrial Soc. v. Stainland with Old Lindley U.D.C.*, L. R. 1906, 1 K. B. 233; 75 L. J. K. B. 190; 4 L. G. R. 295.

(4) *Pegg & Jones, Ltd. v. Derby Cpn.*

(1909, K. B. D.), L. R. 1909, 2 K. B. 511; 78 L. J. K. B. 909; 101 L. T. 237; 73 J. P. 413; 7 L. G. R. 922.

(5) See *Leck v. Epsom R.D.C.*, *post*, p. 121, and, as to "trade refuse," s. 48 of P. H. Act, 1907, *post*, Part I., Div. III.

(6) See *Reg. v. Walker*, cited in Note to s. 299, *post*.

(7) *Barnett v. Laskey* (1898), 68 L. J. Q. B. 55; 79 L. T. 408; 63 J. P. 5.

mixed with street refuse "so as to cause injury to" the occupiers of certain mills on the river.⁸

Damages and an injunction were granted against a local authority that had tipped refuse on a field purchased by them for the purpose, foul water having issued from the heap and polluted a brook.⁹

An injunction restraining a nuisance caused by smells from a refuse tip was granted, but suspended, owing to war and labour difficulties, on the defendants undertaking to keep the tip covered with earth so as to minimise the nuisance.¹⁰ For the full undertakings given by the defendants in a case where the alleged public nuisance was from smells, smoke, and flies, see the case cited below.¹¹

The plaintiff worked a farm which was "L" shaped. The local authority used the angle as a refuse tip, tipping about fifty tons a month. Shortly after the commencement of tipping in 1907 one of the plaintiff's cows died. The *post-mortem* examination showed that it had died from eating oilcloth and other refuse. The local authority paid the plaintiff for this cow, and endeavoured to minimise the risk of further loss in this direction, *inter alia*, lighting three bonfires a day. The plaintiff alleged that, from the same cause and the bonfires, from 1908 to the date of the action, he had lost seven young cattle, two heifers, and four milk cows (£174 was claimed under this head), and that his crops had been damaged and his milk tainted (£125 10s. was claimed under this head). The defendants had arranged with the manageress of the farm that if any beast died she was either to notify them or to call in a veterinary surgeon; but this had not been done, and there had been no analysis of the hay or of the contents of the intestines of the animals. The Court of Appeal reversed the judgment of Leigh Clare, V.-C., for the plaintiff. *Per* Cozens Hardy, M.R.: "I think that this is an instance of a well-known fallacy called *post hoc ergo propter hoc*. . . . The plaintiff has not succeeded in discharging the burden which undoubtedly rests upon him; the burden, I mean, of showing that the death of these cows, which I assume was due to eating the hay from the Boon Bank, was occasioned by the hay being in some way polluted by the contiguity of the tip and what was done on the tip."¹²

A local authority deposited refuse in a field which was placarded by the owner as a "free coup" (*i.e.* free shoot). Other persons did the same. The refuse was set alight (there was no evidence as to who did this), the plaintiff's child's clothes caught fire, and she died from her injuries. The fence to the field was defective, and the public habitually used the field for purposes of recreation without hindrance. It was held that, as (1) the ground upon which the local authority were allowed to shoot their refuse did not belong to them and they therefore had no control over it, and (2) the refuse deposited by them was not in itself dangerous, and (3) it was not alleged that the local authority themselves set fire to the rubbish, or directed it to be burned, or that it was burned by anybody for whom they were responsible, the action must be dismissed. *Per* Lord Kinnear: "No one, whether he is the owner of ground or not, is allowed to put upon a piece of ground open to the public and habitually frequented by the public any dangerous machine or dangerous animal without taking precautions against anyone getting hurt. . . . The answer in this case is that the materials which the defendants left upon this waste ground or free coup are not in themselves dangerous to anybody."¹³

Where alterations in level, caused by a local authority's refuse tip, resulted in the diversion of water, which created a gully into which the plaintiff fell on a dark night, the authority were held liable in damages.¹⁴

As to nuisances from accumulations of refuse, see the Note to sect. 91.

(8) *Atkinson v. Huddersfield Cpn.* (Chitty, J.), Times, April 20th, 1893, p. 3, col. ii. See also *Metrop. Bd. of Works v. Eaton*, post, p. 120.

(9) *Jones v. Welshpool Cpn.* (Swinfen Eady, J.), Times, November 18th, 1904, p. 3, col. iv.

(10) *Great Central Ry. Co. v. Doncaster R.D.C.* (1917, Ch. D.), 82 J. P. 33; 15 L. G. R. 813.

(11) *A.G. (Dartford R.D.C.) v. Thames Deep Water Wharf, Ltd.* (1921, Ch. D.), 85 J. P. 610. Failure to carry out these undertakings was followed by sequestration proceedings, as a result of which the defendants undertook to cease depositing the

refuse altogether, and to cover the whole heap with six inches of earth. M.S.

(12) *Holden v. Dalton U.D.C.* (1912), 3 Glen's Loc. Gov. Case Law 189. Cf. *Notts C.C. Case* (Times, October 28th, 1910, p. 16, col. iv., bot.), where the council were painting a bridge, the workmen left a pot of paint in an adjoining field, a cow licked up all the paint, and its owner was paid £17 6s. 0d. in settlement of proceedings.

(13) *Johnstone v. Lochgelly B.C.*, 1913 S. C. (S.) 1078; 50 Sc. L. R. 907; 4 Glen's Loc. Gov. Case Law 141.

(14) *Priest v. Manchester Cpn.* (1915, K. B. D.), 84 L. J. K. B. 1734; 13 L. G. R. 665.

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Nuisances from refuse tips.

Accumulations of refuse.

Sect. 42, n.**Negligence of contractor.**

A local authority hired a horse and driver from D. for the day to draw and drive one of their watering-carts. They had authority to give directions to the driver when and where to water the streets, but had no further control over him. In these circumstances they were held not liable for injuries caused by the driver's negligence.¹⁵ But where a local authority had contracted with L. for the supply for three years of horses, harness, and drivers for watering-carts, and the driver of one of these carts was negligent and caused an accident while filling the cart, and the jury found that at the time of the accident the driver was a servant of L., but was acting under the control of the local authority, Channell, J., ruled that both L. and the local authority were liable.¹⁶

An urban district council, having undertaken to cleanse cesspools in a part of their district, employed a contractor to empty the cesspools and cart the sewage contents in a movable receptacle belonging to the council, but made no provision in the contract as to the subsequent disposal of such sewage. The contractor deposited the sewage on certain land without the consent of the landowners. They brought an action for an injunction and damages against the council. The Court of Appeal held that the council were responsible for the acts of the contractor on the ground that, under the terms of the contract, the duty of disposing of the sewage remained with them. And, *per* Buckley, L.J., even if the contract had provided for the disposal of the sewage, the council would have been liable on the ground that their duty to dispose of the sewage was statutory, and they could not escape from responsibility by delegating the duty to a contractor.¹⁷

Private streets.

It is to be noticed that the powers of the present section with respect to "streets" are not confined to streets repairable by the inhabitants at large, such as are vested in urban authorities. Reference should, however, be made to sect. 148, under which urban district councils can take upon themselves, by agreement, the cleansing and watering of streets not repairable by the inhabitants at large.

Sending rubbish into sewers.

The Commissioners of Sewers for the City of London swept mud from the streets into heaps, and then sent it mixed with water into the sewers of the Metropolitan Board of Works. This was held to constitute the offence, under the Metropolis Management Act, 1855, of sweeping "soil, rubbish, or filth or *any other thing* into or in any sewer."¹⁸

Explosives.

A Home Office Order of October 28th, 1904,¹⁹ after reciting that, by the Explosives Act, 1875,²⁰ "a Secretary of State may from time to time make byelaws for regulating the conveyance, loading and unloading of gunpowder, in any case in which byelaws made under any other provision of the Act do not apply, and in particular for declaring or regulating all or any of the matters therein-after following:" and that by the same Act,²¹ "it is declared that, subject to the provisions subsequently in Part II. of the Act contained, Part I. of the Act relating to gunpowder shall apply to every other description of explosive in like manner as if the provisions of Part I. of the Act were re-enacted in Part II. with the substitution of that description of explosive for gunpowder:" and that "danger to the public has been caused by the depositing of explosives in receptacles for refuse:" provides that "the following byelaws shall be observed:—(1) Explosive²² shall not be deposited in any receptacle or place appropriated for refuse, and shall not be handed or forwarded to any dustman or other person employed in the removal of refuse, unless due notice has been given to such dustman or person, or to the dustman or person whose duty it is to remove refuse from such receptacle or place. 2. Explosive²² shall not be conveyed in any carriage or boat appropriated for the removal of refuse." The Order also provides that "in the event of any breach (by any act or default) of the foregoing byelaws, or an attempt to commit such breach:—The person committing the offence shall be liable to a penalty not exceeding in the case of the first offence, £10, and in the case of the second offence, or any subsequent offence, £20, and also the following persons, viz., the owner of the carriage or boat in respect of which, or containing the explosive in respect of which, the offence is committed, the person in charge of such carriage, and the person owning such

(15) *Jones v. Liverpool Cpn.* (1885), L. R. 14 Q. B. D. 890; 49 J. P. 311.

(16) *Mileham v. St. Marylebone B.C. and Latter* (1903), 67 J. P. 110; 1 L. G. R. 412.

(17) *Robinson v. Beaconsfield U.D.C.* (1911, C. A.), L. R. 1911, 2 Ch. 188; 80 L. J. Ch. 647; 105 L. T. 121; 75 J. P. 353; 9 L. G. R. 789.

(18) 18 & 19 Vict. c. 120, s. 205; *Metropolitan Bd. of Works v. Eaton* (1884), 48 J. P. 611. See also *Atkinson v. Huddersfield Cpn.*, ante, p. 119.

(19) 2 L. G. R. (Orders) 220.

(20) 38 Vict. c. 17, s. 37.

(21) *Ibid.*, s. 39.

(22) *Sic.*

explosive, shall each be liable to a similar penalty unless he proves that he had supplied proper means and issued proper orders for the observance, and used due diligence to enforce the observance, of these byelaws."

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As to the general district funds and rates of urban district councils, see sect. 209 *et seq.*; and as to the funds from which the expenses of rural district councils are to be paid, see sects. 229 and 230.

Funds.

The recovery of penalties is provided for by sect. 251 *et seq.* With regard to the offence of obstructing the scavengers of the local authority, see the Note to sect. 306.

Penalties.

The district council are themselves liable to penalties under sect. 43 if they fail to remove the refuse after undertaking or contracting for its removal.

Sect. 43. If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earthclosets privies ashpits and cesspools fail, without reasonable excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse or to cleanse any earthcloset privy ashpit or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period.

Penalty on neglect of local authority to remove refuse, &c.
P.H. 1874, s. 21

Note.

A somewhat similar provision to the present section was contained in the Metropolis Management Act, 1855,²³ and with reference to that enactment the following case may be cited. The vestry of St. Leonard's, Shoreditch, refused to collect or remove the dirt from a workhouse, situated in their parish, but belonging to the Holborn Guardians, relying on a local Act which provided that the land and building should not be liable to be charged with any greater taxes or assessments than before they became vested in the guardians. The guardians employed persons to collect and remove the dirt, and then brought an action to recover the expenses. It was held that the exemption from increased rates did not exempt the vestry from performing their duty in respect of the premises, and that such duty not being that of a surveyor of highways, they were liable for the amount claimed.²⁴

Duty of district council.

A district board in the metropolis, who had contracted for the removal of house refuse, were (before the passing of the Public Health (London) Act, 1891, which expressly imposes on them the duty of securing the due removal of such refuse) held to have performed their duty, and not to be liable to an action in respect of the contractor's neglect to remove refuse, the breach of duty being on his part, and not on the part of the board.²⁵

The fact that the mode of construction of certain privies had not been approved by the local authority in accordance with a local Act was held not to afford a "reasonable excuse" under the present section for the refusal of the local authority to cleanse them.²⁶

Reasonable excuse.

But where a local authority rescinded all resolutions as to any undertaking to cleanse cesspools under sect. 42, and then resolved to empty them gratuitously every three months, and more often if paid for doing so, it was held that there was a reasonable excuse for not cleansing without payment a particular owner's cesspool within three months after the last cleansing.²⁷ *Per* McCardie, J. :—"If the respondents undertook to do the work,"²⁸ they undertook it *in toto*. The scheme of this legislation is that the responsibility for the cleansing of cesspools shall fall upon certain definite persons—the local authority, or the contractor, or, in the case mentioned by sect. 44, the occupiers of premises; but wherever the duty falls it falls in its entirety. In my opinion the local authority is not entitled to demand any payment whatsoever for the fulfilment of its statutory obligation, but the obligation as to cleansing is a question of degree; it is always a matter of the reasonable interpretation of the statutory duty. So far as the reasonable

(23) 18 & 19 Vict. c. 120, s. 125; see now 54 & 55 Vict. c. 76, s. 30.
(24) *Holborn Guardians v. Shoreditch Vestry* (1876), L. R. 2 Q. B. D. 145; 46 L. J. Q. B. 36; 35 L. T. 400.
(25) *Ellis v. Strand Dist. Bd.* (1892, C. A.), 67 L. T. 307. See also *Robinson v. Beacons-*

field U.D.C., ante, p. 120.
(26) *Pegg & Jones, Ld. v. Derby Cpn.*, ante, p. 118.
(27) *Leck v. Epsom R.D.C.*, L. R. 1922, 1 K. B. 383 at p. 392; 91 L. J. K. B. 321; 126 L. T. 528; 86 J. P. 56; 20 L. G. R. 173.
(28) As to this point, see ante, p. 118.

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fulfilment of the section requires the cleansing of cesspools by the local authority, it must do so without payment, but once the measure of statutory duty has been reached, there is nothing to prevent the local authority saying to an occupier that if he desires further privileges he may obtain them by payment."

A bye-law made by the London County Council under the Public Health (London) Act, 1891,²⁹ required occupiers to deposit their house refuse in movable receptacles on the kerbstone or outer edge of the footpath in front of their houses or in a conveniently accessible position on the premises, as the sanitary authority might prescribe; but a sanitary authority directed the occupiers in all cases to deposit their house refuse in movable receptacles on the kerbstone or outer edge of the footpath, and refused to remove house refuse placed in a conveniently accessible position on a person's own premises. The sanitary authority were convicted under the same Act³⁰ for failing to remove the refuse without reasonable cause, and the Divisional Court upheld the conviction.³¹ But an objection that compliance with the byelaw would necessitate a temporary obstruction of the highway was overruled.

Easement.

Where the owner of a house had an easement entitling him to deposit refuse in a dustbin on another person's land, from which the refuse was removed by the local authority, it was held that the local authority did not carry out the removal as agents of the owner of the house so as to acquire from him a right of way along the passage which they used for that purpose.³²

House refuse.

The definition of "house" in sect. 4 is not to be imported into the expression "house refuse." Clinkers from the furnaces of a steam laundry were therefore held not to be such refuse as a local board were bound to remove under sects. 42 and 43.³³

Ashes.

Brewers occupying premises in a parish within the district of the Metropolitan Paving Act³⁴ burnt coals there in the process of brewing, and when they were partially consumed by having passed once through the fires removed them intermixed with the dust and ashes arising from the same fires to other premises occupied by them in another parish, where they used them for heating water to cleanse their casks. It was held that the scavenger of the parish first referred to was not entitled, under sects. 59 and 60 of the Paving Act, to claim any of the articles so removed.³⁵ So, also, where a brass-founder, having extracted a quantity of metal from ashes which fell into the ashpit during the process of casting, was accustomed to give the refuse, in which some metal still remained, as a perquisite to his apprentices, by whom it was sold to brass refiners, and a further quantity of metal was extracted from the ashes, it was held that the ashes, being available for a commercial purpose, were not "dust, cinders, or ashes" within the meaning of the same Act,³⁶ And certain commissioners under a Local Improvement Act were not compellable to remove from a manufactory dust, ashes, and rubbish arising from the combustion of coal and otherwise in the course of the manufacture of edge tools within the limits of the district of the commissioners, as the intention of the Act was that only the rubbish arising from the domestic use of the houses should be removed.³⁷

Tots.

The vestry of Paddington sold to the plaintiff all the breeze, dust, cinders, ashes, dirt, offal, garbage, filth, and refuse, which should be collected by them within the parish during one year, to be collected by the vestry and delivered to him. The servants of the vestry having appropriated various articles called "tots" thrown into the dustbins by the owners, the plaintiff claimed damages; but it was held that the contract applied only to such refuse as the vestry were bound to remove under the Act, and that they were only bound to remove things which were or might be injurious to the health of the inhabitants, and the "tots" were not such things.³⁸

Where sect. 48 of the Public Health Acts Amendment Act, 1907,³⁹ is in force, the council may be required to remove trade refuse (other than sludge) from any premises; but in that case the owner or occupier of the premises is to pay them a reasonable sum to be settled in case of dispute by a court of summary jurisdiction,

(29) 54 & 55 Vict. c. 76, s. 16 (2).

(30) *Ibid.*, s. 30 (2).

(31) *Wandsworth B.C. v. Baines*, L. R. 1906, 1 K. B. 470; 75 L. J. K. B. 158; 70 J. P. 124; 4 L. G. R. 257.

(32) *Foster v. Richmond* (1910, Ch. D.), 9 L. G. R. 65.

(33) *London and Provincial Steam Laundry Co. v. Willesden Loc. Bd.* (1892), L. R. 1892, 2 Q. B. 271; 67 L. T. 499; 56 J. P. 696.

(34) 57 Geo. III. c. xxix, ss. 59, 60.

(35) *Filbey v. Combe* (1837), 2 M. & W. 677; 1 Jur. 721.

(36) *Law v. Dodd* (1848), 1 Ex. 845; 17 L. J. M. C. 65.

(37) *Lyndon v. Standbridge* (1857), 2 H. & N. 45; 26 L. J. Ex. 386.

(38) *Collins v. Paddington Vestry* (1879), 48 L. J. Q. B. 345; 40 L. T. 843; 27 W. R. 504.

(39) *Post*, Part I., Div. III.

and if a question arises as to what is trade refuse it is to be settled by a similar court. Sect. 43, n.

The Metropolis Management Act, 1855,⁴⁰ authorised vestries and district boards to employ scavengers to remove "all dirt, ashes, rubbish, ice, snow, and filth . . . in or under houses and places," and imposed a penalty on an occupier who refused to allow the removal of such dirt, etc. It also enacted that if a scavenger was required to remove "the refuse of any trade, manufacture, or business, or . . . any building materials," he might make a charge for the removal. The question whether certain ashes, etc., were trade refuse, which the vestry of a metropolitan parish were not bound under the Metropolis Management Act to remove from private premises without payment, was considered to be a question as to the construction of the Act, and therefore to be properly brought before the High Court on a special case.⁴¹ Ashes from coal burnt in the furnace of a steam engine used by a pianoforte manufacturer for sawing and lifting materials were held to be refuse for the removal of which a charge might be made.⁴² And clinkers and ashes from the furnaces of an electric light contractor, to whom a portion of a building containing residential flats had been sub-let for the sole purpose of supplying the building with electric light, were held to be trade refuse.⁴³

Trade refuse.

Such coal was distinguished from the clinkers produced in furnaces used at the Hotel Metropole for generating steam for electric lighting, warming, cooking, etc., which the vestry were held by the Court of Appeal to be bound to remove without payment.⁴⁴ And in a subsequent case a magistrate's decision that the ordinary refuse of the same hotel, comprising such things as ashes from the grates, sawdust, empty bottles and tins, straw, packing-cases, tea leaves, waste paper, egg shells, lemon peel, dust from the rooms and staircases, and broken crockery and glass, was "house refuse" (within the definition in the Public Health (London) Act, 1891, quoted below), being all of the same character and description as that which was removed by the local authority from every large private dwelling-house, though greater in quantity, was upheld by the Divisional Court.⁴⁵ An appeal to the Court of Appeal in this case was dismissed on the ground that the decision of the magistrate was expressly rendered final by the statute,⁴⁶ and an appeal to the House of Lords failed for the same reason.⁴⁷ The decision in the Metropole case was subsequently applied to the case of similar refuse produced in a tea shop or restaurant.⁴⁸

Sect. 141 of the Public Health (London) Act, 1891,⁴⁹ enacts that "house refuse means ashes, cinders, breeze, rubbish, night soil, and filth, but does not include trade refuse," and that "trade refuse means the refuse of any trade, manufacture, or business, or of any building materials." With regard to these definitions, Lord Alverstone, C.J., in the tea-shop case,⁵⁰ said: "If we could adopt the principle that everything produced in a trade was trade refuse, we should have a clear and safe guide to the decision of these cases," but that the previous decisions precluded this. In a water-supply ("domestic purposes") case⁵¹ Channell, J., said: "In the case of a hotel, refuse domestic in its character, as ashes and broken victuals, is house refuse and not trade refuse, although it would not exist, or would not exist in such quantities, but for the business of a hotel being carried on. It is only trade refuse if the trade directly makes the refuse, and not if the trade only increases the quantity of the household or domestic refuse." Apparently this means that, when refuse comes from business premises, one first has to look

(40) 18 & 19 Vict. c. 120, ss. 125, 126, 128; see now 54 & 55 Vict. c. 16, ss. 29-36.

(41) *Reg. v. Bridge* (1890), L. R. 24 Q. B. D. 609; 59 L. J. M. C. 49; 62 L. T. 297; 54 J. P. 629. Distinguished, with regard to the power of the justices to state such a case, in proceedings under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 164; *Wills & Sons v. McSherry* (K. B. D.), L. R. 1914, 1 K. B. 616; 83 L. J. K. B. 596; 110 L. T. 65; 78 J. P. 120; 12 Asp. 426. And see, with regard to the same matter, *Westminster City Cpn. v. Gordon Hotels, Ltd.*, *infra*.

(42) *Gay v. Cadby* (1877), L. R. 2 C. P. D. 391; 46 L. J. M. C. 260; 36 L. T. 410.

(43) *Westminster Vestry v. Queen Anne's Mansions* (1893), 57 J. P. 277.

(44) *St. Martin's Vestry v. Gordon*, L. R. 1891, 1 Q. B. 61; 60 L. J. M. C. 37;

64 L. T. 243; 55 J. P. 437.

(45) *Westminster Cpn. v. Gordon Hotels, Ltd.*, L. R. 1906, 2 K. B. 39.

(46) *Ibid.*, L. R. 1907, 1 K. B. 910.

(47) *Ibid.*, L. R. 1908 A. C. 142; 77 L. J. K. B. 520; 98 L. T. 681; 72 J. P. 201; 6 L. G. R. 520. See also, as to right to appeal, *Wills & Sons v. McSherry* (*supra*), and *Kydd v. Liverpool Watch Committee*, L. R. 1908 A. C. 327; 77 L. J. K. B. 947; 99 L. T. 212; 72 J. P. 395; 6 L. G. R. 903.

(48) *Lyons & Co. v. London City Cpn.*, L. R. 1909, 2 K. B. 588; 78 L. J. K. B. 915; 101 L. T. 206; 73 J. P. 372; 7 L. G. R. 811.

(49) 54 & 55 Vict. c. 76, s. 141.

(50) For this quotation, see L. R. 1909, 2 K. B. at p. 595.

(51) *Metropolitan Water Bd. v. Avery*, *post*, Vol. II., p. 1240. For this quotation, see L. R. 1913, 2 K. B. at p. 268.

Sect. 43, n.
Trade refuse
—continued.

at the refuse itself and ask oneself whether it possesses a "domestic character"—that is to say, whether it is of the same "species" or class as that produced in ordinary dwelling-houses. If it does not, then it may safely be labelled "trade refuse"; but if it does, one must then, it seems, ask oneself this further question: Did the trade, during the carrying on of which the refuse was produced, "directly make" it? If it did, the refuse, according to the above test, is trade refuse in spite of its "domestic character." But it is difficult to draw the line between "direct" and "indirect" for this purpose. Jelf, J.,⁵² said: "There are many cases which clearly fall on one side of the line and many which as clearly fall on the other. For example, in a carpenter's shop the sawdust and shavings are clearly 'trade refuse'; the snippings from a tailor's business would clearly be trade refuse; and so would the hair cut by a hairdresser from the heads of his customers. On the other hand, there are certain incidents common to all houses, whether used for trade purposes or not, which would clearly not be trade refuse—dust blown in by the wind, soot from chimneys, and dirt brought in on the boots of persons entering the house. These fall clearly on the other side of the line." In the same case Sutton, J., said that trade refuse "means the residue of the manufacture, and does not include all matter necessary to carry on the manufacture"; and in the *Hotel Metropole* case⁵³ Lopes, L.J., drew a distinction between refuse produced "in aid of" a trade and refuse "of" a trade, holding that the former was not "trade refuse." In the *Gordon Hotels* case⁵⁴ Darling, J., said: "Trade refuse must be refuse which is produced in the doing of something different from the occupation of a house as a house is ordinarily occupied," and "house refuse is not converted into trade refuse by the mere fact that the people, who occupy the house and buy the food and the coal for the fires for the purpose of carrying on the house, are running the house as a hotel." It may therefore be that refuse from a trade is only trade refuse when the appliances used in turning out the article sold (or in doing work to an article) themselves produce the refuse, and not when the refuse is produced by appliances used incidentally for such turning out or work, or by persons doing business with the trader, or by other external agencies.

The Local Government Board expressed the opinion that an urban district council are not empowered to undertake the removal from shops of trade refuse mainly consisting of wastepaper, cardboard boxes, etc.

Power of local authority to make bye-laws imposing duty of cleansing, &c. on occupier.
L.G., s. 32.
San. 1868, s. 5.

Sect. 44. Where the local authority do not themselves undertake or contract for—

The cleansing of footways and pavements adjoining any premises,

The removal of house refuse from any premises,

The cleansing of earthclosets privies ashpits and cesspools belonging to any premises,

they may make bye-laws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises.

L.G., s. 32 (4).

An urban authority may also make bye-laws for the prevention of nuisances arising from snow filth dust ashes and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.

Note.

Scavenging.

Contracts for the purposes mentioned in the first clause of the present section may be entered into under sect. 42. With regard to the meaning of "refuse," see the Note to sect. 43.

Under sect. 50 an urban district council may require manure, etc., to be removed periodically from stables, mews, and other premises, and under sect. 49 they may require accumulations of filth to be taken away.

An urban or rural district council may, where the Infectious Diseases (Prevention) Act, 1890,¹ has been adopted, recover penalties from persons who throw infectious refuse into ashpits, etc., without disinfecting it.

Bye-laws.

Sects. 182-186 contain provisions relating to the making and confirmation of bye-laws.

Under the Public Health Acts Amendment Act, 1890,² an urban district council,

(52) In *Lyons & Co. v. London City Cpn.*, ante, p. 123; see L. R. 1909, 2 K. B. at p. 597.

(53) *St. Martin's Vestry v. Gordon*, ante, p. 123; see L. R. 1891, 1 Q. B. at p. 70.

(54) *Westminster City Cpn. v. Gordon*

Hotels, Ltd., ante, p. 123. For this quotation, see L. R. 1906, 2 K. B. at p. 51.

(1) *Post*, Part II., Div. I.

(2) See s. 26, *post*, Part I., Div. II.

who have adopted that Act, may make bye-laws as to the times for removing offensive matter or liquid, the construction of the vessels or carts used for the purpose, and the cleansing of places where any of the offensive matter or liquid may have been spilt; and any local authority that has undertaken or contracted for the removal of house refuse may make bye-laws imposing duties on the occupier of premises in connection with such removal. The same Act contains a provision for the cleansing of courts or passages leading to the back of several buildings in separate occupations.³

A footway partly gravelled, but paved for the convenience of walking to the necessary extent for practical purposes, was held, under the General Turnpike Act,⁴ to be a "pavement or paved footway."⁵ Lord Coleridge, C.J., said, "in one sense of the word of course it may be said that 'pavement' means flagging"; but, referring to the fact that the word "pave" was defined in the Metropolis Management Act, 1862,⁶ as including the formation of the roadway or footway of any street, he held that a gravelled footway with a proper foundation, and bound in by a granite kerb, was a pavement within the meaning of a provision of the Metropolis Management Act, 1855,⁷ dealing with opening the pavements of streets to lay drains.⁸ See also the definition of "paved" in sect. 11 (2) of the Public Health Acts Amendment Act, 1890.⁹

With respect to the abatement of nuisances from accumulations or deposits, or from keeping animals, see sect. 91 and following sections.

With reference to nuisances from snow, the House of Lords held, in a Scottish case, that a tramway company, who had heaped upon the sides of a street the snow which they had removed from their tramway by means of a snow plough, and who had also by scattering salt on the snow formed slush which was injurious to horses and other animals, could not justify the nuisance which they had created either under the Tramways Act, 1870,¹⁰ or their special Acts, or by the neglect of the town council to remove the snow.¹¹ This case was distinguished by the Privy Council in a Canadian case arising on the construction of a contract between the City Council of Montreal and a street railway company, on the ground that as in Montreal the snow was permanent in winter, and the inhabitants were permitted to throw the snow which was inconvenient to them into the street, the sweeping of the snow from the railway track could not be treated as a nuisance.¹²

As to the discharge into streams of snow mixed with street refuse, see the case cited below.¹³

On a truck-load of manure arriving at a railway station, the railway company at once gave notice to the consignee to remove it, and in the meantime placed it in their goods yard, which was surrounded by shops and houses. The consignee, in removing the manure on the following day, caused a nuisance from the smell. The company were convicted under a bye-law prohibiting the depositing of manure, etc., upon the surface of any place, but the Court quashed the conviction.¹⁴

A case arising under the Metropolitan Police Act, 1839, which imposes a penalty on a person throwing or laying any litter in a street or public place, was remitted to the magistrate for reconsideration, he having dismissed the summons on the ground that theatrical advertisements scattered about a road from a van were not "litter" in point of law; the Court held that the question was one of fact, namely, whether the printed advertisements in question were thrown in such quantities as to cause litter in the ordinary and popular sense and so as to be an offence.¹⁵

As to litter, etc., in streets, see sects. 28 [23] [26] [29] of the Town Police Clauses Act, 1847.¹⁶

Sect. 47 imposes penalties for keeping swine in dwelling-houses or so as to be a nuisance to any person.

A bye-law prohibiting the keeping of pigs within fifty feet of a dwelling-house,

Sect. 44, n.

Meaning of
"pavement."

Nuisances.

Snow.

Manure,
litter, &c.Keeping of
Animals.

(3) Public Health Acts Amendment Act, 1890, s. 27.

(4) 3 Geo. IV. c. 126, s. 112.

(5) *Reg. v. Manchester Cpn.* (1860), 2 L. T. 280.

(6) 25 & 26 Vict. c. 102, s. 112.

(7) 18 & 19 Vict. c. 120, s. 78.

(8) *Hampstead Vestry v. Hoopel* (1885), L. R. 15 Q. B. D. 652; 54 L. J. M. C. 147; 49 J. P. 471.

(9) *Post*, Part I., Div. II.

(10) 33 & 34 Vict. c. 78.

(11) *Ogston v. Aberdeen District Tram-*

ways Co., L. R. 1897 A. C. 111; 66 L. J. P. C. 1; 75 L. T. 633; 61 J. P. 436.

(12) *Montreal City v. Montreal Street Ry.*, L. R. 1903 A. C. 482; 72 L. J. P. C. 119; 89 L. T. 30.

(13) *Atkinson v. Huddersfield Cpn.*, ante, p. 119.

(14) *London, Brighton, and South Coast Ry. Co. v. Hayward's Heath U.D.C.* (1899), 80 L. T. 266.

(15) *Hills v. Davies* (1903), 88 L. T. 464; 67 J. P. 198; 1 L. G. R. 499.

(16) *Post*, Vol. II., p. 1649.

Sect. 44, n.
Keeping of
animals—
continued.

situated in a rural sanitary district, was held to be unreasonable, and therefore void and unenforceable.¹⁷

And a bye-law made by a town council under the Municipal Corporations Act, 1835,¹⁸ imposing a fine upon every person "who shall keep, or suffer to be kept, any swine within the said borough, from the 1st day of May to the 31st day of October, inclusive, of any year," was bad, for it was directed generally against the keeping of swine, and not merely against the keeping of them so as to be a nuisance.¹⁹

But a bye-law forbidding the keeping of pigs within one hundred feet of a dwelling-house, and another ordering certain drainage to be provided wherever pigs were kept, were held not to be unreasonable bye-laws, and in order to obtain a conviction it was not necessary to prove that the infraction of either bye-law caused a nuisance;²⁰ nor is it necessary to prove that the pigs have been fed or kept all night on the premises.²¹

A bye-law under sect. 32 of the Local Government Act, 1858,²² required the occupiers of yards, etc., where animals were kept, to provide covered receptacles for dung, etc. Justices were held to be wrong in dismissing, on the ground that no nuisance had been proved, a summons for failure to provide such a receptacle.²³

Further as to the abatement of nuisances from accumulations, deposits, and the keeping of animals, see sect. 91 and the following sections, *post*.

The Protection of Animals Act, 1911,²⁴ prohibits various forms of cruelty to animals.

Power to
provide recep-
tacles for
deposit of
rubbish.
P.H., s. 56.

Sect. 45. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust ashes and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act.

Note.

Public con-
veniences.

With regard to the provision of public urinals, water-closets, earth-closets, privies, ashpits, and other conveniences for public accommodation, and the creation of nuisances thereby, see sect. 39 and Note.

Refuse
destructors
in rural
districts.

The Local Government Board stated that they were advised that a rural district council must be invested with urban powers under the present section before they can provide a refuse destructor, and that then the section would only enable them to provide places for the deposit of matters which they had themselves collected.

The Board were willing to invest rural district councils with the powers of the present section in respect of parishes (the names of which should be specified in the applications) in which the council themselves undertake or contract for the removal of house refuse, etc., in the exercise of the powers of sect. 42. It will, however, be observed that under the present section, if put in force, the council can only provide *permanent* places for the deposit of such matters as are collected by them.

Profit from
destructors.

Application was made to the Local Government Board for sanction to a loan for the provision of a refuse destructor, the proposed works including plant for making mortar out of the products of the destructor. The Board stated that, pending the decision of Parliament on the general question of municipal trading, it would be contrary to the Board's practice to sanction a loan for plant of this kind, except on the condition that the local authority will not manufacture material for sale, but will only sell such surplus products of the plant as they cannot themselves use. Upon receipt of a copy of the resolution of the district council undertaking to observe this condition the loan was sanctioned.

Destructors
as furnaces.

The Court restrained the use of part of certain land for the erection of a refuse destructor, though the land had been acquired under the Electric Lighting Acts and the intention was to use the refuse as fuel for the generation of electricity.²⁵

Waste
utilisation.

During the war the Local Government Board issued various Circulars as to the

(17) *Heap v. Burnley R.S.A.* (1884), L. R. 12 Q. B. D. 617; 53 L. J. M. C. 76; 48 J. P. 359.

(18) 5 & 6 Wm. IV. c. 76, s. 90.

(19) *Everett v. Grapes* (1861), 3 L. T. 669; but see *Kruse v. Johnson*, and other cases cited in Note to s. 182, *post*.

(20) *Wanstead Loc. Bd. of Health v. Wooster* (1873), 37 J. P. 403; and see *Lutton*

v. Doherty (1885), 16 L. R. Ir. 493.

(21) *Steers v. Manton* (1893), 57 J. P. 584.

(22) 20 & 21 Vict. c. 43, s. 32.

(23) *Tong Street Loc. Bd. v. Seed* (1875), 39 J. P. 278.

(24) *Post*, Vol. II., p. 2223.

(25) *A.G. v. Pontypridd U.D.C.*, *post*, Vol. II., p. 1284.

disposal of waste paper, metal, etc., with the assistance of the National Salvage Council.² **Sect. 45, n.**

As to nuisances from refuse tips, see the Note to sect. 42.

Sect. 46. Where, on the certificate of the medical officer of health or of any two medical practitioners, it appears to any local authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing cleansing or purifying of any house or part thereof would tend to prevent or check infectious disease, the local authority shall give notice in writing to the owner or occupier of such house or part thereof to whitewash cleanse or purify the same, as the case may require.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed cleansed or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

Nuisances from refuse tips.

Houses to be purified, on certificate of officer of health or of two medical practitioners. P.H., s. 60.

Note.

The present section extends to rural as well as urban district councils.

By the interpretation clause, sect. 4, the word "house" includes schools, also factories and other buildings in which persons are employed. Further as to the sanitary condition of factories, see sects. 1 to 9 and 98 to 102 of the Act of 1901.³

Sect. 120 of the present Act also gives district councils power to cause premises to be cleansed and disinfected, in terms very similar to those of the present section, except that the certificate of *one* medical practitioner will suffice, and that the continuing penalty which may be imposed is to amount to at least one shilling.

See also the Note to sect. 120, with reference to deodorising disinfectants, and the further provisions relating to the prevention of diseases in sects. 120-140.

As to recovery of penalties and expenses, see sect. 251 *et seq.*

Common lodging-houses are required by sect. 82 to be limewashed periodically.

As to the cleansing of persons infested with vermin, see the Cleansing of Persons Act, 1897.⁴

If a nuisance renders a house or building unfit for human habitation, its use for that purpose may be prohibited under sect. 97. If the medical officer of health finds that any dwelling-house in the district is in a state so dangerous or injurious to health as to be unfit for human habitation, he must report thereon to the local authority of the district. He is also to do so on receiving a representation from four or more householders living in or near the street where the premises are. The local authority are then to take action thereon in the manner provided for by the Housing Acts.⁵

In urban districts the medical officer of health may make an official representation to the local authority to the effect that an area is unhealthy, with a view to an improvement scheme being made for the re-arrangement and reconstruction of the streets and houses in such area.⁶

As to the power of local authorities to require the owners of houses "suitable for occupation by persons of the working classes" to render them "in all respects reasonably fit for human habitation," see sect. 28 of the Housing, Town Planning, &c., Act, 1919.⁷

The medical practitioner's certificates referred to in the present section will be invalid unless the giver is registered under the Medical Acts, 1848 and 1860.⁸

A summons under the Scottish enactment corresponding to the present section⁹ was held to have been properly dismissed on the ground that the notice, complaint, and evidence as to "filth" were all too vague, a mere general allegation of "dust or dirt" all over the house not being sufficient.¹⁰ Lord Clyde, L.J.G.,¹¹ said

Disinfection of premises.

Cleansing of persons.

Premises unfit for human habitation.

Repair of houses.

Doctors' certificates.

Notice to cleanse.

(2) March 15th, 1917, 15 L. G. R. (Orders) 21; May 3rd, 1917, 15 L. G. R. (Orders) 31; November 22nd, 1917, 15 L. G. R. (Orders) 354; March 16th, 1918, 16 L. G. R. (Orders) 38; August 30th, 1918, 16 L. G. R. (Orders) 436.

(3) *Post*, Vol. II., pp. 2138, 2150.

(4) Set out in the Note to s. 120, *post*.

(5) See ss. 30 and 31 of Act of 1890, and amendments thereto, *post*, Part II., Div. III.

(6) See ss. 4 and 5 of Act of 1890, *post*,

Part II., Div. III.

(7) *Post*, Part II., Div. III.

(8) See 21 & 22 Vict. c. 90, s. 37; 23 Vict. c. 7, s. 3.

(9) P.H. (Sc.) Act, 1897 (60 & 61 Vict. c. 38), s. 40, as amended by Housing (Sc.) Act, 1919 (9 & 10 Geo. V. c. 60), s. 46.

(10) *Gala-Water District Committee v. Buchan*, 1920 S. C. (J.) 87.

(11) *Ibid.*, at p. 91.

Sect. 46, n.

that the notice should have been "specific as to the particular rooms, or walls, or floors, or ceilings, or cupboards, or beds, or what not, in which the state of filth was known to the local authority to exist," and should have "indicated the sort of cleansing which the case required"; and Lord Cullen¹² that the notice should give the occupier "practical guidance as to what he must do," and provide the judge with a "satisfactory standard" whereby compliance or non-compliance with the notice could be determined.

The words "filthy" and "unwholesome" are "alternatives."¹³

Penalty in respect of certain nuisances on premises.
P.H., s. 59.

Sect. 47. Any person who in any urban district—

- (1.) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person; or
- (2.) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the urban authority to remove the same; or
- (3.) Allows the contents of any water-closet privy or cesspool to overflow or soak therefrom,

shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued, and the urban authority shall abate or cause to be abated every such nuisance, and may recover in a summary manner the expenses incurred by them in so doing from the occupier of the premises on which the nuisance exists.

Note.

Keeping of animals.

The present section applies only to nuisances in urban districts; but any animal so kept in any district as to be a nuisance or injurious to health is a "nuisance" within the meaning of sect. 91, and may be dealt with under the subsequent sections; and in cases falling within the operation of the present section, as well as within the nuisance clauses, the urban authority may proceed under either at their option: see sect. 111. See also sect. 44 and Note.

The provision as to the keeping of swine applies not merely to the place of keeping but to the manner of keeping the animals, and therefore an information and conviction for keeping swine upon premises, and also pigsties thereon, so as to be a nuisance to the inhabitants of the dwelling-houses and premises near and adjoining thereto, were upheld.¹

It is an offence under the present section to keep swine so as to be a "nuisance" in the common law meaning of the term, and it is not necessary in order to constitute such offence that there should be any injury to health.² The offence is also indictable at common law.³

As to pigsties near streets, see sect. 28 [30] of the Town Police Clauses Act, 1847,⁴ and, as regards London, the enactment and case cited below.⁵

Overflow from privy, etc.

Per Holt, C.J., "As every man is bound so to look to his cattle, as to keep them out of his neighbour's ground, that so he may receive no damage; so he must keep in the filth of his house of office, that it may not flow in upon and damnify his neighbour. If a man has two houses contiguous, and one has a house of office, which is separated from the cellar of the other by the wall, which keeps in the filth of the house of office, and he sell that house, the vendee must keep in the filth of the house of office, so as it shall not run in upon the other house."⁶

OFFENSIVE DITCHES AND COLLECTIONS OF MATTER.

Provision for obtaining order for cleansing offensive ditches lying near to or forming the boundaries of districts.
L.G., s. 31.

Sect. 48. Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority, summon the local authority of such adjoining district to appear before a court of summary jurisdiction to show cause why an order should not be made by such court for cleansing such watercourse or open ditch, and for

(12) *Gala-Water District Committee v. Buchan*, 1920 S. C. (J.) at p. 94.

(13) *Ibid.*, per Lord Skerrington at p. 93.

(1) *Digby v. West Ham Loc. Bd. of Health* (1858), 22 J. P. 304.

(2) *Banbury U.S.A. v. Page* (1881), L. R. 8 Q. B. D. 97; 51 L. J. M. C. 21; 45 L. T. 759; 46 J. P. 184.

(3) *Reg. v. Wigg* (1705), 2 Salk. 460; 2 Ld.

Raymond 1163.

(4) *Post*, Vol. II., p. 1649.

(5) 54 & 55 Vict. c. 76, s. 17: *Chelsea Vestry v. King* (1864, C. P.), 34 L. J. M. C. 9; 29 J. P. 39.

(6) *Tenant v. Goldwin* (1704), 2 Ld. Raymond, at p. 1092, cited in *Humphries v. Cousins*, *post*, p. 181.

executing such permanent or other structural works as may appear to such court to be necessary; and such court, after hearing the parties, or ex parte in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such court may seem reasonable. **Sect. 48.**

Note.

The present section extends to rural district councils.

Foul watercourses, etc., are amongst the things included in the definition of "nuisances" given by sect. 91, and such nuisances may be abated by the means pointed out in sect. 93, *et seq.*, at the option of the local authority (sect. 111), even though they are caused by an act taking place without the district (sect. 108). **Nuisances.**

With regard to the position of the boundaries of parishes, when such boundaries are formed by a highway or river, or by the sea, see the Note to sect. 4 on the meaning of "parish." **Boundary of district.**

An order made by justices upon the complainant authority, to cleanse a ditch beyond the boundary of their district, was upheld notwithstanding the contention that they could not comply with it without committing a trespass.¹

It is a nuisance to suffer the highway to be incommoded by reason of the foulness of adjoining ditches, and it is said that he who hath the land next adjoining to the highway ought, of common right without prescription, to scour his ditches, but that he who hath land not so adjoining is not bound by common law to do so without a special prescription.² **Ditches near highways.**

By sect. 67 of the Highway Act, 1835,³ the highway authority as surveyor of highways "shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make and lay such trunks, tunnels, plats, or bridges, as [they] shall deem necessary, in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby," to be settled and paid in the manner provided by the Act.⁴ And by sect. 68 of the same Act,⁵ "if any owner, occupier, or other person shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plats, or bridges, after they shall have been made by or taken under the charge of such [surveyor or district surveyor], and without [his] authority and consent, such owner, occupier, or other person shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses."

Sect. 67 of the Act of 1835 does not authorise a highway authority to direct water on to private land.⁶

By the General Turnpike Act of 1822,⁷ somewhat similar powers for making and maintaining ditches, etc., at the sides of turnpike roads were given to the turnpike trustees and their surveyor.⁸

An Inclosure Act directed the inclosure commissioner (amongst other things) to set out such watercourses as he should think proper, and to order and direct by whom and at whose expense such watercourses should be repaired and cleansed. The Act also provided that he should assign land for getting materials for repairing the public roads. The commissioner by his award set out certain roads and allotted land for getting road materials to the surveyor of highways. He also ordered that a certain watercourse should be made and for ever thereafter be repaired and cleansed by the surveyor of highways for the time being, the expenses attending such repairing and cleansing to be paid out of a rate to be made for the repair

(1) *Woburn R.S.A. v. Newport Pagnell R.S.A.* (1887), 51 J. P. 694.

(2) 1 Hawkins' 'Pleas of the Crown,' c. 76, s. 149; Brooke's *Abr. tit. Nuisance*, 28; Bacon's *Abr. tit. Highways* (D.); Year Book, Mich. Term, 8 Hen. VII. 2; 13 Co. Rep. 33; *Anon. Loft.* 359.

(3) 5 & 6 Wm. IV. c. 50, s. 67.

(4) As to this enactment, see *A.G. v. Copeland* (C. A.), L. R. 1902, 1 K. B. 690; 71 L. J. K. B. 472; 86 L. T. 486; 66 J. P. 420.

(5) 5 & 6 Wm. IV. c. 50, s. 68.

(6) *Thomas v. Gower R.D.C.*, L. R. 1922,

2 K. B. 76; 91 L. J. K. B. 666; 127 L. T. 333; 86 J. P. 147; 20 L. G. R. 567. Further as to this case, see the end of the Note to s. 308, *post*; and further as to the rights of local authorities and adjoining owners under ss. 67 and 68, see *Ballard v. Leek U.D.C.*, cited in Note to s. 327, *post*.

(7) 3 Geo. IV. c. 126, ss. 113, 114, 115.

(8) As to these enactments, see *Merivale v. Exeter Turnpike Trustees* (1868), L. R. 3 Q. B. 149; 9 B. & S. 70; 37 L. J. M. C. 40; 18 L. T. 83.

Sect. 48, n.

of highways in the township. The watercourse, not being properly cleansed, overflowed and caused a nuisance to the highway. It was held by Byrne, J., that the commissioner had jurisdiction to impose the repair and cleansing of the watercourse on the surveyor of highways and to direct him to raise the expenses by a rate.⁹

Landowner's duty to scour.

A watercourse flowed from the plaintiff's land to the defendant's and, owing to silting opposite the defendant's land, flowed on to the plaintiff's land and damaged it. It was held that, though the defendant had executed works to facilitate the flow of water past his land, the watercourse had not lost its character as a "natural stream," and that, as the defendant had not committed any positive act of obstruction, he was under no duty to scour the stream.¹⁰

Dedication of site of ditch.

The filling in and piping of a ditch which ran along a strip of land at the side of a highway set out under an Inclosure Act by the urban district council to avoid danger to the public, the owner of the soil assenting to this course being taken, and the fact that the owner did nothing for four years to prevent the public from walking over the site of the ditch, were held by Swinfen Eady, J., not to show an intention on the part of the owner to dedicate the site to the use of the public as part of the highway.¹¹ But a roadside ditch, even though not covered in, may be dedicated as part of the highway.¹²

Ditches in the metropolis.

The metropolitan borough councils may cause ditches at the sides of or across public roads and byways and public footways to be filled up, and substitute pipe or other drains alongside or across such roads and ways, with appropriate shoots and means of conveying water from the roads and ways thereinto, and the surface of land so gained if thrown into the road is to be repairable as part of the roads or ways.¹³

The Public Health (London) Act, 1891, contains provisions with reference to pools, ditches, gutters and watercourses, which are offensive or likely to be prejudicial to health.¹⁴

Under the Nuisances Removal Act, 1855, now repealed, certain improvement commissioners were held to be entitled to make a new sewer in any direction through enclosed lands adjoining a highway, the sewer being necessary for the purpose of abating a nuisance from an old watercourse which had been used as a sewer and was not in the same line as the new sewer; and the fact that they had power to make the sewer under a local Act upon giving twenty-eight days' notice was held not to affect their power under the general Act.¹⁵

Removal of filth on certificate of inspector of nuisances.

Sect. 49. Where in any urban district it appears to the inspector of nuisances that any accumulation of manure dung soil or filth or other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if such notice is not complied with within twenty-four hours from the service thereof, the manure dung soil or filth or matter referred to shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner.

Note.**Offensive accumulations.**

The urban district council may either proceed under the present section to procure the removal of the accumulation, or they may treat it as a "nuisance" within

(9) *A.G. v. Tamworth R.D.C.* (1901), 85 L. T. 190.

(10) *Normile v. Ruddell* (1912, K. B. D., Ir.), 47 Ir. L. T. 179; 4 Glen's Loc. Gov. Case Law 152.

(11) *Walmsley v. Featherstone U.D.C.* (1909, Ch. D.), 73 J. P. 322; 7 L. G. R. 806.

(12) *Chorley Cpn. v. Nightingale*, L. R. 1906, 2 K. B. 612; 75 L. J. K. B. 793; 95 L. T. 443; 70 J. P. 500; 4 L. G. R. 1066.

An appeal to C. A. was dismissed on the ground that there was evidence to support the decision below, 71 J. P. 441; 5 L. G. R. 1114.

(13) 18 & 19 Vict. c. 120, s. 87.

(14) 54 & 55 Vict. c. 76, s. 43.

(15) *Earl of Derby v. Bury Improvement Comrs.* (1869), L. R. 4 Ex. 222; 38 L. J. Ex. 100; 20 L. T. 927.

sect. 91, and cause it to be abated under sect. 92 *et seq.*¹ Manure, etc., removed by the council in abating a nuisance may be sold by auction under sect. 101. As to the removal of manure in London, see sect. 36 (2) of the Public Health (London) Act, 1891.²

No penalty is recoverable for neglect to comply with a notice under the present section, but if notice given under sect. 50 to remove manure or refuse, or under the nuisance clauses, to abate a nuisance, is not complied with, a penalty may be imposed.

With regard to the recovery of penalties and expenses, see sect. 251, *et seq.*

It was not the practice of the Local Government Board to confer on rural district councils the powers of the present section. Such councils can deal with nuisances arising from accumulations of offensive or noxious matter under the nuisance clauses of the Act; and under sect. 42 they can undertake or contract for the removal of house refuse and cleansing of receptacles.

The provision in the Metropolitan Police Act, 1839, as to the removal of night soil, etc., was repealed by the Removal of Offensive Matter Act, 1906.³ See now the provisions in the Public Health (London) Act, 1891, and the City of London (Public Health) Act, 1902.⁴

Sect. 49, n.

Rural district councils.

London.

Sect. 50. Notice may be given by any urban authority (by public announcement in the district or otherwise) for the periodical removal of manure or other refuse matter from mews stables or other premises; and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding twenty shillings for each day during which such manure or other refuse matter is permitted to accumulate.⁵

Periodical removal of manure from mews and other premises.
San. 1866, s. 53.

WATER SUPPLY.

POWERS OF LOCAL AUTHORITY IN RELATION TO SUPPLY OF WATER.

Sect. 51. Any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes, and for those purposes or any of them may—

(1.) Construct and maintain waterworks, dig wells, and do any other necessary acts; and

(2.) Take on lease or hire any waterworks, and (with the sanction of the [Minister of Health]) purchase any waterworks, or any water or right to take or convey water, either within or without their district, and any rights powers and privileges of any water company; and

(3.) Contract with any person for a supply of water.

General powers for supplying district with water.
P.H., s. 75.
San. 1866, s. 11.
P.H., 1874, s. 33.

Note.

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Duty of District Council.

Besides the provisions of the present Act with regard to water supply, further provisions on the same subject are enacted by the Public Health (Water) Act, 1878.⁶ That Act expressly renders it the duty of every rural district council to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house, and also from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district. The Minister of Health may, by order, invest

Duty as regards particular houses.

(1) See *Smith v. Waghorn*, as to stable dung, *post*, p. 182; and *Margate Pier Co. v. Margate Town Council*, as to offensive sea-weed, *post*, p. 196.

(2) 54 & 55 Vict. c. 76, s. 36 (2).

(3) 2 & 3 Vict. c. 47, s. 60 (4); 6 Edw. VII. c. 45, s. 1.

(4) 54 & 55 Vict. c. 76, ss. 29-36; 2 Edw. VII. c. cxvi., s. 4.

(5) See s. 49 and Note.

(6) See ss. 3, 7, *post*, Vol. II., p. 1268.

Sect. 51, n.

Duty as regards district generally.

Default in providing supply.

Constant pressure.

Meaning of waterworks and water company.

Construction of water-works.

any urban district council with the powers and duties under the same Act of a rural district council.²

The present section is not in terms obligatory, but it implies an obligation on both urban and rural district councils, in certain cases, to provide their districts or any parts of them (as distinguished from particular dwelling-houses), which have not already a proper and sufficient supply, with such a supply of water. This appears from sect. 299, which enables the Minister of Health, on complaint of default, to make an order, after due inquiry, limiting a time for performance of the duty by the local authority.

Under the Local Government Act, 1894,³ a parish council (or parish meeting, where there is no such council) may make a complaint to the county council, if they consider that the rural district council ought to have provided the parish with a supply of water, where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a proper supply can be got at a reasonable cost. The county council may then, after inquiry, either take upon themselves the duties and powers of the district council with respect to water supply, or may exercise the powers of the Minister of Health under sects. 299 to 302 of the present Act.

Sects. 35 and 42 of the Waterworks Clauses Act, 1847,⁴ are not incorporated with the present Act, so that, unless those enactments are incorporated in the special Acts affecting a waterworks undertaking, there is no duty to supply at any particular pressure, notwithstanding sect. 55 of the present Act.⁵

Powers of District Council.

By sect. 4 the term "waterworks" "includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company."

A district council may be a "water company" within the meaning of the Act.⁶

Sect. 54 gives the district council the necessary powers for laying water mains both within and without the limits of their district. Sect. 285 enables them to construct works in an adjoining district, and also to combine with other local authorities for the construction of works for the joint benefit of their own and other districts.

The Local Government Board stated that, when a district council propose to obtain a supply of water by sinking a well, they consider it desirable that a boring should be made, and the yield and quality of the water actually ascertained, before any contracts are made for carrying out the permanent works; and for the purpose of testing the yield the Board considered that there should be continuous pumping, day and night without cessation, for at least fourteen days, and that records should be made (1) of the quantity of water pumped each day, (2) the level of the water when the pumping begins and when it ceases, and (3) the time which elapses before the water returns to its normal level after the pumping. Money may be borrowed for the purposes of the preliminary works; see sect. 234, *post*.

The Court of Appeal held that a special Act, giving to a corporation a general power to construct all necessary and proper outfalls in connection with an aqueduct for the purpose of supplying water, must be taken to have been framed with reference to the works to be constructed and to the nature of the land on which they were to be made,⁷ and to authorise the council to utilise a natural channel as a storm-water overflow, and that the landowner's remedy was to claim compensation under the Act.⁸

The power given to a water company, by a special Act, to acquire by agreement for the general purposes of their undertaking a limited quantity of additional land beyond that which they were empowered to take compulsorily, was held to be exerciseable only for purposes ancillary to the main purpose of the company,

(2) Public Health (Water) Act, 1878, s. 11.

(3) See ss. 16, 19, *post*, Vol. II., pp. 2018, 2023.

(4) *Post*, Vol. II., pp. 1221, 1223.

(5) *Purnell v. Wolverhampton New Water Co.* (1861, C. P.), 10 C. B. N. S. 576; 4 L. T. 513. For a case relating to the construction of local Acts incorporating these sections of the Act of 1847, see *Liverpool Cpn. v. Brady* (1897, Q. B. D.), 14 T. L. R. 11. As to

supplies in bulk, see the *Wombwell and Morpeth Cases*, *post*, p. 135.

(6) See *ante*, p. 41.

(7) See *per* Lord Halsbury in *Herron v. Rathmines Comrs.*, L. R. 1892 A. C. at p. 501; 67 L. T. 659.

(8) *Fielden v. Morley Cpn.* (1898, C. A.), L. R. 1899, 1 Ch. 1; 67 L. J. Ch. 611; 79 L. T. 231.

namely, the supply of water by waterworks "constructed as by this Act provided"; and they were accordingly restrained by injunction from sinking wells and erecting a pumping station for the purpose of tapping a new water supply, although the water was intended to be pumped into a reservoir constructed under the powers of the Act.⁹ This was followed by Swinfen Eady, J., where there were similar provisions in the special Act, and also a clause authorising the company to take and use any underground springs and water which might be found in or under any lands for the time being of the company, and the company had never proceeded with the works specifically mentioned by the Act.¹⁰ It was, however, distinguished in a case in which the special Act, after empowering the company to acquire by agreement additional lands, expressly empowered them, upon such lands, for the purposes of and in connection with their waterworks, to execute any of the works and exercise any of the powers mentioned in or conferred by sect. 12 (not incorporated with the present Act) of the Waterworks Clauses Act, 1847,¹¹ which (amongst other things) authorises the sinking of wells; and it was held by the House of Lords that the company were empowered to sink a well on additional land so purchased for the purpose of supplying water to their reservoir some six miles distant.¹²

Any contracts that may be necessary may be entered into by virtue of sect. 173, subject, in the case of urban district councils, to the restrictions of sect. 174.

A landowner may, under the District Councils (Water Supply Facilities) Act, 1897,¹³ charge his land with contributions to the expenses incurred by the district council in supplying water to such land.

As to the powers of limited owners, see the Acts of 1877 and 1922, set out elsewhere.¹⁴

Where a rural district council determine to adopt plans for the water supply of a contributory place, they are required, by sect. 16 (3) of the Local Government Act, 1894,¹⁵ to give notice thereof to the parish council before entering into a contract for the execution of such works.

Land may be purchased under sects. 175 and 176. With regard to the redemption of tithe rentcharge on the land purchased, see the provision in the Tithe Act, 1878, which has already been set out.¹⁶

Where a district council carried out a scheme of water supply by means of a loan sanctioned by the Local Government Board, the Board considered it preferable that the freehold of any lands on which the council contemplated the erection of a reservoir and filter-beds should be acquired. If, however, the works are to be executed on leasehold land, the Board generally limited the time for repayment of the loan to a period not exceeding that of the lease.

The Local Government Board, in a letter to the clerks of sanitary authorities, after stating that "the sanitary authority are aware that if there is no such company (namely, a water company whose limits include their district) they themselves may not only construct and maintain waterworks, but also dig wells, and do any other acts necessary for providing a water supply for their district," expressed the following opinion: "It is therefore competent for them, in case of need, to provide by means of water-carts or other like expedients, a temporary supply for domestic use, and for flushing sewers and drains; and the cost attendant upon the adoption of this suggestion, which would be comparatively small, might be wholly or in part reimbursed by a moderate charge for the accommodation."¹⁷

With regard to the liability of the district council for damage caused by the improper construction of the works, or by their neglect to maintain them in proper condition, see the Note to sect. 308.

Sects. 60, 68, 69, and 307 of the present Act, and certain provisions of the Waterworks Clauses Acts,¹⁸ impose penalties on persons damaging the works, or wasting or polluting the water.

Sect. 51, n.
Construction
of water-
works.—cont.

Notice to
parish
council.

Purchase of
land.

Provision of
temporary
works.

Negligence in
construction,
&c., of works.

Damage,
waste, &c.

(9) *A.G. v. Frimley and Farnborough District Water Co.* (C. A.), L. R. 1908, 1 Ch. 727; 77 L. J. Ch. 442; 98 L. T. 905; 72 J. P. 204; 6 L. G. R. 689; applied in *A.G. (Seisdon R.D.C.) v. S. Staffs Water Co.* (1909, Warrington, J.), 25 T. L. R. 408.

(10) *Marriott v. East Grinstead Gas and Water Co.*, L. R. 1909, 1 Ch. 70; 78 L. J. Ch. 141; 99 L. T. 958; 72 J. P. 509; 7 L. G. R. 477.

(11) 10 Vict. c. 17, s. 12.

(12) *A.G. v. Barnet Gas and Water Co.*

(1910), 102 L. T. 546; 74 J. P. 193; 8 L. G. R. 499.

(13) *Post*, Vol. II., p. 1274.

(14) *Post*, Vol. II., pp. 1264, 2355.

(15) *Post*, Vol. II., p. 2018.

(16) *Ante*, p. 95.

(17) Instructional letter, 29th June, 1874.

(18) See ss. 54-57 of Act of 1847, and ss. 16-20 of Act of 1863, *post*, Vol. II., pp. 1229, 1243.

Sect. 51, n.
Defective
machinery.
Purchase of
waterworks.

With regard to the supply to local authorities of a defective pump¹⁹ and windmill,²⁰ see the cases cited below.

Sub-sect. 2 of the present section enables the district council to purchase waterworks from a company, while sect. 63 gives the company the authority which they may require to transfer their undertaking to the council.

In conformity with the recommendation of the Royal Sanitary Commission, the present section requires that the sanction of the Minister of Health shall be obtained before waterworks or water-rights are purchased by a district council.

The trustees under a local Act for supplying a borough with water may transfer their undertaking to the council under sect. 136 of the Municipal Corporations Act, 1882,²¹ even if it extends beyond the borough.

As to the exercise of options in connection with the purchase of waterworks, see the case cited below.²²

Power of
parish
council.

Parish councils are authorised by the Local Government Act, 1894,²³ to utilise any well, spring, or stream within their parish, and provide facilities for obtaining water therefrom, "but so as not to interfere with the rights of any corporation or person"; and this is not to derogate from any obligation of the district council with respect to the supply of water.

Interference with Water Rights.

The district council may not injuriously affect the supply of water to which other persons are entitled, or streams, etc., in which other persons have certain rights, without the consent of such persons; see sect. 332, and the Note to that section, which treats of the rights of landowners in respect of water flowing through their lands above or under ground.

Purchase of
stream.

A waterworks company, authorised by its Act to take certain springs, etc., took some which partly supplied a stream that watered a meadow. In this case the company were liable to pay compensation under the Lands Clauses Act, and were not bound to purchase the landowner's interest in the stream, for it was not taking anything of which he was either owner or occupier.²⁴ But a corporation who, under their powers to divert the whole of a stream, gave notice of intention to do so were required to pay the value of the entire stream, and not merely to pay compensation for injury caused by each partial abstraction of water from it.²⁵

Compensation.

A corporation were required, by a special Waterworks Act, to send down a certain stream, from which they took water, not less than a prescribed quantity of compensation water for the benefit of the mill-owners below, under a penalty of five pounds a day for default. On such default being made, eight persons sued for penalties for forty-three days. The corporation contended that only one mill-owner could sue; but judgment was given in favour of each of the plaintiffs for the full amount, and was upheld by the Court of Appeal, the penalty being in the nature of liquidated damages or compensation.²⁶

The reservation, in a grant of land, of the right to make watercourses over it for the public use and benefit, may include the right to divert water from existing streams in the land and to use the water so diverted.²⁷

Supply of Water to District Council.

Agreement
for supply.

The Local Government Board stated that an agreement between a rural district council and a statutory waterworks company within whose limits of supply the rural district is situate, for the supply of water to the district on payment to the company of annual sums equal to a specified percentage on the cost of laying the mains, or such less sums as with the water rates will equal that percentage, did not require the sanction of the Board.

(19) *Munro & Co. v. Bennet & Son*, 1911 S. C. (S.) 337; 2 Glen's Loc. Gov. Case Law 23.

(20) *Bower Bros. v. Chapel-en-le-Frith R.D.C.* (1911, C. A.), 75 J. P. 321; 9 L. G. R. 663.

(21) *Post*, Vol. II., p. 1828.

(22) *Ward v. Wolverhampton Water Co.* (1871, Bacon, V.-C.), L. R. 13 Eq. 243; 41 L. J. Ch. 308; 25 L. T. 487.

(23) See ss. 8 (1) (e), (3), 19 (10), *post*, Vol. II., pp. 2004, 2024.

(24) *Bush v. Trowbridge Waterworks Co.*

(1875), L. R. 10 Ch. App. 459; 44 L. J. Ch. 645; 33 L. T. 137.

(25) *Stone v. Yeovil Cpn.* (1876, C. A.), L. R. 2 C. P. D. 99; 46 L. J. C. P. 137; 36 L. T. 279.

(26) *Beaumont v. Huddersfield Cpn.* (1902), 67 J. P. 57; 1 L. G. R. 118. See also *Hanbury v. Llanfrechfa Upper U.D.C.*, cited in Note to s. 332, *post*.

(27) See *Remfry v. Natal Surveyor-General*, L. R. 1896 A. C. 558; 66 L. J. P. C. 72; 75 L. T. 58.

Where two parishes were added to an urban district after the execution of an agreement for the supply of water to that district by the plaintiffs, an injunction was granted restraining the urban district council from taking from the plaintiffs' pipes water for these added parishes.²⁸

A landowner charging his estate with the cost of construction of waterworks under the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877,²⁹ is empowered by sect. 6 of that Act to enter into any agreement for the supply of water to any local authority during the existence of the charge. See also the Law of Property Act, 1922.³⁰

Where a private person, who had been supplying water to the inhabitants of two townships in a rural district under a contract with the rural sanitary authority, gave three months' notice to the inhabitants of his intention to discontinue the supply, the notice was held not to be reasonable; and an interim injunction was granted to restrain the person from cutting off the supply, there being evidence that no other water supply could be procured in the district.³¹

A waterworks company, who were required by a special Act to supply water to an urban district council "in bulk at the point at which it is now supplied," namely, a point on a rising main from their pumping-station, were held by Cozens-Hardy, J., to be under no obligation to supply the water at the pressure at which it had been supplied before the passing of the Act, so as to cause it to reach the parts of the district above that point.³² A contract between the promoters of the Bill for the same company's Act and a local board, the predecessors of another urban district council, provided that, if the Bill should be passed, the company would supply in bulk, at an agreed point on their mains, all such water as the local board might require for their district. The Bill was passed, and it incorporated the present Act, and enacted that water supplied by the company need not be constantly laid on under pressure, unless the Local Government Board should so order. A Provisional Order of that Board confirmed by Parliament subsequently directed that water supplied by the company should be laid on under pressure. The contract was eventually confirmed by the company and the urban district council by a deed which declared that it should be subject to the special Act and the Provisional Order. The council claimed the right to have the water delivered at the agreed point under such constant pressure that it would reach the top storey of the highest house in their district, and to take it at irregular times as they required it. It was held by Swinfen Eady, J., that, though the council were entitled to be supplied with as much water as they might reasonably require for other purposes, as well as for domestic purposes, the company were not bound to deliver it at a greater pressure than would deliver it at the agreed point; and the council must take it regularly and continuously, and not intermittently.³³ Another contract, however, was construed as giving a right to a direct connection to a gravitation main, the effect of which was that the water would be supplied under pressure.³⁴

Rating Waterworks.

The district council are rateable to the poor rates of the parishes in which their works are situate, and through which the mains pass, in respect of the occupation of the soil by such works and mains.

To provide a gathering-ground for their waterworks a local authority purchased a large area of moorland, removed all farmhouses and buildings and live stock from it, and allowed it to be untenanted. Part of the land was utilised as plantations and nurseries for young trees, and the sporting rights over the whole were let and separately assessed. It was held by the House of Lords that the reservation and use of the land as a gathering-ground for water rendered the local authority rateable as beneficial occupiers, and that the case must be remitted to quarter sessions to determine the question of value and mode of assessment.³⁵

Sect. 51, n.

Effect of addition to district.

Supply by limited owner.

Discontinu-
ance of supply.

Supply at pressure.

Rateability.

(28) *Tynemouth Cpn. v. Newbiggin-by-the-Sea U.D.C.* (1915, Ch. D.), 80 J. P. 195; 14 L. G. R. 322. See also *Huddersfield Cpn. v. Ravensthorpe U.D.C.*, post, p. 139.

(29) *Post*, Vol. II., p. 1264.

(30) *Post*, Vol. II., p. 2355.

(31) *Hunslet Guardians v. Ingram*, 1893 W. N. 61.

(32) *Wath-upon-Deerne U.D.C. v. Deerne Valley Water Co.*, MS. and *Times*, 27th July, 1901.

(33) *Wombwell U.D.C. v. Deerne Valley Water Co.* (1907), 71 J. P. 415; 5 L. G. R. 1132.

(34) *Morpeth Cpn. v. Tynemouth Cpn.* (1916, K. B. D.), 85 L. J. K. B. 808; 80 J. P. 75; 14 L. G. R. 182.

(35) *Liverpool Cpn. v. Chorley U.A.C.*, L. R. 1913 A. C. 197; 82 L. J. K. B. 555; 108 L. T. 82; 77 J. P. 185; 11 L. G. R. 182. *Winstanley v. N. Manchester Overseers*, post, p. 136, considered.

Sect. 51, n.
Basis of
valuation.

It was held by the Court of Appeal that the price paid for the moorland was some evidence of the rent which a hypothetical tenant would pay for the land used as plantations and nurseries, and was therefore relevant.³⁶

An ordinary waterworks company, supplying water for profit, are assessed on the basis of the hypothetical landlord's share of the net revenue derived from their undertaking;³⁷ but a district council are not generally entitled to make a profit out of the water consumers for the benefit of the general body of ratepayers, and there may be difficulty in arriving at the rent which they or any other hypothetical tenants might reasonably be expected to pay if they rented the works. Blackburn, J., had laid down the principle that the occupier is rateable at what a tenant from year to year would give as the rent who takes the land subject to the same restrictions as those under which the actual occupiers hold it, and who would only give such a rent as the restrictions imposed by statute would enable him to earn;³⁸ and this principle was followed by the Court of Appeal in a subsequent case, in which it was pointed out that the rent and therefore the rateable value of every house in the district was increased by reason of the occupier being entitled by virtue of the statute to cheap water from the waterworks of the local authority, who were not entitled to make a profit out of the undertaking, and that, if the local authority in respect of their reservoir and waterworks were rated at the profit which a tenant under no restriction could get from the waterworks, the same profit would be rated twice over.³⁹

These decisions were followed in a subsequent case,⁴⁰ but were distinguished by Manisty and Cave, JJ., in a case relating to the valuation of baths and laundries and board schools, on the ground that the Acts under which the waterworks were established imposed the restrictions on the property itself, and rendered it impossible that such property should be used for any other purposes or for any further profits than those contemplated by the Acts, and that in the case before the Court the restriction was only placed on the amount of profit to be derived from the use of premises which had a rateable value up to the time when it was acquired by the local authority;⁴¹ and in the London County Council cases⁴² Lord Herschell, L.C., said: "I must demur to the view that the question whether profit (by which I understand is meant pecuniary profit) can be derived from the occupation by the occupier is a criterion which determines whether the premises are rateable, and at what amount they should be assessed."

A waterworks board, prohibited by their special Act from levying a higher water rate than might be required to discharge so much of their expenses as was not defrayed by water rents and other payments, had been held rateable, as their property was capable of being beneficially occupied; and it was decided that the water rate ought to be taken into consideration in assessing the rateable value,⁴³ but not (in the case of a local board) a sum transferred from the general district rate to the waterworks account.⁴⁴

Valuation of
intake.

Quarter sessions, in accordance with the usual practice in rating indirectly productive portions of water undertakings, assessed the annual value at 4 per cent. on the cost of the land and 5 per cent. on the cost of the buildings; and they held (a) that no further sum should be added for enhanced value in respect of the user of the intake and the statutory right of appropriating water from the river by that means or in respect of the special fitness of the land for that purpose, and (b) that the percentage on cost representing the annual value ought not to be reduced by reason of the special facilities of the water board for borrowing below the current rate of interest. It was held (1) that the user of the intake and the statutory right of appropriating water by that means were not rateable subjects, and that, in the absence of evidence to the contrary, the special fitness of the land

(36) *Winstanley v. N. Manchester Overseers* (C. A.), L. R. 1912, 1 K. B. 270; 81 L. J. K. B. 426; 106 L. T. 205; 76 J. P. 161; 10 L. G. R. 165.

(37) See, as to the principles on which waterworks are generally assessed, *Reg. v. West Middlesex Water Co.* (1859), 1 E. & E. 716; 28 L. J. M. C. 135; *Reg. v. New River Co.* (1879), L. R. 4 Q. B. D. 309; 27 W. R. 785; S.C. nom. *Reg. v. St. Mary, Islington, U.A.C.*, 48 L. J. M. C. 123; S.C. nom. *New River Co. v. Islington*, 40 L. T. 322, discussed in 'Penfold on Rating,' 8th Edit.

(38) *Liverpool Cpn. v. Wavertree Overseers* (1875), L. R. 2 Ex. D. 55, n.; 39 J. P. 101.

(39) *Worcester Cpn. v. Droitwich U.A.C.*

(1876), L. R. 2 Ex. D. 49; 46 L. J. M. C. 241; 36 L. T. 186; 41 J. P. 355. See also the Note to s. 56 as to this case.

(40) *Peterborough Cpn. v. Stamford U.A.C.* (1883), 31 W. R. 949.

(41) *Chorlton-upon-Medlock Overseers v. Chorlton U.A.C.* (1882), 51 L. J. Q. B. 458; 47 L. T. 96; 46 J. P. 535.

(42) *Ante*, p. 57, footnote (1).

(43) *Dewsbury and Heckmondwike Water Bd. v. Penistone U.A.C.* (1886), L. R. 17 Q. B. D. 384; 55 L. J. M. C. 121; 54 L. T. 592; 50 J. P. 644.

(44) *Merthyr Tydfil Loc. Bd. v. Merthyr Tydfil U.A.C.*, L. R. 1891, 1 Q. B. 186; 60 L. J. M. C. 42; 63 L. T. 647; 55 J. P. 294.

for the purpose of the undertaking must be taken to have been covered by the price paid for the land; and (2) that, in cases where it was proper to ascertain the annual value on the basis of interest on cost, the rate of interest did not depend upon the financial position of the occupier; and (3) that therefore quarter sessions were right on both points.⁴⁵

The occupation of land by a waterworks company by means of their water mains does not render the company liable to land tax, although it renders them liable to rates.⁴⁶

A rural district council purchased water in bulk, and supplied it in nine parishes in their district, according to a separate scale for each parish. In four parishes the total profit was £347 10s., in three the total loss was £66 6s. 11d., and in two receipts balanced expenditure. They were assessed at £585 10s., and their establishment charges were £414 13s. It was held that they were not entitled to deduct losses and establishment charges, and that the undertaking was properly assessed.⁴⁷

Metropolis Water Acts.

The water supply in the metropolis is regulated by the Metropolis Water Acts, 1852, 1871, 1897, 1899, and 1902,⁴⁸ and the Metropolitan Water Board (Charges) Acts, 1907 to 1921.⁴⁹ The provisions of these Acts apply (with the exceptions mentioned below) to all places formerly within the limits of supply of the New River, East London, Southwark and Vauxhall, West Middlesex, Lambeth, Chelsea, Grand Junction, and Kent Waterworks Companies, and the Staines Reservoirs Joint Committee.

The undertakings of these bodies were transferred to the Metropolitan Water Board by the Act of 1902. That Board consists of persons appointed by the county councils of London, Essex, Kent, Middlesex, Surrey, and Hertfordshire, the Common Council of the City of London, the councils of the City of Westminster, the metropolitan boroughs, and the boroughs of West Ham, Ealing, and Kingston, the councils of forty-one other urban districts around London, and the conservators of the rivers Thames and Lee. The parishes of Sunbury and Chessington are added to, and the boroughs of Croydon and Richmond and the urban districts of Cheshunt and Ware are excluded from, the limits of supply of the Water Board, and the water undertakings of the Tottenham and Enfield Urban District Councils have been transferred to the Board by the Act of 1902.

The compulsory transfer of waterworks undertakings to the Metropolitan Water Board, and the powers given to them to sell or lease any of the lands or buildings transferred, was held by Joyce, J., not to enable them to sell, assign, or underlet leasehold land transferred to them without the lessors' consent, the land having been leased to their predecessors subject to a covenant not to assign or underlet it without the consent of the lessors, and subject to the right of the lessors to re-enter on breach of such covenant, there being no provision in the Board's Acts for compensating persons whose rights might be interfered with by the exercise of the powers of the Board.⁵⁰

The expenses of the Water Board, so far as they are not met by the water rates and other receipts, are apportioned on the constituent councils, and in the case of the municipal corporations and urban district councils are paid in the same manner as expenses incurred in the execution of the Public Health Acts.

The powers and duties of the Board of Trade under the Metropolis Water Acts, 1852 and 1871, were transferred to the Local Government Board (now the Ministry of Health).⁵¹

Sect. 52. Before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament to supply water, the local authority shall give written notice to

Sect. 51, n.

Land tax.

Income tax.

Metropolitan
Water Board.Transfer of
powers of
Board of
Trade.Restriction on
construction of
waterworks by
local authority.
P.H., s. 75.

(45) *Metrop. Water Bd. v. Chertsey U.A.C.*, L. R. 1916, 1 A. C. 337; 85 L. J. K. B. 296; 114 L. T. 380; 80 J. P. 137; 14 L. G. R. 217.

(46) *Chelsea Water Co. v. Bowley* (1851), 17 Q. B. 358; 20 L. J. Q. B. 520.

(47) *Wakefield R.D.C. v. Hall*, L. R. 1912, 3 K. B. 328; 81 L. J. K. B. 1201; 107 L. T. 138; 76 J. P. 437; 10 L. G. R. 1002. *Cf. Mullingar R.D.C. v. Rowles*, 1913 Ir. K. B. 44.

(48) 15 & 16 Vict. c. 84; 34 & 35 Vict. c. 113; 60 & 61 Vict. c. 56; 62 Vict. c. 7; 2 Edw. VII. c. 41. See also 54 & 55 Vict. c. 76, ss. 48-54.

(49) 1907 (7 Edw. VII. c. clxxv.), 1915 (5 & 6 Geo. V. c. lxxiii., s. 55), and 1921 (11 & 12 Geo. V. c. xciv.). See also the following Orders of the Local Government Board:—December 24th, 1902; January 8th, 1903, 1 L. G. R. (Orders) 40-46; August 11th, 1903 (*re stock*), 1 L. G. R. (Orders), 359-380.

(50) *Metrop. Water Bd. v. Solomon*, L. R. 1908, 2 Ch. 214; 77 L. J. Ch. 517; 98 L. T. 712; 72 J. P. 259; 6 L. G. R. 594.

(51) 35 & 36 Vict. c. 79, s. 35, re-enacted in Sched. V. Part III. of the present Act, *post*.

Sect. 52.

every water company within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act.

Note.

Monopoly of supply.

The term "water company," by sect. 4, means "any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit," and it includes the council of another district, authorised to supply and supplying water for profit within the district of the council who are desirous of establishing waterworks of their own.¹

Although a body authorised by statute to supply water within certain limits may be restrained at the instance of the Attorney General as representing the public from supplying water to an area beyond those limits, the grant to another body of statutory powers to supply water within that area, coupled with an obligation to supply the water at rates not exceeding certain prescribed rates, does not itself give the latter body any monopoly of supply within such area, so as to entitle them to bring an action for an injunction to restrain the first-mentioned body from supplying water within the same area in competition with them.²

A municipal corporation, who had supplied a dock company with water before the company was amalgamated with and merged in a railway company, brought an action in the name of the Attorney General to restrain the company from supplying the dock with water from land which had been acquired for the purposes of the railway undertaking. It was, however, held that, in the absence of any prohibition in the amalgamating Act, there was nothing illegal or *ultra vires* in the company so supplying water to the dock.³

With regard to the first clause of the present section, the Local Government Board, in their official circular of September 30, 1875, mentioned that "by the Public Health Act, 1848, sect. 75, local authorities were placed under certain restrictions in the construction of waterworks within the limits of supply of any water company, and a question having arisen whether these restrictions were confined to cases where the company is empowered *by statute* to supply water, sect. 52 removes the doubt, by expressly limiting such restrictions to cases where the water company has acquired Parliamentary powers."

The question alluded to in the foregoing extract was one of those which arose in the following case: The R. Company had been incorporated, by an Act of 1835, for supplying the town of Richmond (Surrey) with water drawn from the Thames near Richmond Bridge, and had supplied such water until 1862, when it became too polluted. They then, having failed to procure Parliamentary powers to enable them to amalgamate with, or to extend the limits of the S. and V. Company, who took their supply from the river above Richmond, and whose main passed through the town, transferred all their shares and property to that company, and thenceforth practically ceased to exist, no new directors being appointed. The S. and V. Company after the transfer supplied the town with water, though it was beyond their limits. In 1873, the Richmond Vestry, as the urban sanitary authority, gave notice to the R. Company, but not to the S. and V. Company, under sect. 75 of the Public Health Act, 1848, of their intention to construct waterworks; and in 1875 the then holders of the shares in the R. Company appointed directors, and brought an action to restrain the vestry from proceeding with the works on the ground that that company was "able and willing" to supply the parish with water; but an injunction was refused, on the ground that the R. Company could not delegate its powers to the S. and V. Company, and was not both "able and willing" to supply the water, though it was still an existing

(1) See *Wolverhampton Cpn. v. Bilston Comrs.*, ante, p. 41.

(2) *Stockport Water Co. v. Manchester Cpn.* (1862), 9 Jur. (N.S.) 266; followed in *Pudsey Gas Co. v. Bradford Cpn.*, cited in

Note to s. 161, post.

(3) *A.G. v. North Eastern Ry. Co.* (C. A.), L. R. 1906, 2 Ch. 675; 76 L. J. Ch. 5; 95 L. T. 512; 70 J. P. 473.

company, and that as the S. and V. Company were not authorised to supply the town, there was no company which could assert a monopoly against the vestry.⁴

Hall, V.-C., said that the scope and effect of the present section was that the local authority were not to throw away the money of the ratepayers in constructing waterworks where there was an existing body which could provide a proper water supply without recourse being had to such money. It was an unreasonable construction of the section to hold that a company was not "able and willing" to supply water unless they had all the works for such a purpose executed and completed down to the minutest detail. Evidence had been given on the part of the company in question that they had a supply of water sufficient to furnish twenty gallons per head per day for a population of 9,500 persons, whereas the population required to be served was only 5,556, and the local board had themselves estimated that fifteen gallons per head would be a sufficient supply. It also appeared that £5,000 had already been expended on the projected works, which, it was said, could be completed within five months. The Vice-Chancellor was therefore satisfied upon the evidence that the plaintiffs were a company "able and willing" to provide a proper supply within the meaning of the section, and the local authority ought, therefore, to hold their hands and not rush into expense which might prove to be unnecessary. He considered that the plaintiffs had a *locus standi* and were entitled to sue the local board; and he granted an injunction to restrain the board from constructing and maintaining any waterworks within the district of the company.⁵

The present section does not prevent the local authority from procuring a supply of water for themselves to water streets and flush sewers, where they do not supply the inhabitants generally;⁶ or from enlarging their existing waterworks by constructing a new reservoir and acquiring a fresh source of supply, within the limits of supply of a company.⁷ But it does prevent a local authority from extending their mains for the purpose of supplying water to an area which has been added to their district by an order of the county council and is within the limits of supply under a local Act of another local authority.⁸

An action for violation of the monopoly, where there is one, is actionable without proof of special damage, but in the case in which it was so held,⁹ the action was dismissed on the ground of "acquiescence" in the giving of the supply, and it was said that, even if there had been no such acquiescence, an injunction would have been refused on the ground that granting it would have deprived His Majesty's troops of water.

A local authority that added to a notice under the present section a statement that they would proceed to construct waterworks themselves, unless the company informed them within a month that the company were able and willing to supply water proper and sufficient for certain purposes, were held to have so threatened to construct the works as to justify the company in issuing a writ for an injunction.¹⁰

With regard to arbitration, see sects. 179-181.

The only questions for an arbitrator under the present section are whether the company are able to supply water proper for all reasonable purposes, and sufficient for those purposes, and whether they are willing to supply for such purposes; and it was held that such an arbitrator had no jurisdiction to determine whether a certain minimum quantity per head per diem of water suitable and proper for drinking and ordinary domestic purposes (which it was not suggested were unreasonable purposes) was a reasonable quantity.¹¹

Sect. 52, n.
Monopoly of supply.—*cont.*

Special damage.

Notice.

Arbitration.

(4) *Richmond Water Co. and Southwark and Vauxhall Water Co. v. Richmond (Surrey) Vestry* (1876), L. R. 3 Ch. D. 82; 45 L. J. Ch. 441; 34 L. T. 480.

(5) *Newhaven and Seaford Water Co. v. Newhaven Loc. Bd.*, 1882 Loc. Gov. Chron. 515.

(6) *West Surrey Water Co. v. Chertsey Guardians*, L. R. 1894, 3 Ch. 513; 63 L. J. Ch. 806; 71 L. T. 368.

(7) *Cleveland Water Co. v. Redcar Loc. Bd.*, L. R. 1895, 1 Ch. 168; 64 L. J. Ch. 64; 59 J. P. 7.

(8) *Huddersfield Cpn. v. Ravensthorpe U.D.C.*, L. R. 1897, 2 Ch. 121; 66 L. J. Ch. 581; 76 L. T. 817; 61 J. P. 596. See also

Tynemouth Cpn. v. Newbiggin-by-the-Sea U.D.C., ante, p. 135.

(9) *Birr (No. 1) R.D.C. v. Birr U.D.C.* (1915, O'Connor, M.R.), 1915 Ir. K. B. 413. See also (as to supply to trains passing through to other districts) *Seton v. Linlithgow Burgh Comrs.* (1900), 37 Sc. L. R. 715; and as to "indirect" supply, *Halifax Cpn. v. Morley Cpn.* (1894, Kekewich, J.), 10 T. L. R. 454.

(10) *Bognor Water Co. v. Bognor Loc. Bd.* (1894), 70 L. T. 402.

(11) *In re Yeadon Loc. Bd. and Yeadon Water Co.* (1888), 59 L. T. 844; reversed on another point, see Note to s. 180 (under heading "Special Case"), post.

Sect. 53.

As to
construction
of reservoirs.

Sect. 53. At least two months before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons) the local authority shall give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed.

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority at any time within the said two months, the intended work shall not be commenced without the sanction of the [Minister of Health], after such inquiry as herein-after mentioned, unless such objection is withdrawn.

The [Minister of Health] may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the [Minister of Health] on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the [Minister of Health] may make an order disallowing or allowing with such modifications (if any) as [he] may deem necessary the intended work.

Note.

**Works outside
district.**

With regard to the execution of works by a district council in an adjoining district, see sect. 285 and the Note thereto; and with regard to local inquiries, see sects. 293-296.

**Application
for sanction
to loan for
construction
of reservoir.**

When a district council apply to the Minister of Health for sanction to a loan for the construction of a reservoir to hold more than 100,000 gallons, the Minister requires to be furnished, at the expiration of the two months mentioned in the present section, with a copy of the newspaper containing the advertisement of the notice, and a copy of any objection served on the council. If no such objection has been served, the fact should be stated; but if one has been made and not withdrawn, the council should pass a resolution asking the Minister to appoint an inspector to make the inquiry and report, and should forward a copy of such resolution to the Minister.

Power of
carrying mains.
L.G., s. 52.

Sect. 54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force.

Note.

**Meaning of
supplying
water.**

A district council who have power to supply their district with water, and are taking steps to supply it, do "supply water within their district" within the meaning of the present section although they are not yet actually supplying any water to anyone.¹

**Laying
water mains.**

As to the construction of sewers within and without the district, see sects. 16 and 32, and the Notes to those sections.

Sects. 16 and 54 are not restricted by the provisions of sects. 28 and 29 of the Waterworks Clauses Act, 1847,² with regard to the laying of pipes; and an injunction to restrain a local board from opening up a private road in order to lay water mains in it, because they had not given previous notice to and obtained the consent of the owner of the soil, was refused by a majority of the Court of Appeal.³

But when they are executing works in an adjoining district, they are restricted by sects. 32-34, although they may have the consent of the council of that district under sect. 285.⁴

**Repair of
pipes.**

If a man carries water by conduit pipes through his neighbour's land, he must keep those pipes in repair; and it is no answer for him to say that the pipes became choked up by the fall of a well on the neighbour's land, which such neighbour was under no obligation to repair, nor to say that he repaired the pipes as soon as he was given notice of the injury.⁵

A person who has a right so to carry water through his neighbour's land has as incident to the easement a right to go upon such land and repair the pipes

(1) *Per North, J., in Jones v. Conway, etc., Water Bd., infra.*

(2) *Post*, Vol. II., p. 1217.

(3) *Hill v. Wallasey Loc. Bd.*, L. R. 1894, 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. 641.

(4) *Jones v. Conway and Colwyn Bay Joint Water Bd.*, L. R. 1893, 2 Ch. 603; 62 L. J. Ch. 767; 69 L. T. 265; 57 J. P. 501.

(5) *Bell v. Twentyman* (1841), 1 Q. B. 766.

when necessary; and the owner of the land may not render access to the pipes substantially less convenient, as by erecting buildings over them.⁶

Sect. 54, n.

A railway company sold to a local authority a pipe laid by the company and connecting their station with the company's water undertaking, and the authority covenanted to keep the pipe in repair. The pipe became furred, and a substantial diminution in the supply resulted. It was held that there had been a breach of covenant though the supply was still sufficient for ordinary railway purposes.⁷

Sect. 55. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water; and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district or part of the district supplied.

As to supply of water.
See P.H., s. 75.

Note.

A local authority supplying water, and only required to keep a supply of pure and wholesome water "in the mains," were held not to be liable for injuries sustained by the consumer from the contamination of water by the leaden communication pipes, although such pipes were "to be deemed to belong to them."⁸

Contamina-
tion of water.

A water company were restrained by injunction, in an action by the Attorney General, at the relation of the local authority, from supplying a town with water from old colliery workings, such water being impure, and the company's Act only authorising them to obtain fresh water from springs, streams, or ponds.⁹

A water company's reservoir, holding 42,000,000 gallons, was unfenced and a number of men working at it lived close by in huts unprovided with sanitary arrangements, and the banks were in a polluted condition. It was supplied by streams, one of which passed some farms, which drained into it. Dead dogs were found in another reservoir and moles in a third. Evidence of analysis showed traces of pollution. It was held that the company was not supplying "pure and wholesome water" as required by sect. 35 of the Waterworks Clauses Act, 1847.¹⁰ But as the company had, before the issue of the writ, taken steps to acquire the farms, had invited tenders for fencing, and were considering plans for filtration, an injunction was refused, though a declaration was granted, with liberty to apply in six months, and costs.¹¹

Constant pressure.

As to the duty to supply water under pressure, see the Note to sect. 51.

Sect. 56. Where a local authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained in the manner by this Act prescribed with respect to general district rates; moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates.

Power to charge water rates and rents.
P.H., s. 93.
See L.G. Am., s. 20.

Note.

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Charges for Supply.

The present section does not give the district council the right to make an unlimited profit out of their waterworks, and so benefit the ratepayers at large at the expense of the consumers of the water. Thus, the Court of Appeal held that the corporation of a borough, in making a water rate under the Public Health Act, 1848,¹ which gave them similar powers to those of the present Act, were bound to make an estimate of the sum which they actually required for the maintenance of their waterworks, and could not legally levy a larger sum by a water rate

Profit.

(6) *Goodhart v. Hyett*, ante, p. 93.
(7) *Great Northern Ry. Co. v. Bradford Cpn.*, post, p. 146.
(8) *Milnes v. Huddersfield Cpn.* (1886), L. R. 11 A. C. 511; 56 L. J. Q. B. 1; 55 L. T. 617; 50 J. P. 676.
(9) *A.G. v. North Shields Water Co.*, 1892

Loc. Gov. Chron. 995; *Times*, May 12th, 1892.
(10) *Post*, Vol. II., p. 1221.
(11) *A.G. v. Rhymney and Aber Valley Gas and Water Co.* (1907, Swinfen Eady, J.), 71 J. P. 435. See also the *Leicester Case*, post, p. 145.
(1) 11 & 12 Vict. c. 63, s. 93.

Sect. 56, n.

than the sum so required.² Under the corresponding Irish statutes,³ however, it was held that a water rate was not invalid because it included a sum applicable to payment of capital expenses.⁴

Application of general rates to cost of water supply.

It does not appear to be obligatory upon the district council to charge a water rate on the consumers. Sect. 10 of the Public Health (Water) Act, 1878,⁵ contemplates the possibility that they may be supplying water without charge, for it provides that upon application to them by ratepayers, it shall be incumbent upon them to charge water rates or rents in respect of the water supplied. If they do not make any charge to the consumers, or if the charge is insufficient to meet the expenses of providing the supply and maintaining the works, such expenses must be charged on the district, or in a rural district on the contributory place.

Kennedy, J., considered that a district council could (though it was not obligatory on them to do so) include in the water rates and rents provision for the repayment, wholly or in part, of the capital borrowed for the establishment of the waterworks, and the interest thereon, and that their discretion must be governed in great part by regard to the inducement to the inhabitants of the area supplied to take good and wholesome water, which would be afforded by the imposition upon consumers of only a moderate charge.⁶ In general, however, the Local Government Board considered that the costs of a water undertaking should, as far as practicable, be borne by the consumers of the water.⁷

Water Rates.

Recovery.

Sect. 57 incorporates certain provisions of the Waterworks Clauses Acts, 1847 and 1863,⁸ relating to the recovery of water rates, which to some extent differ from sects. 219-225 and 256 of the present Act.

Annual value.

The "net annual value" on which the water rates are to be assessed is defined by sect. 4 of the present Act, under the expression "rack rent." Sect. 68 of the Waterworks Clauses Act, 1847, also requires water rates to be based on "annual value": and with regard to the meaning of this expression, see the Note to that section.⁹ With regard to the mode of ascertaining the annual value of premises for the purposes of the general district rate, see the first clause of sect. 211.

Meaning of rate in covenants.

In a lease the landlord covenanted to pay "all rates and taxes chargeable in respect of the premises," and it was held that the water rate was a "rate" which he was bound to pay under the covenant.¹⁰ This case was distinguished and doubted in one in which the covenant was to pay "all rates, etc., imposed by the Corporation of London or otherwise however."¹¹ And a landlord's covenant to pay "all rates, taxes, and assessments, water rate, and other outgoings, now or hereafter to be imposed or assessed upon the said premises or on the lessee or lessees in respect thereof," did not render him liable to pay for water supplied to the tenant for trade purposes.¹²

In a later case, in which the covenant was "to procure to be paid all rates and taxes payable in respect of the said demised premises," Buckley, J., although he felt bound to follow the first-mentioned case,¹³ expressed his disagreement with it, pointing out that "water rate is not payable in respect of the premises in the sense that the owner of the premises must pay it: it is payable in respect of water which the occupier requests to have supplied to his premises."¹⁴ This case was taken to the Court of Appeal, but that court dismissed the appeal, having regard to the nature of the premises in question. They formed a portion of a very large building, and contained lavatories and waterclosets, and were supplied with water, together with the remainder of the building, by the Metropolitan Water Board. The building was assessed for water as a whole. The

(2) *Worcester Cpn. v. Droitwich U.A.C.* (1876), L. R. 2 Ex. D. 49; 46 L. J. M. C. 241; 36 L. T. 186; 41 J. P. 355.

(3) P.H. (Ir.) Act, 1878, 41 & 42 Vict. c. 52, ss. 2, 61, 66-68, 232, 233, 279.

(4) *Hanly v. Sligo R.D.C.*, 1918 Ir. K. B. 280. See also the *Sleaford Case*, *infra*.

(5) *Post*, Vol. II., p. 1270.

(6) *Horn v. Sleaford R.D.C.*, L. R. 1898, 2 Q. B. 358; 67 L. J. Q. B. 724; 78 L. T. 722.

(7) See Note to s. 8 of Act of 1878, *post*, Vol. II., p. 1271.

(8) See ss. 68-74 of Act of 1847, and s. 21 of Act of 1863, *post*, Vol. II., pp. 1232, 1244. For cases on recovery of water rates, see

post, Vol. II., p. 1235.

(9) *Post*, Vol. II., p. 1232.

(10) *Direct Spanish Telegraph Co. v. Shepherd* (1884), L. R. 13 Q. B. D. 202; 53 L. J. Q. B. 420; 51 L. T. 124; 48 J. P. 550.

(11) *Badcock v. Hunt* (1888, C. A.), L. R. 22 Q. B. D. 145; 58 L. J. Q. B. 134; 60 L. T. 314; 53 J. P. 340.

(12) *Floyd v. Lyons & Co.*, L. R. 1897, 1 Ch. 633; 66 L. J. Ch. 350; 76 L. T. 251.

(13) *Direct Spanish Telegraph Co. v. Shepherd*, *supra*.

(14) *Bourn & Tant v. Salmon & Gluckstein, Ltd.* (1906, Ch. D.), 95 L. T. 139; 70 J. P. 462.

court considered that the intention of the parties was that the rent to be paid was to be an inclusive rent, covering the water rate, and had regard also to the length of time which had elapsed since the decision in the first-mentioned case was given, and to the fact that that decision must have governed and guided the rights of parties in innumerable cases of a similar kind ever since. The court, however, expressly reserved its opinion as to what might be the effect of the same words in a lease, say, of a suburban house in which the tenant might or might not be able to get the water supplied for his necessities otherwise than from a water company.¹⁵

In ascertaining the rateable value for the purposes of the poor rate a deduction from the gross estimated rental ought not to be allowed in respect of water rates as tenant's rates, the supply and payment being optional, nor as an expense necessary in order to maintain the premises in a condition to command the rent.¹⁶ But to ascertain the gross estimated rental where the landlord pays the water rates, such rates, not being rent of the premises, should generally be deducted.¹⁷

On the other hand, the Divisional Court has held that sect. 256 of the present Act, relating to the recovery of water rates made under the Act, applies to water rates made in pursuance of the above sections and the incorporated provisions of the Waterworks Clauses Act, 1847.¹⁸

The council of a borough were empowered by a special Act to charge for water supplied for domestic purposes a sum not exceeding 7½ per cent. per annum on the rateable value of the premises supplied. The borough was extended by an order providing that the general district rates to be levied in the added area should not during a certain period exceed such an amount in the pound as when added to the poor rate and to the borough rate "and any other rate made by the corporation in the same year" would make up a total rate of 5s. 6d. in the pound. There was no provision expressly requiring equality of rating to the water rate throughout the borough, and the Court of Appeal held that the council could differentiate the water rate by reducing it to 5 per cent. on the rateable value in the old part of the borough, and leaving it at 7½ per cent. in the added part. The court also expressed the opinion that the water rate was not a "rate" within the meaning of the above-mentioned provision of the order, and that it ought not to be taken into consideration in arriving at the maximum for the general district rate.¹⁹

As to the payment of water rates by the Crown, see the case cited below.²⁰ It was held that a Scottish local Act,²¹ and a statutory order thereunder, authorised the levying of a water rate before the ratepayers were able to obtain a supply, though Lord Johnstone remarked,²² "the result is a perfect *reductio ad absurdum* of rating."²³

Agreements for Supply.

The Local Government Board stated that where water is supplied by agreement and paid for by a water rent, there does not appear to be anything to prevent the district council from including in the agreement a stipulation that if the rent is paid before a specified date a deduction or discount shall be allowed; but that where the water is not supplied by agreement, and payment for it is recovered by means of a water rate, assessed on the net annual value of the premises supplied, such an arrangement would not be applicable.

In 1905 a local authority bought part of a farm for water-supply purposes and covenanted with the vendor to "lay down all necessary pipes for a reasonable supply of water up to Chaldean's Farmhouse (but not any internal pipes or fittings)," to "lay down pipes and erect a stand-pipe for a reasonable supply of water to the farm buildings free of all expense to the vendor or his tenants," and to "supply a reasonable quantity of water for the use of the house and for the said stand-pipe free of charge." At this date the farm consisted of a small house rated at £12 gross and £10 15s. rateable, the usual farm buildings, and 140 acres of land, and was in the occupation of one tenant. In 1911 the new owner of

Sect. 56, n.
Meaning of
rate in
covenants.—
continued.

Uniformity
of rate.

Crown
exemption.
Supply not
available.

Allowances
of discount.

Covenant for
gratuitous
supply.

(15) *Bourn & Tant v. Salmon & Gluckstein*, Ld. (C. A.), L. R. 1907, 1 Ch. 616; 76 L. J. Ch. 374; 96 L. T. 629; 71 J. P. 329.

(16) *Reg. v. Bilston Overseers* (1865), L. R. 1 Q. B. 18; 35 L. J. M. C. 73; 12 Jur. (N.S.) 139; 13 L. T. 327; 6 B. & S. 908.

(17) See *Smith v. Birmingham Churchwardens* (1888, Q. B. D.), 5 T. L. R. 70.

(18) *Elliott v. Russell*, cited in Note to s. 256, *post*.

(19) *Northampton Cpn. v. Ellen*, L. R.

1904, 1 K. B. 299; 73 L. J. K. B. 329; 90 L. T. 71; 68 J. P. 197; 2 L. G. R. 473.

(20) *Postmaster-General v. Nenagh U.D.C.*, *post*, Vol. II., p. 1226.

(21) *Kirkcaldy*, 1913, 2 & 3 Geo. V. c. clxix., s. 58.

(22) 1914 S. C. (S.), at p. 886.

(23) *Fife C.C. v. Fife Coal Co.*, 5 Glen's Loc. Gov. Case Law 199. See also *Southend Water Co. v. Howard*, *post*, p. 149.

Sect. 56, n.
Covenant for
gratuitous
supply.—*cont.*

the farm enlarged the house to such an extent that its gross value was fixed at £120 and its rateable value at £96, changed its name to Carldane Court, erected a motor garage, and let off the farm buildings and land to a tenant. Disputes having arisen as to the effect of these alterations on the above covenant, the local authority sought declarations (a) that the covenant did not run with the land (this was abandoned at the trial), (b) that they were not bound to furnish a free supply of water to Carldane Court (this was granted) or to the farm buildings (this was refused), (c) that the free supply had been improperly used for building operations and washing motor cars (this was granted), and (d) that the defendant must pay for all water used in excess of his rights at the usual scale of charges (this was granted). The defendant contended that he was still entitled to a free supply to the extent measured by what was reasonable for the old farmhouse, and that, as he was supplying from his own sources water to 23 taps and 3 water-closets and only taking from the council's works water for one tap and one water-closet, this standard had not been exceeded. As to this it was held that the covenant must be construed as requiring a free supply for the reasonable use of the old farm-house, that the old farm-house had "substantially ceased to exist," and that the measure by which the obligation under the covenant could be ascertained had been destroyed.²⁴ The defendant also contended (unsuccessfully) that washing motor cars was using water for domestic purposes such as might easily have been contemplated at the date of the covenant, and (successfully) that the covenant was "severable" and that the local authority must at least continue the free supply to the farm buildings which had been let.

Money paid
under
mistake.

A local authority covenanted to supply a coal company with water on certain terms contained in a conveyance to the authority of lands belonging to the company. According to the true construction of the covenant in the event which happened (namely, the company being unable to obtain a supply from their own sources) the authority were bound to supply the company with water at 2d. per 1,000 gallons. Under a mistaken construction of the covenant the company had been paying 8d. per 1,000 gallons. Bailhache, J., in an action by the company to recover back £2,314 overpaid, held that, the mistake not having been one of "public law," the maxim *ignorantia juris neminem excusat* did not apply, and that therefore the court was not debarred from giving the company relief, and entered judgment for £1,426 (the claim being reduced to six years' overpayments, and in other particulars). The Court of Appeal, however, held that, whether the mistake was one of law or fact (*semble* it was one of law), and whether or not the company could recover more than six years' overpayments (*semble* they could not), as no notice of the event which entitled them to water at a lower rate had been given to the defendants, the action failed.²⁵

Education
authorities.

Local education authorities have power to contract for the supply of water to non-provided as well as provided schools.²⁶

Stamp duty.

The Stamp Act, 1891,²⁷ exempts from the duty of sixpence (charged on agreements under hand only) any "agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise." An offer made by the secretary of a waterworks company to supply certain premises with water, accepted by the person in possession of the premises, was held to come within the same exemption in the earlier Stamp Act of 1815.²⁸

Obtaining
supply
elsewhere.

An undertaking by a person to obtain all the water that he required from a water company and no other person or persons, was held by the Privy Council to prevent him from obtaining a gratuitous supply from another source.²⁹

Determina-
tion for
impurity.

A water-supply agreement was terminable on notice that the water was impure. The question of purity was to be decided by the Local Government Board, and there was a general arbitration clause. The Board declined to undertake the determination of the question referred to them, and notice was given terminating the

(24) *Hadham R.D.C. v. Crallan* (Ch. D.), L. R. 1914, 2 Ch. 138; 83 L. J. Ch. 717; 111 L. T. 154; 78 J. P. 361; 12 L. G. R. 707. See also *Ilkeston Cpn. v. Fretwell* (1916), 80 J. P. Jo. 4, where the Divisional Court held that a supply for farming purposes did not include a supply for domestic purposes; and *Great Northern Ry. Co. v. Bradford Cpn.*, *post*, p. 146.

(25) *Stanley Bros. v. Nuneaton Cpn.* (1913), 108 L. T. 986; 77 J. P. 349; 11 L. G. R. 902. Further as to payments under mistake, see *Baylis v. Bishop of London*, L. R. 1913, 1 Ch.

127; *Corestan v. Wade*, 1913 Ir. Ch. 25; *Maskell v. Horner*, *post*, Vol. II., p. 1436.

(26) *Trowbridge Water Co. v. Wilts C.C.*, L. R. 1909, 1 K. B. 824; 78 L. J. K. B. 406; 101 L. T. 35; 73 J. P. 280; 7 L. G. R. 484.

(27) 54 & 55 Vict. c. 39, Sched. Agreement.

(28) *West Middlesex Water Co. v. Suwerkropp* (1829), 4 C. & P. 87; Moo. & M. 408; followed in *Gurr v. Scudds* (1855), 11 Ex. 190.

(29) *Kimberley Water Co. v. De Beers Consolidated Mines*, L. R. 1897 A. C. 515; 66 L. J. P. C. 108; 77 L. T. 117.

agreement without any further steps being taken. *Per Astbury, J.*,³⁰ "The determination by the Local Government Board, or, if there be an alternative, by some alternative arbitrator, as to which I determine nothing, is a condition precedent to the right to give a notice." In the same case it was also held that the court will not refuse to decide such a question on an originating summons though their doing so may not settle the litigation between the parties.³¹

Sect. 56, n.

Sect. 57. For the purpose of enabling any local authority to supply water there shall be incorporated with this Act the Waterworks Clauses Act, 1863,¹ and the following provisions of the Waterworks Clauses Act, 1847; (namely,) "With respect" (where the local authority have not the control of the streets) "to the breaking up of streets for the purpose of laying pipes";² and "With respect to the communication pipes to be laid by the undertakers";³ and "With respect to the communication pipes to be laid by the inhabitants";⁴ and "With respect to waste or misuse of the water supplied by the undertakers";⁵ and "With respect to the provision for guarding against fouling the water of the undertakers";⁶ and "With respect to the payment and recovery of the water rates."⁷

Incorporation of certain provisions of Waterworks Clauses Acts.

Provided,—
That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof; and
That any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction; and
That section forty-four of the Waterworks Clauses Act, 1847, shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.

Note.

The above-mentioned clauses are set out as indicated in the footnotes to the text of the present section. With regard to the construction of the incorporated Acts, see sect. 316 and the Note to sect. 54.

Waterworks clauses.

The words " (where the local authority have not the control of the streets) " mean where they have not the control of the streets generally, and do not refer to the control of the particular streets proposed to be broken up.⁸

Control of streets.

Notwithstanding the incorporation of the provisions of the Waterworks Clauses Act, 1847, with respect to the recovery of water rates, sect. 256 of the present Act has been held applicable to water rates made by a district council.⁹

Recovery of water rate.

Sect. 58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them; they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues.

Power to supply water by measure.

The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove test inspect and replace any such meter or other instrument.

(30) *Earl Harrowby v. Leicester Cpn.* (1916), 85 L. J. Ch. 150; 114 L. T. 129; 80 J. P. 92; 14 L. G. R. 42, at p. 49.

(31) R.S.C., Order LIV. (A), Rules 1-4. *Lewis v. Green* (L. R. 1905, 2 Ch. 340) distinguished on this point.

(1) *Post*, Vol. II., p. 1238.

(2) See ss. 28-34, *post*, Vol. II., pp. 1217-1220.

(3) See ss. 44-47, *post*, Vol. II., pp. 1225-1227.

(4) See ss. 48-53, *post*, Vol. II., pp. 1227, 1228.

(5) See ss. 54-60, *post*, Vol. II., pp. 1229, 1230.

(6) See ss. 61-67, *post*, Vol. II., pp. 1231, 1232.

(7) See ss. 68-74, *post*, Vol. II., pp. 1232-1235.

(8) *Hill v. Wallasey Loc. Bd.*, *ante*, p. 140.

(9) *Elliott v. Russell*, cited in Note to s. 256, *post*.

Sect. 58, n.

Supply of
water by
meter.

Loan for cost
of meters.

Place of
supply.

Register of
meter to be
evidence.

Note.

A local authority cannot compel the adoption of the meter system in the supply of water for domestic purposes to their district; but if they in any case enter into an agreement for the supply of water, they can make it a condition that the water shall be supplied by meter.

Access to the premises for examining as to waste or misuse of the water may be obtained under sect. 57 of the Waterworks Clauses Act, 1847.¹⁰ See also sects. 14 and 15 of the Waterworks Clauses Act, 1863,¹¹ as to letting water-meters and inspecting them.

Under a water company's Act it was held that though the consumer was not bound to put up a meter if the water used for a bath could be otherwise accurately measured,¹² the water supplied to the bath must be so measured by and at the expense of the consumer.¹³

The Local Government Board declined to sanction a loan for providing water-meters for ordinary dwelling-houses until agreements should be made for supplying water by measure under the present section.

Where gas was supplied by meter for lighting the premises of a railway company, and the meter was placed at a point within the limits of the district of the gas company, the House of Lords held that a provision, which prohibited the company from supplying gas within the limits of another company, was contravened, because the gas was distributed by pipes from the meter and used for lighting purposes within the limits of the latter company.¹⁴

This was followed in a case in which a water company had laid supply pipes from the boundary of their limits of supply to premises outside those limits at the expense of the owner of the premises. An action was brought in the name of the Attorney General on the relation of another water company, within whose limits of supply the premises were situate, and it was contended that the supply of water to the premises was incidental to the supply within the limits of the first-mentioned company; but Neville, J., held that it was not so incidental, but was *ultra vires*, and granted an injunction to restrain the company from supplying water outside their limits, and the Court of Appeal confirmed his decision.¹⁵ The water is supplied either where the consumer "takes it through stand-pipes, or where it is transferred into a cistern, or where it is made available for use by the consumer."¹⁶

In 1883 a local authority granted an application by a railway company for a supply of water to a railway station at D., payment to be by meter. From 1886 the company used that supply for their station at W. also, both stations being in the same water district, but they had made no application for a supply to W. It was held that the company were not entitled to use the supply for W. By so doing they were contravening sect. 58 of the Act of 1847 and sect. 18 of the Act of 1863.¹⁷ Though the supply at D. could be applied there for every ordinary use for railway purposes, that did not entitle the company to send water down the line to be used at W. or any other station. There was no acquiescence in such user, which, though apparently an open user, was by means of underground pipes only. Knowledge of such user could not be imputed to the authority by reason of their official reading of a meter for an authorised supply, though that meter was side by side with the separate meter used for W.¹⁸

Sect. 59. Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be *primâ facie* evidence of the quantity of water consumed; and if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a court of summary jurisdiction, and such court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding.¹⁹

(10) *Post*, Vol. II., p. 1230.

(11) *Post*, Vol. II., p. 1242.

(12) *Sheffield Water Co. v. Bingham* (1880), L. R. 25 Ch. D. 446, n.; *Sheffield Water Co. v. Carter* (1882), L. R. 8 Q. B. D. 632.

(13) *Sheffield Water Co. v. Bingham* (1883), L. R. 25 Ch. D. 443; 52 L. J. Ch. 624; 48 L. T. 604. See *post*, Vol. II., p. 1225, as to this and the preceding case.

(14) *Gaslight & Coke Co. v. South Metropolitan Gas Co.* (1889), 62 L. J. Ch. 123; 62 L. T. 126; 54 J. P. 373.

(15) *A.G. v. West Gloucestershire Water Co.*, L. R. 1909, 2 Ch. 338; 78 L. J. Ch. 746; 101 L. T. 258; 73 J. P. 453; 7 L. G. R. 1078.

(16) *Ibid.*, per Neville, J., L. R. 1909, 1 Ch. at p. 644.

(17) *Post*, Vol. II., pp. 1230, 1243.

(18) *Great Northern Ry. Co. v. Bradford Cpn.* (1918, Ch. D.), 88 L. J. Ch. 101; 120 L. T. 267; 83 J. P. 33; 17 L. G. R. 1.

(19) For definition of "court of summary jurisdiction," see s. 4 and footnote (2), *ante*, p. 9.

Sect. 60. If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding forty shillings, and the local authority may in addition thereto recover the amount of any damage sustained. The existence of artificial means, under the control of the consumer, for causing any such alteration prevention abstraction or use shall be evidence that the consumer has fraudulently effected the same.

Sect. 60.
Penalty for
injuring meters.

Note.

As to the letting of meters to water consumers, see sect. 14 of the Waterworks Clauses Act, 1863,²⁰ As to the inspection of water-meters, see sect. 15 of that Act and sect. 58 of the present Act. For cases relating to meters, see the Notes to sect. 18 of the Gasworks Clauses Act, 1847,²¹ and sects. 14 and 19 of the Gasworks Clauses Act, 1871.²²

Meters.

Water supplied by meter by a waterworks company to a consumer and standing in his pipes may be the subject of larceny at common law.²³

**Larceny of
water.**

With regard to the recovery of penalties, see sect. 251. See also the Note to sect. 307 with respect to malicious injuries to property.

Penalties.

Sect. 61. Any local authority for the time being supplying water within their own district may, with the sanction of the [Minister of Health], supply water to the local authority of any adjoining district on such terms as may be agreed on between such authorities, or as, in case of dispute, may be settled by arbitration in manner provided by this Act.

Power to
supply water
to authority of
adjoining
district.

Note.

The following is from the circular of the Local Government Board of the 30th September, 1875 : " In cases where a local authority have more water than is required for the supply of their own district, and the authority of an adjoining district are willing to take the surplus, sect. 61 enables the necessary arrangements to be entered into for that purpose, subject to the sanction of the Local Government Board. It is believed that this provision will not unfrequently be found useful in cases where a local authority obtain their supply from sources outside their district."

**Supply to
adjoining
district.**

A district council submitted to the Local Government Board the draft of an agreement under the present section, by which it was proposed that the works in the district to be supplied with the water should be carried out by the supplying council. The Board stated that it was very doubtful whether, under any circumstances, that council could exercise, in the district to be supplied, the powers of breaking up the streets, etc., which presumably would be necessary for carrying out the proposal, and they therefore suggested that the council of the adjoining district should execute the works in that district.

**Works in
adjoining
district.**

Where a water main for supplying an urban district with water from the Vyrnwy aqueduct of the Liverpool Corporation was laid by the corporation, the supplying authority, by virtue of a power in a special Act, the authority receiving the supply having taken the steps necessary under the present Act to enable the works to be carried out, the corporation were held to be the rateable occupiers of the mains in a parish between the aqueduct and the point at which the water became the property of the urban district council.²⁴

**Rateability
of such works.**

The present section merely requires the Minister of Health to sanction the supply of water by the one authority to the other; it does not require the Minister to sanction or consider the terms of the agreement between the two authorities, but the sanction may be limited to particular places in the district.²⁵

**Sanction of
Minister.**

With regard to the mode of reference to arbitration, see sects. 179-181. A township, being entitled under a local Act to take any quantity of water between certain limits from the works of the corporation, took more than the minimum quantity, and sold part of it at a profit to a neighbouring township. It was held by the Court of Appeal that there was nothing to prevent them from doing so.²⁶

**Sale of
surplus
water.**

(20) *Post*, Vol. II., p. 1242.
(21) *Post*, Vol. II., p. 1207.
(22) *Post*, Vol. II., pp. 1256, 1257.
(23) *Ferens v. O'Brien* (1883), L. R. 11 Q. B. D. 21; 52 L. J. M. C. 70; 47 J. P. 472.
(24) *Liverpool Cpn. v. Birkenhead U.A.C.* (1905, K. B. D.), 94 L. T. 509; 70 J. P. 146;
(25) *Soothill Upper U.D.C. v. Wakefield R.D.C.*, L. R. 1905, 2 Ch. 516; 74 L. J. Ch. 703; 93 L. T. 711; 69 J. P. 447; 3 L. G. R. 1208.
(26) *Halifax Cpn. v. Soothill Upper Loc. Bd.* (1874), 31 L. T. 6.

Sect. 62.

Local authority may require houses to be supplied with water in certain cases.

P.H., s. 76.

L.G., 51.

San. 1866, s. 50.

Sect. 62. Where on the report of the surveyor of a local authority it appears to such authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force, at a cost not exceeding twopence a week, or at such other cost as the [Minister of Health] may, on the application of the local authority, determine under all the circumstances of the case to be reasonable, the local authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district; and water rates may be made and levied on the premises by the authority or company which furnishes the supply and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same, and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the local authority be declared to be private improvement expenses.

Note.

Under the Public Health (Water) Act, 1878,¹ rural district councils have (and urban district councils may obtain) power to require a supply of water to be provided where there is no available supply within a reasonable distance from the house, but the present section is not thereby repealed.² Nor does the Act of 1878 limit the amount of the expenses which can be recovered from the owner under the present section.³

The present section assumes that there is an available supply of water within a reasonable distance from the premises; and if the owner contends that the mains, with which he is required to connect, are at an unreasonable distance, his only remedy is to appeal to the Minister of Health under sect. 268.⁴

By the Act of 1878, where application is made to the Minister of Health by a district council under the present section to determine what is a reasonable cost, the Minister may, for that purpose, fix by order a general scale of charges for the whole or any part of the district of the council; and the cost of the supply of water to any house within the area specified in the order is to be deemed to be determined to be a reasonable cost within the meaning of the section, if it does not exceed the cost authorised by such general scale of charges.⁵

When application is made to the Minister of Health by a rural district council, under the present section, to determine what is a reasonable cost within the meaning of the section for a supply of water to houses in the rural district, and to fix a general scale of charges for the district, the Minister, under the section as amended by the Act of 1878, can only determine the "reasonable cost" at which a supply of water may be furnished compulsorily to houses which are without a proper supply. The Local Government Board stated that if there is no local Act in force in the district authorising the levying of a water rate, and a supply is furnished by the district council pursuant to a requisition by a person entitled under sect. 44 or sect. 53 of the Waterworks Clauses Act, 1847, as incorporated by sect. 57 of the present Act, the charges which the council may make for the supply of water are not controlled by the scale applicable to cases of enforced supply under the present section; and they may, under sect. 56, charge in respect of water supply a water rate to be assessed on the net annual value of the premises supplied, or they may enter into an agreement with the consumer for the supply on terms which may include the payment of a water rent.

No scale of charges approved by the Minister is required to enable a district council to compel the laying on of a supply to a house where the charge for the supply is not to exceed twopence a week.

(1) See s. 3, *post*, Vol. II., p. 1267.

(2) *Colne Valley Water Co. v. Treharne* (1884), 50 L. T. 617; 48 J. P. 279.

(3) *West Lancashire R.D.C. v. Ogilvy*, L. R. 1899, 1 Q. B. 377; 68 L. J. Q. B. 215;

80 L. T. 162; 63 J. P. 166.

(4) See s. 3 of Act of 1878, *post*, Vol. II., p. 1267.

(5) *Ibid.*, s. 8.

Compulsory powers of district council.

Jurisdiction of Minister of Health.

The Local Government Board refused to sanction, by an order under the Act of 1878, a general scale of charges submitted by an urban district council, because the adoption of that scale would have involved a considerable annual deficit which would have had to be borne by the general district rate; and they expressed the view that such an arrangement would be inequitable, and that as far as practicable the cost of a water undertaking should be borne by the consumers of the water. **Sect. 62, n.**

The "cost at which the supply can be furnished" seems, having regard to the reference to the water rate authorised by a local Act, to mean the cost at which the supply can be furnished after the works have been executed, and not to include the cost of the works as well as the water rate or cost of the water. **Cost of supply.**

It will be noticed that, if water cannot be supplied at so low a cost as the prescribed maximum, the section does not authorise the district council to require it to be provided. In the case of common lodging-houses, however, they have a less restricted power: see sect. 81.

As to the analysis of water for the purposes of the surveyor's report under the present section, see the Note to sect. 70. **Analysis of water.**

With regard to the authentication and service of notices, see sects. 266 and 267.

The term "owner" is defined by sect. 4. A notice to obtain a proper supply of water to a house was objected to on the ground that it was served upon the owner's agent and rent collector, and not upon the owner personally or in the manner prescribed by statute; but as the notice was addressed to and actually reached the owner, the objection was overruled.⁶ In the same case it was objected that the local board ought not merely to have directed their surveyor to serve the notice, but should have passed some formal resolution on the subject; but this objection also was overruled. **Notice to owner.**

A finding by justices that a lock-up shop was not a "house" in respect of which water rates were payable was upheld by the Divisional Court in the following circumstances: The premises consisted of a greengrocer's shop with a store behind. The respondent was the occupier, and he (and occasionally, during the dinner hour, his daughter) attended at the shop. There was a rainwater butt on the premises, but no water-closet or other sanitary convenience. The respondent had failed to comply with a notice to provide a proper water supply under the present section.⁷ **Meaning of house.**

With regard to the mode of recovering from the owner the expenses incurred in executing the works, see sects. 251 and 257, under which such expenses may be recovered in a lump sum or by instalments, or may be made a charge on the premises and enforced in equity. **Recovery of expenses.**

With regard to the recovery of water rates, see the Note to sect. 56; and with regard to private improvement expenses and rates, see sects. 213-215 and 232. **Recovery of water rates.**

The owner of a house who has failed to comply with the notice of the district council to obtain a proper supply of water is liable under the present section, "as if he had demanded a supply and were willing to pay water rates," to pay the water rates to the company which "furnishes the supply" by means of its mains in the street in front of his house, although no connection has been made between the house and the mains. The council may make the connection and charge it to the owner, but their doing so is not a condition precedent to the chargeability of the owner for water rates.⁸

Sect. 63. Any water company may contract to supply water or may lease their waterworks to any local authority; and the directors of any water company, in pursuance, in the case of a company registered under the Companies Act, 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company of a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights powers and privileges, and all or any of the waterworks premises and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase. **Powers of water company for supplying water to local authority. L.G., s. 53.**

(6) *Caballero v. Lewis* (1874). 38 J. P. 614. See also s. 267, *post*.

(7) *Wootton v. Bishop* (1907, K. B. D.), 96 L. T. 705; 71 J. P. 334; 5 L. G. R. 760.

(8) *Southend Water Co. v. Howard (or Havard)* (1884), L. R. 13 Q. B. D. 215; 53 L. J. Q. B. 354; 48 J. P. 469. See also *Fife C.C. v. Fife Coal Co.*, *ante*, p. 143.

Sect. 63, n.

Note.

Transfer of water, gas, and market undertakings.

“Water company.”

Special resolution.

Wharncliffe meetings.

Price.

Vesting of public cisterns, &c., in local authority.
P.H., s. 78.
L.G., s. 45 (5).
T.L., s. 121.
N.R. 1860, s. 7*.

* See Note to s. 5, ante, p. 42.

The present section empowers a water company to sell the whole or part of its undertaking to the district council. The power of the council to purchase the undertaking is derived from sect. 51, and can only be exercised with the sanction of the Minister of Health.

Similar provisions are made by the present Act for transferring gas undertakings (see sect. 162) and markets (see sect. 168) to urban district councils.

Sect. 4 defines “water company” to mean “any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit.”

By the Companies (Consolidation) Act, 1908,⁹ “(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. (2) A resolution shall be a special resolution when it has been—
(a) passed in manner required for the passing of an extraordinary resolution; and
(b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting. (3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. (4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles. (5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company. (6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.”

The Standing Orders of both Houses of Parliament (62-66) require similar special resolutions to be passed at meetings, known as “Wharncliffe meetings,” by the members of companies applying to Parliament for powers. Such resolutions do not require confirmation at subsequent meetings.

A water company, bound by their special Act to sell to the sanitary authority, when required, all mains, pipes, and fittings belonging to them, at a price to be determined in default of agreement by arbitration, were not entitled to compensation for the loss of the right to supply water, in addition to compensation for the value of the plant *in situ*.¹⁰

Sect. 64. All existing public cisterns pumps wells reservoirs conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute maintain and plentifully supply with pure and wholesome water other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.

(9) 8 Edw. VII. c. 69, s. 69. This Act (see s. 286 and Sched. VI.) repealed the whole of the Act of 1862, mentioned in the present section (25 & 26 Vict. c. 89: the replaced sections were ss. 51, 52), but applies to companies registered under the former Acts (see ss. 245-247). As to notices of meetings under

s. 69 of the Act of 1908, see *MacConnell v. Prill & Co.*, L. R. 1916, 2 Ch. 57; 85 L. J. Ch. 674; 115 L. T. 71.

(10) *Stockton and Middlesbrough Water Bd. v. Kirkleatham Loc. Bd.*, L. R. 1893 A. C. 444; 63 L. J. Q. B. 56; 69 L. T. 661; 57 J. P. 772. See also Note to s. 162, post.

Note.

Sect. 64, n.

The Local Government Act, 1894,¹ confers on parish councils the power to utilise any well, spring, or stream within their parish, and provide facilities for obtaining water therefrom, but "so as not to interfere with the rights of any corporation or person."

Parish
councils.

The "vesting" of the works in the district council does not give them the absolute ownership of the soil, but a limited ownership similar to that which they have in sewers, or, in the case of urban district councils, in certain streets: see on this point the Note to sect. 13.

Vesting of
works.

Taking water from a cattle trough vested in the local authority under the present section by means of a pipe inserted without their consent may be restrained by them in an action in their own name without the Attorney General.²

The shaft of an abandoned mine was used as a public well, and accordingly held to be vested in the local authority under the present section.³

In an action of trespass brought by a local board against a person who had pulled down a retaining wall erected by the board at a pond at which the public had from time immemorial been accustomed to water horses and cattle, Kay, J., ruled that the pond was vested under the present section in the local board, who had for some years exercised rights over it.⁴

A well used by the public for seventy years, and used very largely by the inhabitants of the particular district, was held to be a "public well" which the local authority had power to cover in and provide with a pump under the Public Health (Scotland) Act, 1867,⁵ that Act authorising them to "cause all existing public pumps used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water"; and the fact that an existing water company had a similar monopoly to that which is given by sect. 52 of the present Act did not prevent the local authority from causing the well to continue to be supplied with water.⁶ But a well which had occasionally been locked during dry seasons, and had never been repaired at the cost of any rate, was held not to be "public" within the meaning of the present section, although it had been used from time immemorial without payment by any of the inhabitants of the district who wished to use it.⁷

Under the Public Health (Ireland) Act, 1878,⁸ which contains the same provisions as the present section, it was held that the right of the public at large to resort to a well could not be supported by prescription, and that it was too wide to be the subject of a custom, but that it must have arisen from a dedication to the public by the owners from time immemorial of the land on which the well existed. It was also held that it was unnecessary to prove that the soil was in any sense public property; for if the public has a servitude attached to the soil and freehold, by virtue of which the public enjoyed the right of free access to the well to obtain its water for their use, it would be a "public well" within the meaning of the Act.⁹

Phillimore, J., in a judgment relating to a claim of public rights over a pier, after stating that he had very often had to consider the title to, or right of use of, roadside ponds, made the following observations: "The view I have long formed is that, at any rate, although the soil of these ponds probably belongs to the lord of the manor or to the adjacent landowner, there is a dedication of the right of using these ponds, not to the parishioners only, but to the whole of the public—a dedication which can only be supported in a few other cases besides rights of way which can be dedicated by the owner of the soil. And the same thing applies to springs—though there may be some question of the right of the parishioners or of the public in that case—and the natural basins of springs"; but he added, "if there can be in law such a dedication as I have suggested for other purposes than that of a highway, it is rather difficult to prove, and would require very conclusive evidence."¹⁰

The shaft of an abandoned mine was used as a public well, and therefore vested in the district council. It was not fenced, and a horse fell into it and was killed.

Fencing mine
shaft.

(1) See s. 8 (1) (e), *post*, Vol. II., p. 2004.

(2) *Holmfirth Loc. Bd. v. Shore* (1895, Q. B. D.), 59 J. P. 344.

(3) *Knuckey v. Redruth R.D.C.*, *post*, p. 152.

(4) *Leadgate Loc. Bd. v. Bland* (Durham Assizes), 45 J. P. 526; 1881 Loc. Gov. Chron. 615.

(5) 30 & 31 Vict. c. 101, s. 89 (4).

(6) *Smith v. Archibald* (1880), L. R. 5 A. C.

489.

(7) *A.G. v. Tonkin* (Kekewich, J.), 18 T. L. R. 29; 1901 Loc. Gov. Chron. 1125.

(8) 41 & 42 Vict. c. 52, s. 74.

(9) *Dungarvon Guardians v. Mansfield*, L. R. 1897, 1 Ir. 420.

(10) *Tyne Improvement Comrs. v. Imrie*; and *A.G. v. Tyne Improvement Comrs.* (1899), 81 L. T. 174.

Sect. 64, n.

In an action against the council by the owner of the horse, it was held that they were not owners of the mine or persons interested in the minerals so as to be required by the Metalliferous Mines Regulation Act, 1872,¹¹ to fence the shaft, and the judgment for the defendants given by the county court judge was upheld on appeal.¹²

Care of drinking fountains.

A local authority in Scotland had sole control of a public drinking-fountain. It overflowed, the water froze on the pavement, and the plaintiff fell on the ice and died from his injuries. It was held that there was no cause of action. *Per* Lord Dunedin: "In such a case I can only imagine negligence coming under one or other of two heads: either that there was some structural defect in the fountain which made overflows probable; or that the fountain, having from some temporary or fortuitous cause overflowed, this dislocation of the ordinary arrangements had been brought to the knowledge of the authorities, or had existed for such a length of time that they ought to have known, and they had failed to remedy the temporary defect."¹³

But where a similar fountain was in such a state that, when climbed on by a person desirous of seeing a procession, the top fell and injured another person standing near, the jury found for the plaintiff, and a new trial was refused. The local authority, to whom the fountain had been given by a former mayor about fifty years previously, contended that the injury resulted from the fountain being put to a use never intended and not reasonably capable of anticipation. Cozens-Hardy, M.R., said: "It is pre-eminently a case in which a common jury were the proper tribunal to consider, and by their verdict to decide, whether this fountain, which was in the highway and was so situate that, according to the defendants' own witnesses, people would be likely to climb up it to view the procession, was in a dangerous condition, and whether the corporation had neglected to keep it in repair—whether, in short, the corporation, with the knowledge they possessed in the ordinary discharge of their duties, had neglected to do what was reasonable for them to do for the protection of the public. . . . This is one of those cases in which the maxim *res ipsa loquitur* may be fairly applied." Fletcher Moulton, L.J., said: "persons who have a structure like this in a highway must take care that there is a reasonable margin of safety."¹⁴

Supply of water to works.

The inhabitants of a certain district were entitled by custom to the flow of water from a certain spring to a spout in the public highway, and to take water therefrom to use for domestic purposes. The proprietor of land through which the water flowed having abstracted and diverted the water on certain occasions so as substantially and sensibly to diminish the flow to the spout, the inhabitant of a house within the district brought an action against him. It appeared that many of the inhabitants had been put to inconvenience on divers occasions by failing to find water on going to the spout while the flow was so diminished, though the jury found that the plaintiff had not personally suffered any actual inconvenience or damage. It was held on a rule *nisi* to enter a nonsuit that the plaintiff could maintain the action without having suffered actual damage individually, for the act of the defendant, if continued, would be evidence of a right existing in him in derogation of the rights of the inhabitants of the district, among the number of whom was the plaintiff.¹⁵

Individual damage.

Although the present section gives the local authority power to cause their wells to be maintained and supplied with water, it does not authorise them to enter upon a person's land and help themselves to water; and therefore an injunction was granted to restrain the servant or agent of a rural authority from digging holes in a roadway to recover the water which had ceased to flow into their wells by reason of certain operations of the landowner.¹⁶

Although water percolating underground in undefined courses is not the property of any person,¹⁷ yet no one is entitled so to pollute it as to prevent any other person from enjoying the right of appropriating it.¹⁸

Private ponds.

As to interference by local authorities with private ponds, see the case cited below.¹⁹

(11) 35 & 36 Vict. c. 77, s. 13, *post*, p. 176.

(12) *Knuckey v. Redruth R.D.C.*, L. R. 1904, 1 K. B. 382; 73 L. J. K. B. 265; 90 L. T. 226; 68 J. P. 172; 2 L. G. R. 456.

(13) *O'Keefe v. Edinburgh City Cpn.* (1910, Sc. (S.)), 48 Sc. L. R. 50; 1 Glen's Loc. Gov. Case Law 47.

(14) *McLoughlin v. Warrington Cpn.* (1910, C. A.), 75 J. P. 57; 2 Glen's Loc. Gov. Case

Law 124.

(15) *Harrop v. Hirst* (1868), L. R. 4 Ex. 43; 38 L. J. Ex. 1; 19 L. T. 426.

(16) *Edwards v. Jolliffe*, 1877 W. N. 120.

(17) *Chasemore v. Richards*, cited in Note to s. 332, *post*.

(18) *Ballard v. Tomlinson*, *ante*, p. 97.

(19) *Burdett Coutts v. Ridge P.C.*, *post*, Vol. II., p. 2006.

With regard to the closing of wells, tanks, cisterns, or pumps, in which the water is polluted, see sect. 70.

A district council, being proprietors of waterworks, may supply a public fountain gratuitously for a limited purpose, and a person taking the water for another purpose will be liable to a penalty under the Waterworks Clauses Act, 1847;²⁰ and although a fountain erected on a highway may be a public nuisance (*i.e.* by obstructing the highway), the water with which it is gratuitously supplied remains the property of those who supply it, and cannot be taken for any other purpose than that for which it is supplied. In the case in which this was decided, an inhabitant had presented to the town an ornamental fountain, with a trough or basin, which was set up in one of the public streets; and the local board supplied it with water on market days for the use of cattle in the market, and for horses, if yoked, when passing to and fro. The respondent kept horses, and, with a view to evade payment of the rate for the supply of water to his stable, took his horses to the fountain to drink.²¹

The present section does not enable the local authority to licence a person to take water for commercial purposes from a public well constructed at the source of an ancient stream, or to divert the water at its source to the injury of a riparian proprietor below.²²

Where a rural district council have provided stand-pipes for the supply of water to any portion of their district, they may make water rates on the dwelling-houses within two hundred feet from them under the Public Health (Water) Act, 1878.²³

Sect. 65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied; moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor or borough rates.

Note.

The district council need only supply water for the purposes here mentioned, "if they think fit"; and they are not under the same obligation as they are with respect to the supply of water for domestic purposes. With regard to the meaning of "domestic purposes," see sect. 12 of the Waterworks Clauses Act, 1863,²⁴ and the Note to that section.

Further, with regard to public baths and washhouses, see the Baths and Wash-houses Acts, 1846 to 1882,²⁵ which, in urban districts, are to be carried out by the council,²⁶ and in rural districts, by the existing commissioners, or by the parish or district council, or in districts partly urban and partly rural, by a joint committee.

Water companies, with whose Acts the Waterworks Clauses Acts are incorporated, are required in certain cases to provide a constant supply of water for public baths and washhouses.²⁷

Sect. 66. Every urban authority shall cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person; and they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.

(20) See s. 59, *post*, Vol. II., p. 1230.
(21) *Hildreth v. Adamson* (1860), 8 C. B. (N.S.) 587; 30 L. J. M. C. 204; 2 L. T. 359; 25 J. P. 645.
(22) *Mostyn v. Atherton*, L. R. 1899, 2 Ch. 360; 68 L. J. Ch. 629; 81 L. T. 356.

(23) See s. 9, *post*, Vol. II., p. 1271.
(24) *Post*, Vol. II., p. 1239.
(25) *Post*, Vol. II., p. 1381.
(26) See s. 10 of present Act, *ante*, p. 48.
(27) See s. 37 of Act of 1847, *post*, Vol. II., p. 1222.

Sect. 66, n.

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Fire-plugs.

Rural districts.

Rural district councils should not apply for the powers of the present section, except for the particular contributory place or places for which it is intended to provide fire-plugs.¹

Supply of water.

If a water company, whose special Act incorporates the Waterworks Clauses Act, 1847, supply water within the district of any "town commissioners," as defined by that Act, they are required to provide and maintain fire-plugs at the expense of the commissioners; and where fire-plugs are fixed, a sufficient supply of water must be kept constantly laid on, for cleansing the sewers and drains, for cleansing and watering the streets, and for supplying any public pumps, baths, or washhouses established for the free use of the inhabitants, or paid for out of the rates, upon terms to be agreed on or settled by two justices.²

Damage.

An extraordinary frost caused water to escape from a fire-plug, and damage was thereby caused to adjoining premises, but this was held to afford no evidence of negligence on the part of the water company.³ In a subsequent case, however, where there was no such excuse as that of an extraordinary frost, it was held that there was evidence to go to the jury.⁴

By a local Act a water company were bound, at the request of the town improvement commissioners, to fix fire-plugs in their mains, and to repair them and keep them in proper order at the cost of the commissioners, in whom the property in the plugs was vested by their Improvement Act. In consequence of the cap of one of the fire-plugs provided under the Act having been broken, a horse placed his foot in the plug-hole and was lamed, and it was held that the water company and not the commissioners were liable.⁵

A water company, authorised to place fire-plugs in a highway, but having no power to repair the road, are not bound to vary the level of the plugs from time to time as the road wears away, and are therefore not liable for an accident caused by a plug projecting after the road has worn away from it.⁶

A claim for damages against a water company for not keeping their pipes charged as required by sect. 42 of the Waterworks Clauses Act, 1847, whereby the plaintiff's premises were burnt down, was held not to be sustainable;⁷ and a plea to an action for damage by fire that the fire-plug to the main was opened for extinguishing another fire, which was the cause of the default in the supply of water, was held good.⁸

Position of fire-plug incorrectly indicated.

An urban district council supplying water under a local Act which incorporated sects. 38-43 of the Waterworks Clauses Act, 1847, placed a fire-plug on a water main in a street not proved to be repairable by the inhabitants at large. They affixed to the wall of a house a plate which indicated a position about seven feet six inches from the actual position of the plug, and the plug became covered (it did not appear by whom) with several inches of soil. On a fire occurring in the street, the efforts of the fire brigade were retarded by delay in finding the plug, and the damage to the plaintiffs' premises, on which the fire occurred, was thereby largely increased. The plaintiffs, owners and occupiers of the premises, were held by Grantham, J., on further consideration, not to be entitled to recover from the council damages as for breach of duty amounting to misfeasance on the ground that the council were not shown to be responsible for the covering of the fire-plug with soil, and that the inaccuracy of the indicating plate would not have been material if the plug had not been covered up, and was therefore not the *causa causans* of the damage. It was also held ⁹ that, if there had been a breach of statutory duty under

(1) L.G.B. Decision, 1912 Loc. Gov. Chron. 196.

(2) See ss. 37-43, *post*, Vol. II., p. 1222.

(3) *Blyth v. Birmingham Water Co.* (1856), 11 Ex. 781; 25 L. J. Ex. 212; 2 Jur. (N.S.) 333; 20 J. P. 247.

(4) *Steggles v. New River Co.* (1865), 13 W. R. 413.

(5) *Bayley v. Wolverhampton Water Co.* (1860), 6 H. & N. 241; 30 L. J. Ex. 57; 25 J. P. 199. See also cases cited *post*, Vol. II., p. 1218.

(6) *Moore v. Lambeth Water Co.*, cited in Note to s. 308 (under heading "Action for damages"), *post*.

(7) *Atkinson v. Newcastle and Gateshead Water Co.* (1877, C. A.), L. R. 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 42 J. P. 183; *questioning Couch v. Steel* (1854), 3 E. & B. 402; 23 L. J. Q. B. 121.

(8) *Campbell v. East London Water Co.* (1872), 26 L. T. 475; 36 J. P. 711.

(9) Following *Atkinson v. Newcastle and Gateshead Water Co.*, *supra*.

the present Act, the remedy was by proceeding under sect. 43 of the Act of 1847, and not by action. This was, however, reversed by the Court of Appeal on the ground that, although the council were not responsible for the covering up of the fire-plug, yet the putting up of the directing plate with misleading directions thereon was an act of misfeasance, and that, as it had caused damage to the plaintiffs, the district council were liable.¹⁰

The lid of a hydrant was removed, and a bent pipe and T-shaped water-key were left protruding therefrom, but plainly visible. A child of five injured its eye on the key. It was held that there was no evidence of negligence on the part of the authority, and that, even if there had been, the child was guilty of contributory negligence in that he was "negligent of his own safety in a matter which was quite within his capacity for self-care."¹¹

Fire Brigade.

Fire-engines, fire-escapes, and other apparatus, buildings to keep them in, and men and horses to work and draw them, may be provided by urban district councils under the Town Police Clauses Act, 1847;¹² and subject to certain conditions the men may be insured.¹³

Where Part VIII. of the Public Health Acts Amendment Act, 1907,¹⁴ is in force, any member of the fire-brigade of the district council, when on duty, as well as any police constable acting under orders of his superior officer, or any officer of the council, may enter and if necessary break into any building which is, or is reasonably supposed to be, on fire, or any premises near to it, for the purpose of extinguishing fire, protecting the building, or rescuing persons or property, and the police may stop or regulate the traffic; the council may enter into agreements with other councils for the common use of fire-engines and firemen, and it is provided that the officer in charge of the fire-engine or other apparatus shall have the sole control of the operations for extinguishing a fire.

The Local Government Board refused to sanction the raising of a loan by an urban district council for the provision of cottages for their firemen at some distance from the fire-station, though they were to be provided with fire-alarms or telephones, stating that they were advised that it was not within the powers of the council to provide such cottages apart from the fire-station.

An urban district council may in general make a charge, under the Town Police Clauses Act, 1847,¹⁵ for putting out a fire where the premises are without the district, but not where the fire is within the district.¹⁶

The power given by sect. 285 of the present Act to district councils to combine for the execution of works would enable an urban district council (or a rural district council having urban powers with respect to fires) to enter into an agreement with other district councils, under which the latter councils would acquire a right to the services of the apparatus of the fire-brigade of the former council. Such an agreement might impose conditions, and a reasonable payment might be made under it for the right thereby acquired. The Local Government Board, however, stated that they were advised that it is doubtful whether a district council and a parish council could combine under sect. 57 of the Local Government Act, 1894,¹⁷ in order to purchase a fire-engine for their joint use, since the powers which they can respectively exercise in the matter of the provision of such an engine are not identical.

In rural parishes, where the Lighting and Watching Act has been adopted, the authority acting in execution of that Act, which will generally be the parish council, may provide and keep up fire-engines, etc., for the use of the parish adopting the Act, and may provide a proper place or places for keeping them, and may place such engines under the care of proper persons, and make them such allowance for their trouble as may be thought reasonable.¹⁸ Where that Act is not adopted, the parish authorities may provide fire-engines, etc., under the Poor Law Amendment Act, 1867;¹⁹ and the powers of a parish council under these enactments are extended by the Parish Fire Engines Act, 1898,²⁰ so as to enable them to agree for the use

Sect. 66, n.

Men and apparatus in urban districts.

Cottages for firemen.

Charges.

Combination of councils.

Rural parishes.

(10) *Dawson & Co. v. Bingley U.D.C.*, *post*, Vol. II., p. 1223.

(11) *Plantza v. Glasgow Cpn.*, 1910 S. C. (S.) 786; 47 Sc. L. R. 688; 1 Glen's Loc. Gov. Case Law 47.

(12) See s. 32, *post*, Vol. II., p. 1657.

(13) See Note to s. 189, *post*.

(14) See ss. 87-90, *post*, Part I., Div. III.

(15) See s. 33 and Note, *post*, Vol. II., p. 1658.

(16) *Bridlington or Drighlington Loc. Bd. of Health v. Bower* (1873, Ex.), 38 J. P. 73; 1873 W. N. 220.

(17) *Post*, Vol. II., p. 2091.

(18) 3 & 4 Wm. IV. c. 90, s. 44.

(19) 30 & 31 Vict. c. 106, s. 29; see L. G. Act, 1894, ss. 6, 19, *post*, Vol. II., pp. 2000, 2023.

(20) *Post*, Vol. II., p. 1659.

Sect. 66, n.

Negligent
management
of fire-escape.

in their parish of the fire-engine, etc., of the council of a neighbouring borough or district.

A local authority arranged with certain tradesmen that in return for a shilling a week they were to attend fire drills and act as firemen when necessary. Boys helped at these drills, and at the conclusion of one of them a fireman called out: "Now, boys, you have had your fun; help to push the truck home." The plaintiff, aged fourteen, and others, seized the ropes and dragged the escape off. In descending a hill it overtook the boys, and injured the plaintiff. The jury found (1) that the local authority were not guilty of negligence; (2) that the fire-escape was fit and proper for its purpose; (3) that the authority's servants were guilty of negligence in the management of the fire-escape, and in allowing the plaintiff to pull it; and (4) that the plaintiff was not aware of the danger. The Court of Appeal reversed the judgment of Darling, J., for the plaintiff for £100 on the ground that the doctrine of "common employment" applied.²¹

False Alarms.

Penalty.

By the False Alarms of Fire Act, 1895,²² "any person knowingly giving or causing to be given a false alarm of fire to the fire brigade of any town or parish outside the metropolitan area or to any officer thereof, whether by means of a street fire-alarm, statement, message, or otherwise, shall be deemed to be guilty of an offence punishable on summary conviction, and shall, on conviction for such offence by a court of summary jurisdiction, be liable for every such offence to a penalty not exceeding twenty pounds." "In any proceeding against any person for an offence under sect. 1 of this Act such person shall be competent but not compellable to give evidence, and the wife of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence."

*Means of Escape from Fire.*Factories and
workshops.

For the powers and duties of district councils in relation to the provision of means of escape in case of fire in connection with factories and workshops, see sects. 14 and 15 of the Factory and Workshop Act, 1901.²³

London.

A public-house was inhabited by thirteen persons, namely, the tenant, his wife and three children, their servant, and the public-house staff, who all slept on the premises. A summons under the London Building Acts (Amendment) Act, 1905,²⁴ for not having proper means of escape in case of fire was held to have been properly dismissed on the ground that the premises were within the exception "a dwelling-house occupied as such by not more than two families."²⁵

Plans of a new hotel, showing certain means of escape, were deposited and approved, subject to the fire-resisting partitions between the staircase and corridors being fitted with self-closing fire-resisting doors. No appeal was brought against this conditional approval. The building was erected without these doors. The superintendent architect refused his certificate that the building had been provided with proper means of escape. The owner appealed to the tribunal of appeal. The tribunal, after hearing evidence on the reasonableness of the condition, found it unreasonable and allowed the appeal. It was held that they had no power to embark upon such an inquiry, but only to consider whether the building had in fact been erected in accordance with the plans as conditionally approved, and the appeal of the county council was allowed.²⁶

As to the apportionment between landlords and tenants of fire-escape expenses, see the London enactment and case cited below.²⁷

Agreements
with univer-
sities.
P. H., s. 93.

Sect. 67. In the Oxford or Cambridge district the local authority may supply water to any hall college or premises of the university within such district, on such terms with respect to the mode of paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof, and the local authority.²⁸

(21) *Bass v. Hendon* U.D.C. (1912, C. A.), 28 T. L. R. 317; 3 Glen's Loc. Gov. Case Law 110. Cf. *Houghton v. Pilkington*, L. R. 1912, 3 K. B. 308; 82 L. J. K. B. 79; 107 L. T. 235.

(22) 58 & 59 Vict. c. 28, ss. 1, 2.

(23) *Post*, Vol. II., pp. 2145-2147.

(24) 5 Edw. VII. c. ccix., s. 12.

(25) *London C.C. v. Cannon Brewery Co.* (K. B. D.), L. R. 1911, 1 K. B. 235; 80 L. J. K. B. 258; 103 L. T. 574; 74 J. P. 461;

8 L. G. R. 1094.

(26) 5 Edw. VII. c. ccix., ss. 7, 22; *London C.C. v. Clark* (K. B. D.), L. R. 1912, 1 K. B. 511; 105 L. T. 713; 76 J. P. 60; 10 L. G. R. 59.

(27) 5 Edw. VII. c. ccix., s. 20; *Monro v. Lord Burghclere* (1917, K. B. D.), L. R. 1918, 1 K. B. 291; 87 L. J. K. B. 366; 118 L. T. 343; 82 J. P. 86; 16 L. G. R. 210.

(28) As to the local authorities for Oxford and Cambridge, see Note to s. 6, *ante*, p. 45.

Sect. 68.

PROVISIONS FOR PROTECTION OF WATER.

Sect. 68. Any person engaged in the manufacture of gas who—

(1.) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas : or,

(2.) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours notice from the local authority or the person to whom the water belongs in that behalf, a further sum of twenty pounds for every day during which the offence is continued or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

Penalty for causing water to be corrupted by gas-washings.
N.R. 1855, ss. 23, 24, 25.
P.H., s. 80.

Note.

The Waterworks Clauses Act, 1847,¹ also contains provisions under which penalties may be recovered by action in the High Court of Justice in respect of the pollution of water by gas-makers. Those penalties, like the penalties imposed by the present section, are not recoverable summarily; but smaller penalties may be recovered summarily under sect. 64 of the Waterworks Clauses Act, 1847, and in proceeding to recover such penalties it would not be necessary to prove any negligence or wilful act on the part of the gas-makers.

There are similar provisions, for the recovery of a penalty by action, in the Lighting and Watching Act, 1833,² and the Gasworks Clauses Act, 1847,³ where those Acts are in force.

Noxious matter percolating through the soil from gasworks to a well was held to render a gas company liable under the Act, which imposes a penalty of £200 on any gas company who shall “empty, drain, or convey, or cause to be emptied, drained, or conveyed, or to run or flow,” any washings, etc., into any stream, well, etc. The well, disused and covered over by the owner for several years, on account of such contamination, did not, it was held, cease to be a well within the Act, even though the plaintiff had accepted the use of substituted wells of the defendants, nor could a licence to pollute be inferred therefrom. In this case Keating, J., who doubted whether a man could by deed give an irrevocable licence to pollute a well, said that a prescription to foul a well would be defeated by variation and excess in the degree of fouling during the prescribed period; and Brett, J., said that, where an Act of Parliament, making an act illegal, came into force while the prescription was running, the prescription, when acquired by due lapse of time, would be an answer to an individual suing as an individual, notwithstanding the statutory illegality.⁴

These statutory provisions will not prevent a person from being liable to be indicted at common law,⁵ or restrained by injunction,⁶ if he creates a public nuisance by fouling a stream with gas-washings.

With regard to the pollution of streams otherwise than in connection with gas-making, see the Note to sect. 17, *ante*, and the Rivers Pollution Prevention Acts, 1876 and 1893.⁷

A person who so contaminates water percolating underground as to pollute his neighbour's well may be restrained by injunction.⁸

Other enactments as to pollution by gas-washings.

Other remedies.

(1) See ss. 62 and 63, *post*, Vol. II., p. 1231.

(2) 3 & 4 Wm. IV. c. 90, s. 50.

(3) See ss. 21-29, *post*, Vol. II., p. 1208.

(4) *Millington v. Griffiths* (1874), 30 L. T. 65.

(5) As in *Rex v. Medley* (1834), 6 C. & P.

292.

(6) As in *Batcheller v. Tunbridge Wells Gas Co.*, *post*, p. 158.

(7) *Post*, Vol. II., p. 1743.

(8) *Ballard v. Tomlinson*, *ante*, p. 97.

Sect. 68, n.
Involuntary
pollution.

An involuntary or unknown proceeding may come within the first prohibition of the present section. A gas company's Act provided that "if the company shall at any time cause or suffer to be conveyed, or to flow, into any stream, reservoir, aqueduct, pond, or place for water, within the limits of the Act, or into any drain, sewer, or ditch communicating therewith, any washing, substance, or thing which shall be produced in the making or supplying gas, or shall do any act to the water contained in such stream, etc., whereby the water therein shall be fouled or corrupted, then the company shall forfeit for every such offence the sum of £200." This was held to make the company liable for the pollution of the plaintiff's well by gas-washings, which escaped through a crack in the floor of a tank, although the injury was not attributable to their negligence, but to the subsidence of the land through mining operations, of which the company were not aware, for they were bound to insure the public from any inconvenience. It was also held that a well was a "place for water" within the meaning of the Act.⁹

Wilful
pollution.

A person, acting in the exercise of a supposed right, threw rubbish into a beck at a point about four miles from the river Aire, into which the beck flowed at a place where that river was navigable, and was convicted under an Act,¹⁰ which imposed a penalty on "any person who shall wilfully throw soil, rubbish, etc.," into the rivers there mentioned, "or any drains, trenches, or watercourses thereunto belonging." The conviction was held to have been wrong, on the ground that the watercourses, etc., did not include tributary streams not forming part of the navigation; but Bramwell, B., further considered that the Act pointed to a knowingly wrongful act on the part of the doer, and greatly doubted whether there had been a wilful throwing in of rubbish within the statute, since the act was done in exercise of a supposed right.¹¹ A local authority were held not to have "wilfully caused or suffered" gas-washings to flow or pass into a tributary of the Thames by reason of having omitted to take steps which might have mitigated the evil arising from gas-washings discharged into their sewers leading to their sewage farm, the effluent from which, after deposit of the sludge and after filtration through the soil, percolated into a tributary of the river.¹²

In an action for an injunction to restrain the pollution of the water in certain pipes, conveying the water supply for the plaintiffs' houses from a well, by the defendants' gas-pipes, evidence that the gas-pipes were well laid, and that in the course of time diffusion of gas and impregnation of the surrounding soil was inevitable, that the water-pipe of the plaintiffs was defective, and that the plaintiffs' water supply was otherwise unfit for domestic use, was held to be irrelevant.¹³

In granting an injunction restraining a gas company from polluting a stream in such a manner as to cause injury to the plaintiff's fishery, the defendants having suggested other causes of the pollution, Neville, J., said: "Upon the circumstantial evidence that has been adduced I have come to the conclusion that the pollution of the river was caused by water pumped out and discharged into the brook from the old gas-tank on the defendant's premises which has been disused for upwards of eleven years, and has apparently become the cemetery of all stray dogs and cats in the neighbourhood, and no doubt contains noxious matter. It is clear on the evidence that such a destruction of fish had never occurred in the memory of any of the witnesses called on either side."¹⁴

Recovery of
penalties.

An action was brought against a gas company to recover the penalty of £200 under the present section, and also damages for fouling a stream which belonged to the plaintiff, not at the place where it was first polluted, but lower down on its course. No "washing or other substance produced in making or supplying gas" was discharged, but the stream was fouled in connection with the making of gas. The jury having found a verdict for £100 damages, Lush, J., held, upon further consideration, that the plaintiff was a person entitled to sue for the penalty; that the penalty was recoverable by the first person of those entitled to sue that brought an action for it; that the word "stream" in the section applied to a running stream, and to one which was not entirely vested in a single proprietor. It was admitted that the recovery of damages was not a bar to the recovery of a penalty also.¹⁵

(9) *Hipkins v. Birmingham and Staffordshire Gas Co.* (1860), 5 H. & N. 74; 29 L. J. Ex. 169; 1 L. T. 303; 6 Jur. (N.S.) 173. Affirmed in Ex. Ch., 6 H. & N. 250; 30 L. J. Ex. 60; 7 Jur. (N.S.) 213.

(10) 14 Geo. III. c. 96, s. 97.

(11) *Smith v. Barnham* (1876), L. R. 1 Ex. D. 419; 34 L. T. 774.

(12) *High Wycombe Cpn. v. Thames Con-*

servators (1898), 78 L. T. 463.

(13) *Batcheller v. Tunbridge Wells Gas Co.* (1901), 84 L. T. 765; 65 J. P. 680.

(14) *Foster v. Charing and District Gasworks, Ltd.* (1911, Ch. D.), 2 Glen's Loc. Gov. Case Law 249.

(15) *Stansfield v. Yeadon and Guiseley Gas Co.*, 1880 Loc. Gov. Chron. 448; *Times*, May 10th, 1880.

Sect. 69. Any local authority, with the sanction of the Attorney General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment bill in Chancery action or otherwise, as they may deem advisable for the purpose of protecting any watercourse within their jurisdiction from pollutions arising from sewage either within or without their district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

Sect. 69.
Local authority may take proceedings to prevent pollution of streams. S.U. 1865, s. 10.

Note.

See sect. 17 and Note, with reference to the pollution of water by sewage, etc. With regard to the meaning of the term “watercourse,” see the Note to sect. 327. With regard to the expenses of carrying the Act into execution by urban district councils, see sect. 207; by rural district councils, sect. 229.

Pollution of streams.

The Rivers Pollution Prevention Act, 1876,¹⁶ allows district councils and persons aggrieved to take proceedings in the county court for preventing the obstruction or pollution of rivers by (1) solid refuse of manufactories, manufacturing processes and quarries, rubbish or cinders, or any other waste or putrid solid matter; (2) sewage matter, solid or liquid; (3) poisonous, noxious, or polluting liquids proceeding from factories and manufacturing processes; and (4) solid or liquid matter proceeding from mines, which is poisonous, noxious, or polluting, or interferes with the flow of the water.

Sect. 70. On the representation of any person to any local authority that within their district the water in any well tank or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, is so polluted as to be injurious to health, such authority may apply to a court of summary jurisdiction for an order to remedy the same; and thereupon such court shall summon the owner or occupier of the premises to which the well tank or cistern belongs if it be private, and in the case of a public well tank cistern or pump, any person alleged in the application to be interested in the same, and may either dismiss the application, or may make an order directing the well tank cistern or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water.

Power to close polluted wells, etc. P.H. 1874, s. 50.

The court may, if they see fit, cause the water complained of to be analysed at the cost of the local authority applying to them under this section.

If the person on whom an order under this section is made fails to comply with the same, the court may on the application of the local authority authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner from the person on whom the order is made.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses.

Note.

Sect. 26 of the Sale of Food and Drugs Act, 1899,¹⁷ expressly excludes “water” from the operation of those Acts, and no authority to analyse water without an order of the court can be gathered from the present section. But it appears to be a necessary implication, from the provisions in sect. 62 of the present Act, that the surveyor may, to enable him to make his report under that enactment as to the “propriety” of the supply of water to particular premises, previously analyse such water. A similar implication arises under sects. 3 and 7 of the Public Health Water Act, 1878.¹⁸ There being no requirement as to notices to owners before the water is taken for this purpose, no such notice is necessary, though they should be given copies of so much of the subsequent report as describes the defect in the water.

Analysis of polluted water.

Special expenses fall on the contributory place in which they were incurred, and not on the common fund of the rural district: see sect. 229.

Special expenses.

(16) *Post*, Vol. II., p. 1743.

(17) *Post*, Part II., Div. II.

(18) *Post*, Vol. II., p. 1267.

Sect. 71.

REGULATION OF CELLAR DWELLINGS AND LODGING HOUSES.

OCCUPATION OF CELLAR DWELLINGS.

Prohibition of
occupying cellar
dwellings.
P.H., s. 67.
San. 1866, s. 42.

Sect. 71. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any cellar (including for the purposes of this Act in that expression any vault or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act.

Note.

Application
of section.

The present section applies to cellar dwellings in rural districts as well as to those in urban districts.

Occupation as
a dwelling.

Sect. 74 defines the meaning of the expression "occupied as a dwelling"; and as to occupation by caretakers, see the case cited below.¹

Existing
cellar
dwellings.

A provision in the Public Health Act, 1848,² forbade, in a similar manner to the present section, the occupation of cellars as dwellings in districts in which that provision was in force, unless they had been so occupied previously to the 31st August, 1848; and the Sanitary Act, 1866,³ extended the prohibition to places in which that provision was not in force on the 7th August, 1866. In places, therefore, where the above-mentioned provision of the Public Health Act, 1848, was in force previously to the 7th August, 1866, no cellar can now be occupied as a dwelling unless it was so occupied before the 31st August, 1848; and in other places no cellar can now be occupied as a dwelling, unless it was so occupied before the 7th August, 1866.

Cellars which were occupied as dwellings previously to the 31st August, 1848, or the 7th August, 1866, as the case may be, and are therefore not affected by the prohibition in the present section, are nevertheless subject to the restrictions of sect. 72, which is re-enacted from the Public Health Act, 1848.⁴ Thus it will be seen that, though a "vault or underground room" is here included in the term "cellar," it must not be occupied or let, even though lawfully occupied or let previously to the passing of the Act, unless the ceiling is at least seven feet above the floor and three feet above the surface of the adjoining ground.

For a further restriction upon underground dwellings, see sect. 17 (7) of the Housing Act of 1909.⁵

Existing cellar
dwellings only
to be let or
occupied on
certain
conditions.
P.H., s. 67.

Sect. 72. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling, any cellar whatsoever, unless the following requisitions are complied with; (that is to say,)

Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least three feet of its height above the surface of the street or ground adjoining or nearest to the same; and

Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at the least below the level of the floor thereof; and

Unless there is appurtenant to the cellar the use of a watercloset earthcloset or privy and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act; and

Unless the cellar has a fireplace with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (except in the case of an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any

(1) *Gowen v. Sedgwick*, cited in Note to s. 157, under heading "Buildings Unfit for Habitation," *post*.

(2) 11 & 12 Vict. c. 63, s. 67.

(3) 29 & 30 Vict. c. 90, s. 42.

(4) 11 & 12 Vict. c. 63, s. 67.

(5) *Post*, Part II., Div. III.

dimensions not being less than four superficial feet in area clear of the sash frame). **Sect. 72.**

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over across or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over across or opposite to any such external window.

Note.

Since sect. 71 absolutely prohibits the occupation of new cellars as dwellings, the present section, as suggested in the marginal note, can only have reference to "existing cellar dwellings," which were lawfully so let or occupied at the time of the passing of this Act. With regard to the cellars which could be so let or occupied, see the Note to the preceding section.

An earth-closet may now be substituted for the water-closet or privy formerly required by the Public Health Act, 1848.

With regard to the provision of water-closets, etc., see sect. 36.

The Towns Improvement Clauses Act, 1847,¹ requires that all cellars shall be provided with proper doors or coverings, and the Town Police Clauses Act, 1847,² imposes a penalty for leaving a cellar open or insufficiently protected.

Sect. 73. Any person who lets occupies or knowingly suffers to be occupied for hire or rent, any cellar contrary to the provisions of this Act shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing from the local authority in this behalf.³

Sect. 74. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act.

Note.

With reference to the duty on inhabited "dwelling-houses," Kelly, C.B., said that "the meaning of the word to 'dwell,' is to live in a house; that is, to live there day and night, to sleep there during the night, and to occupy it for the purposes of life during the day;" and he described this as the natural and well-established meaning of the expression.⁴

In a case relating to the abandonment of rights of common,⁵ Hamilton, J., said: "I am satisfied that it is a dwelling-house. It is not necessary, in my opinion, that it should have been hitherto used as a dwelling-house, or that it should have been intended to be permanently used as a dwelling-house. I do not think pernoctation, actual or regular, is essential. It was a dwelling-house whenever it was desired to use it as such; it had a hearth and a good chimney, and windows and doors and an earth-closet, and a second room which, though at present used for spades and barrows, could well be used as a second living-room, and there is to my mind no doubt, not only that it might be, but that it would be, from time to time, used as a dwelling-house. Although there is no direct evidence upon the point it is legitimate to infer that those who designed this building intended it to be a dwelling-house at times and in case of need."

As to the meaning of "house," see the Note to sect. 4.⁶

Sect. 75. Where two convictions against the provisions of any Act relating to the occupation of a cellar as a separate dwelling place have taken place within three months (whether the persons so convicted were or were not the same) a court of summary jurisdiction may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section.

Note.

See also the provisions of sects. 97 and 109 for causing any premises to be closed when there is a nuisance rendering them unfit for habitation, or where there have been two convictions for overcrowding within three months.

(1) See s. 73, *post*, Vol. II., p. 1625.

(2) See s. 28 [28], *post*, Vol. II., p. 1649.

(3) As to the recovery of penalties, see ss. 251-254, *post*.

(4) *Riley v. Read* (1879), 40 L. T. 398, at

p. 401; L. R. 4 Ex. D. 100; 48 L. J. Ex. 437.

(5) *A.G. v. Reynolds*, *post*, Vol. II., p. 1451. For quotation in text, see L. R. 1911, 2 K. B. at p. 909.

(6) *Ante*, p. 29.

Existing
cellar
dwellings.

Closets.

Doors.

Penalty on
persons offend-
ing against
enactment.
P.H., s. 67.

Definition of
occupying as a
dwelling.
P.H., s. 67.

Meaning of
dwelling-
house.

Power to close
cellars in case of
two convictions.
San. 1866, s. 36.

Closing
premises.

Sect. 76.

Registers of
common
lodging-houses
to be kept.
P.H., s. 66.
C.L. 1851, s. 7.
C.L. 1853, s. 5.

Common
lodging-
houses.

Public
lodging-
houses.

Ordinary
lodging-
houses.

Labourers'
lodging-
houses.

Seamen's
lodging-
houses.

COMMON LODGING-HOUSES.

Sect. 76. Every local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging-houses within the district of such authority, and the situation of every such house, and the number of lodgers authorised under this Act by such authority to be received therein.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all courts and on all occasions as evidence, and shall be sufficient proof of the matter registered, without production of the register or of any document or thing on which the entry is founded; and a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

Note.

See the Note to sect. 89 with regard to the meaning of the expressions "common lodging-house" and "keeper." By that section, if a part only of a house is used as a common lodging-house, that part is to be deemed to be a common lodging-house.

The district council are only to register those houses which have been approved of as common lodging-houses in pursuance of sect. 78; and they are only to register as the keepers, persons who produce proper certificates of character in pursuance of the same section.

Persons are prohibited by sect. 77 from keeping houses as common lodging-houses if the houses are not registered, or if they themselves are not registered as the keepers of the houses. With regard to the power of the district council to refuse to register an applicant, see sect. 78 and Note.

Subject to registration, a person is entitled to keep a common lodging-house; and the district council cannot at their discretion cancel the registration of the keeper.¹

A local board passed a resolution to register a person as the keeper of a common lodging-house, but their clerk, by reason of some information which he subsequently received, did not put the man's name on the register. The district was afterwards made a municipal borough, and the town clerk, not finding the keeper's name on the register, took proceedings against him under sect. 86. The justices refused to convict him, on the ground that he had been substantially registered, and the court upheld their refusal.²

The Towns Improvement Clauses Act, 1847,³ requires public lodging-houses to be registered, prohibits persons from keeping as "public lodging-houses" houses which are not licensed victualling houses and are rated to the poor rate at less than £10, and defines a "public lodging-house" as one in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week.

Houses which are let in lodgings, but do not fall within the category of common lodging-houses, may, under sect. 90, be registered and regulated by the district council under bye-laws made by them in pursuance of that section.

Lodging-houses and cottages suitable for the labouring classes may be provided and managed by urban district councils, and subject to certain restrictions by rural district councils, under Part III. of the Housing of the Working Classes Act, 1890.⁴

Existing dwellings for artisans and labourers may be improved, or other dwellings substituted for them under Part II. of the same Act.

By sect. 214 of the Merchant Shipping Act, 1894⁵—

"(1.) A local authority hereinafter mentioned whose district includes a seaport may, with the approval of the Board of Trade, make bye-laws relating to seamen's lodging-houses in their district, and those bye-laws shall be binding upon all persons keeping houses in which seamen are lodged and upon the owners thereof and persons employed therein.

"(2.) The bye-laws shall amongst other things provide for the licensing, inspection, and sanitary conditions of seamen's lodging-houses, for the publication

(1) *Blake v. Kelly* (1887), 52 J. P. 263.

(2) *Coles v. Fibbens* (1884), 52 L. T. 358; 49 J. P. 308.

(3) 10 & 11 Vict. c. 34, ss. 116-118. These sections are not incorporated in the present

Act. They are only in force in urban districts where there is a local Act incorporating them.

(4) See ss. 53-71, *post*, Part II., Div. III.

(5) 57 & 58 Vict. c. 60, s. 214.

of the fact of a house being licensed, for the due execution of the bye-laws, for preventing the obstruction of persons engaged in securing that execution, for the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and for the exclusion from licensed houses of persons of improper character, and shall impose sufficient fines not exceeding fifty pounds for the breach of any bye-law.

“(3.) The bye-laws shall come into force from a date therein named, and shall be published in the *London Gazette* and in one newspaper at the least circulating in the district, and designated by the Board of Trade.

“(4.) If the local authority do not within a time in each case named by the Board of Trade, make, revoke, or alter, any bye-laws under this section, the Board of Trade may do so.

“(5.) Whenever [His] Majesty in Council orders that in any district or any part thereof none but persons duly licensed in pursuance of bye-laws under this section shall keep seamen’s lodging-houses or let lodgings to seamen from a date therein named, a person acting in contravention of that order shall for each offence be liable to a fine not exceeding one hundred pounds.

“(6.) A local authority may defray all expenses incurred in the execution of this section out of any funds at their disposal as sanitary authority, and fines recovered for a contravention of this section or of any bye-law under this section shall be paid to such authority and added to those funds.

“(7.) In this section the expression ‘local authority’ means in the administrative county of London the county council, and elsewhere in England the local authority under the Public Health Acts . . . and the expression ‘district’ means the area under the authority of such local authority.”

The same Act ⁶ authorises the corporation of a seaport borough to appropriate lands for sailors’ homes.

Bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking may be made by district councils under sect. 314 of the present Act; and similar bye-laws for persons engaged in the picking of fruit and vegetables may be made under the Public Health (Fruit Pickers’ Lodgings) Act, 1882.⁷

As to permitting the use of premises “for the purposes of habitual prostitution,” see the enactment and case cited below.⁸

Sect. 76, n.
Seamen’s
lodging-
houses—*cont.*

Sailors’
homes.

Hop-pickers’
and fruit-
pickers’
lodgings.

Brothels.

Sect. 77. A person shall not keep a common lodging-house or receive a lodger therein unless the house is registered in accordance with the provisions of this Act; nor unless his name as the keeper thereof is entered in the register kept under this Act: Provided that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

All common
lodging-houses
to be registered,
and to be kept
only by register-
ed keepers.
C.L. 1851, s. 8.
C.L. 1853, s. 3.

Note.

The present section not only prohibits a person from keeping an unregistered house as a common lodging-house, but prohibits him from keeping a registered common lodging-house, if he is not himself registered as the keeper of it. But while a penalty recoverable summarily is imposed by sect. 86 for receiving lodgers in an unregistered house, no such penalty is imposed for acting as the keeper of a registered common lodging-house without being registered as such keeper. Sect. 251 directs offences under the Act to be prosecuted in the manner directed by the Summary Jurisdiction Acts, but those Acts only relate to the prosecution of offences for which some penalty or punishment is prescribed. It seems, therefore, that the unregistered keeper of a registered common lodging-house, though he may be liable to be indicted, is not liable to be prosecuted summarily for keeping the house as a common lodging-house.

Where sects. 70 and 71 of the Public Health Acts Amendment Act, 1907,⁹ are in force, deputies may be registered by the lodging-house keepers.

In London, common lodging-house keepers, or a responsible deputy, are required to reside constantly in the house.¹⁰

Registration
of keeper.

Deputy
keepers.

Residence by
keeper in
house.

(6) 57 & 58 Vict. c. 60, s. 259.

(7) Quoted in Note to s. 314, *post*.

(8) Criminal Law Am. Act, 1885 (48 & 49 Vict. c. 69), s. 13, as amended by Act of 1922 (12 & 13 Geo. V. c. 56), s. 3; *Mattison v. Johnson* (1916, K. B. D.), 85 L. J. K. B.

741; 114 L. T. 951; 80 J. P. 243; 14 L. G. R. 457.

(9) *Post*, Part I., Div. III.

(10) 7 Edw. VII. c. clxxv. s. 79; set out in 5 L. G. R. (Statutes) 136.

Sect. 78.

Local authority
may refuse to
register houses.

C.L. 1853,
ss. 3, 4.

Sect. 78. A house shall not be registered as a common lodging-house until it has been inspected and approved for the purpose by some officer of the local authority; [and the local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate for property of the yearly rateable value of six pounds or upwards.¹⁰]

Note.

**Discretion as
to registration
of common
lodging-
house.**

The district council may refuse to register the house if their officer does not consider it to be a proper house to be used as a common lodging-house. But they are not authorised to refuse to register the keeper of the house because they do not approve of him, or are not satisfied as to his character, if he produces a certificate of character in due form and duly signed, unless sect. 69 of the Public Health Acts Amendment Act, 1907,¹¹ is in force in the district or contributory place, in which case they may refuse to register him unless they are satisfied of his character and of his fitness for the position. They are not, however, bound to hear the applicant before refusing to register him, or to give grounds for their refusal.¹²

**Period of
registration.**

Where sect. 69 of the Act of 1907 is in force,¹¹ new registrations of common lodging-house keepers are only in force for such period, not exceeding one year, as the district council may fix, but they may be renewed from time to time.

L. G. B. Memo.

With reference to the provision of the present section requiring the house to be inspected and approved, the Local Government Board, in a memorandum prefixed to the series of model bye-laws issued by them for the purposes of sect. 80,¹³ made the following observations:—

“To the thoroughness of this inspection much importance should be attached. It is essential that in all structural details the fitness of the premises should be carefully ascertained before the house is placed upon the register. The rules which should guide the inspecting officer in his examination of the premises may be thus briefly indicated:—The house should (1) possess the conditions of wholesomeness needed for dwelling-houses in general; and (2) it should further have arrangements fitting it for its special purpose of receiving a given number of lodgers. (1.) The house should be dry in its foundations and have proper drainage, guttering, and spouting, with properly laid and substantial paving to any area or yard abutting on it. Its drains should have their connections properly made, and they should be trapped, where necessary, and adequately ventilated. Except the soil pipe from a properly trapped water-closet, there should be no direct communication of the drains with the interior of the house. All waste pipes from sinks, basins, and cisterns should discharge in the open air over gullies outside the house. The soil pipe should always be efficiently ventilated. The closets or privies and the refuse receptacles of the house should be in proper situations, of proper construction, and adapted to any scavenging arrangements that may be in force in the district. The house should have a water supply of good quality, and if the water be stored in cisterns they should be conveniently placed and of proper construction to prevent any fouling of water. The walls, roof, and floors of the house should be in good repair. Inside walls should not be papered. The rooms and staircases should possess the means of complete ventilation; windows being of adequate size, able to be opened to their full extent, or, if sash windows, both at top and bottom. Any room proposed for registration that has not a chimney should be furnished with a special ventilating opening or shaft, but a room not having a window to the outer air, even if it have special means of ventilation, can seldom be proper for registration. (2.) The numbers for which the house and each sleeping-room may be registered will depend, partly upon the dimensions of the rooms and their facilities for ventilation and partly upon the amount of accommodation of other kinds. In rooms of ordinary construction to be used for sleeping, where there are the usual means of ventilation by windows and chimneys, about 300 cubic feet will be a proper standard of space to secure to each person; but in many rooms it will be right to appoint a larger space, and this can only be determined on inspection of the particular room. The house should possess kitchen and dayroom

(10) Repealed as from the date of any Order putting in force ss. 69-75 of P.H. Am. Act, 1907; see s. 75 (2), *post*, Part I., Div. III.

(11) *Post*, Part I., Div. III.

(12) *Ex parte Kavanagh*, 1894 Loc. Gov. Chron. 545.

(13) Dated July 25th, 1877, and re-issued November 20th, 1901.

accommodation apart from its bedrooms, and the sufficiency of this will have to be attended to. Rooms that are partially underground may not be improper for dayrooms, but should not be registered for use as bedrooms. The amount of water supply, closet or privy accommodation, and the provision of refuse receptacles should be proportionate to the numbers for which the house is to be registered. If the water is not supplied from works with constant service, a quantity should be secured for daily use on a scale, per registered inmate, of not less than ten gallons a day where there are water-closets, or five gallons a day where there are dry-closets. For every twenty registered lodgers a separate closet or privy should be required. The washing accommodation should, wherever practicable, be in a special place and not be in the bedrooms; and the basins for personal washing should be fixed and have water-taps and discharge pipes connected with them. Arrangements for the supply by the sanitary authority of placards such as are mentioned in the bye-laws numbered 23 and 24 in the model series may be suggested as conducive to the well ordering of common lodging-houses."

Sect. 78, n.
L. G. B.
Memo—cont.

Sect. 79. The keeper of every common lodging-house shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words "Registered Common Lodging-house" in some conspicuous place on the outside of such house.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction.

Notice of registration to be affixed to houses.
P.H. 1874, s. 49.

Sect. 80. Every local authority shall from time to time make bye-laws—

- (1.) For fixing and from time to time varying the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and,
- (2.) For promoting cleanliness and ventilation in such houses; and,
- (3.) For the giving of notices and the taking precautions in the case of any infectious disease; and,
- (4.) Generally for the well ordering of such houses.

Bye-laws to be made by local authority.
P.H., s. 66.
C.L. 1851, s. 9.

Note.

With regard to the making, etc., of bye-laws, see sects. 182-186.

A series of model bye-laws (No. III.) was issued by the Local Government Board for the purposes of the present section. For the Memorandum prefixed thereto, see the Note to sect. 78, *ante*.

Bye-laws made under the Public Health (London) Act, 1891, which required the "landlords" to cause certain work to be executed in houses let in lodgings, without providing for any notice being given to them before they incurred the penalties imposed by such bye-laws, were held to be unreasonable and bad.¹

General provisions are made by sects. 120-130, with regard to the prevention of the spread of infectious diseases.

Bye-laws.

A magistrate refused to convict the registered keeper of a common lodging-house, who left the care and management of the house to his deputy, of having failed to give notice of a case of scarlet fever occurring in the house, in pursuance of the Common Lodging-houses Act, 1851, which imposed a penalty if the person was confined to his bed for forty-eight hours by an infectious disease without the keeper giving notice thereof to the local authority. The magistrate's reason for dismissing the case was that the fact of the illness having occurred did not come to the defendant's knowledge until some time after the date of the alleged neglect, and that he could not give notice of what he did not know. But the court held that it was the duty of the keeper of the house to see that the statutory requirements were complied with, and remitted the case with directions to convict.²

Infectious diseases.

Sect. 81. Where it appears to any local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may by notice in writing require the owner or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose;

Power to local authority to require supply of water to houses.
C.L., 1853, s. 6.

(1) *Nokes v. Islington B.C.*, *post*, p. 171.
(2) *Logsdon v. Holland* (1898, Q. B. D.),
14 T. L. R. 449. This decision would no doubt

apply to a similar neglect to give the notice required by s. 84, *post*, p. 166.

Sect. 81. and if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

Note.

Water supply. See sect. 62, and the Note to that section, as to the power of the local authority to require water to be supplied to houses generally. It will be noticed that here they may require the supply to be obtained, if it can be furnished *at a reasonable rate*, and that they have therefore more discretion in the matter than is given to them by sect. 62.

Sanitary conveniences. Where sect. 74 of the Public Health Acts Amendment Act, 1907,³ is in force, the district council may enforce the provision of sufficient and suitable sanitary conveniences for common lodging-houses, and a sufficient water supply for flushing the water-closets and urinals in such houses.

Limewashing of houses. **Sect. 82.** The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall if he fails to do so be liable to a penalty not exceeding forty shillings.⁴

Power to order reports from keepers of houses receiving vagrants. **Sect. 83.** The keeper of a common lodging-house in which beggars or vagrants are received to lodge shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required and transmit to the local authority.⁵

Keepers to give notice of fever, &c., therein. **Sect. 84.** The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health of the local authority, and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated.

Note.

Infectious diseases. With regard to the penalty for neglect to give the notice required by the present section, see sect. 86 and Note, and the case cited in the Note to sect. 80. See also the Infectious Disease (Notification) Act, 1889.⁶ Sects. 120-130 contain general provisions against the spread of infectious disease. Under sect. 124 a person suffering from a dangerous infectious disorder may be removed from a common lodging-house to a hospital.

As to inspection. **Sect. 85.** The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof, and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds.

Note.

Refusal of access. The keeper of a common lodging-house in Scotland refused access to an unlicensed room opening out of a licensed room, and to two licensed rooms which he had shut off from the rest of the house, having provided a separate entrance to them from the street and let them to a monthly tenant. It was held that the first refusal was unlawful, but not the second.⁷

Offences by keepers of houses. **Sect. 86.** Any keeper of a common lodging-house who—
 (1.) Receives any lodger in such house without the same being registered under this Act; or
 (2.) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act, of the persons resorting to such house; or

(3) *Post*, Part I., Div. III.

(4) For other house-cleansing powers, see ss. 46 and 120. As to recovery of penalties, see ss. 251 *et seq.*

(5) For penalty for failure to report, see

s. 86.

(6) *Post*, Part II., Div. I.

(7) *Gunn v. Cadenhead* (1888), 15 S. C. (4th Series) (J.) 57.

(3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease, shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day during which the offence continues. **Sect. 86, n.**

Note.

As to the registration of the house, see sects. 76-78, and the Note to sect. 77; as to the keeper's reports, see sect. 83; as to notice of cases of fever, etc., see sect. 84; and as to the recovery of penalties, see sects. 251 *et seq.* **Offences.**

Formerly, under the Common Lodging-houses Act, 1851,⁸ the keeper was liable to the penalty for not giving notice of fever or infectious or *contagious* disease, only if the sufferer was confined to his bed for *forty-eight hours* without the notice being given; but now it will be seen that he will be liable if he fail to give it if the person suffering from the fever or disease has been confined to his bed at all. Where, however, Part III. of the Public Health Acts Amendment Act, 1890,⁹ has been adopted, he will be liable to the penalty of forty shillings and a daily penalty of five shillings in any case in which he fails to give the notice required by sect. 84.

Where sect. 70 of the Public Health Acts Amendment Act, 1907,¹⁰ is in force, the keeper is liable to a penalty if he or his deputy is not in the lodging-house from 9 p.m. to 6 a.m.; and under sect. 73 of the same Act a person who keeps a common lodging-house without being himself registered may be convicted of any of the offences mentioned in the present section.

By the Prevention of Crimes Act, 1871,¹¹ a person who occupies or keeps any lodging-house and knowingly lodges or harbours thieves or reputed thieves, or permits them to assemble therein, or allows the deposit of goods therein, having reasonable cause for believing them to be stolen, is guilty of an offence against that Act, and liable to a penalty not exceeding £10, and in default to imprisonment for a period not exceeding four months with or without hard labour. **Harbouring thieves.**

Sect. 87. In any proceedings under the provisions of this Act relating to common lodging-houses, if the inmates of any house or part of a house allege that they are members of the same family, the burden of proving such allegation shall lie on the persons making it. **Evidence as to family in proceedings. San. 1866, s. 41.**

Note.

To render a house a common lodging-house, the inmates must be persons promiscuously brought together, and not members of the same family. The allegation that the inmates are members of the same family would therefore, if proved, be a defence to any proceedings taken under the clauses of the present Act relating to common lodging-houses. **Members of the same family.**

Even if the information alleges that the inmates are not members of the same family, the prosecutor need not prove that allegation.¹²

Sect. 88. [Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act relating to common lodging-houses, the court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the court thinks fit, keep a common lodging-house without the previous licence in writing of the local authority, which licence the local authority may withhold or grant on such terms and conditions as they think fit.¹³] **Conviction for third offence to disqualify persons from keeping common lodging-house. C.L. 1853, s. 12.**

Note.

If there have been two convictions within three months for overcrowding a house, an order directing it to be closed for a specified period may be obtained under sect. 109. **Closing overcrowded house.**

(8) 14 & 15 Vict. c. 28, s. 14.

(9) See s. 32, *post*, Part I., Div. II.

(10) *Post*, Part I., Div. III. As to London, see 7 Edw. VII. c. clxxv. s. 79.

(11) 34 & 35 Vict. c. 112, s. 10.

(12) See S. J. Act, 1848 (11 & 12 Vict.

c. 43), s. 14 (proviso).

(13) Repealed as from the date of any Order putting in force ss. 69-75 of the P.H. Am. Act, 1907. See s. 75 (2), *post*, Part I., Div. III.

Sect. 88, n.
Cancelling
registration.

Where Part V. of the Public Health Acts Amendment Act, 1907,¹⁴ is in force, the court before whom the keeper of a common lodging-house is convicted of an offence against the enactment or bye-laws relating to such houses may cancel his registration as keeper.

Interpretation
of "common
lodging-house."
C.L. 1851, s. 2.

Sect. 89. For the purposes of this Act the expression "common lodging-house" includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house.

Note.

Meaning of
common
lodging-
house.

The present Act does not give any definition of the class of houses intended to be referred to by the somewhat vague term "common lodging-house." It seems, however, that a house is not to be treated as a common lodging-house unless persons are harboured or lodged in it "for hire" for a single night or for less than a week at a time, or unless some part of it is let for a term less than a week.¹⁵ On the other hand, every house in which persons are harboured or lodged, or part of which is let, in the manner above mentioned, is not necessarily a common lodging-house, and it is therefore necessary to refer to the course of interpretation through which the term has passed.

Opinions of
law officers.

With reference to the Common Lodging-houses Act, 1851,¹⁶ the General Board of Health, in a circular dated October 17th, 1853, stated that they deemed it expedient that the following opinions of the then law officers of the Crown, Sir A. E. Cockburn (afterwards Chief Justice) and Sir W. P. Wood (afterwards Lord Chancellor), as to the definition of the expression "common lodging-house," should be brought under the notice of local boards of health throughout the country.

Their first opinion was as follows:—"It may be difficult to give a precise definition of the term 'common lodging-house'; but looking to the preamble and general provisions of the Act, it appears to us to have reference to that class of lodging-houses in which persons of the poorer class are received for short periods, and, though strangers to one another, are allowed to inhabit one common room.¹⁷ We are of opinion that it does not include hotels, inns, public-houses, or lodgings let to the upper and middle classes."

Later they gave the following further opinion:—"The points upon which our opinion is desired, appear to us to be the following:—1st. What is the meaning of that part of the definition of a common lodging-house, in our former opinion, which refers to the parties inhabiting a common room being 'strangers to one another?'—The observation made would imply that we meant that the parties must be persons previously unacquainted with one another. Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household. 2nd. Whether lodging-houses, otherwise coming within the definition, but let for a week or longer period, would, from the latter circumstance, be excluded from the operation of the Act? We are of opinion that the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question. 3rd. Who is to be considered the keeper of a common lodging-house where the owner, letting the lodgings, does not himself reside in the house? We are of opinion that where he neither resides in the house nor exercises any control over its management, but simply receives the rent, he cannot be considered the keeper. It is clear that in such case he would not comply with the requirements of the 11th, 12th, and 13th sections of the Act. But where the owner, though not resident in the house, either in person or through an agent colourably or otherwise exercises control over its management, we have no doubt that he should be considered the keeper. A serious difficulty arises where the owner *bonâ fide* lets different parts of the house to different individuals, and these lessees take in lodgers of such a description as would in an ordinary case constitute the house a common lodging-house. The question which here arises is whether each apartment so used is to be considered a common lodging-house of which the lessee is the keeper. It seems to us difficult to suppose that the Act which refers to common lodging-houses was intended to apply to single apartments, so that every room in a house might become a separate common lodging-house. On the other hand, it is to be observed that it is by the 2nd section provided that part of a house, 'if used as a common lodging-house,' shall be included in the Act;

(14) See s. 72, *post*, Part I., Div. III.
(15) See *Parker v. Talbot*, *post*, p. 170.
(16) 14 & 15 Vict. c. 28, see footnote (25),

post, p. 170.
(17) Adopted by Lord Russell, C.J., in *Logsdon v. Booth*, *post*, p. 169.

and it is also true that both under the law relating to burglary and also with reference to the exercise of franchises the separate apartments of lodgers, where the landlord did not reside, have been held to be dwelling-houses. Considering, therefore, that apartments thus let and occupied are especially within the mischief intended to be remedied by the Act, we think that an attempt should be made to treat them as common lodging-houses, and to enforce the provisions of the Act with respect to them against the tenants who thus admit lodgers. At the same time we feel bound to say we entertain considerable doubts as to the result."

Sect. 89, n.

The opinion expressed by the above-mentioned law officers, that the term "common lodging-house" does not include hotels, inns, or public-houses, seems to mean that a house is not a "common lodging-house" merely because it is a hotel, inn, or public-house, and not to mean that every hotel, inn, and public-house is necessarily exempt from the provisions relating to common lodging-houses. For there does not appear to be any reason why the keeper of a hotel, inn, or public-house, who holds himself out as an inn-keeper (that is, as a person who is prepared to supply victuals and lodging to travellers at reasonable charges, and therefore bound to receive and supply such travellers, and liable to them, even in the absence of negligence on his part, for loss of their goods), should not at the same time keep the house as a common lodging-house by receiving into it and providing with victuals and lodgings, at charges determined in each case by express or implied contract, persons who are not travellers and with respect to whom he is not subject to an innkeeper's liability.

Hotels, inns, etc.

A house which received all comers, the itinerant character of the greater number of the lodgers making it probable that they did not as a rule make any long stay at the house, was held to be a common lodging-house. *Per* Grove, J., "The object of this provision in the Act being to promote health by preventing dirt and overcrowding, the evidence seems to me clearly to show that this is a house to which such a provision is applicable. Of course each case must be decided on its own facts. There may be lodging-houses resorted to by a higher class of persons to which the term 'common lodging-house' would not be applicable. . . . I do not think it is necessary to show that the lodgers are all herded together, in order to bring the case within the statute. Even if a common room is necessary to constitute a common lodging-house, the evidence here shows that they all took their meals together." And *per* Lindley, J., "The kind of house that is meant is one that is open to all comers, and therefore requires supervision in order to insure cleanliness." ¹⁸

House open to all comers.

Next it was held that the term "common lodging-house" had reference to a lodging-house kept for purposes of profit, and open to all comers, and that a house (kept by the Salvation Army for the reception of male lodgers who slept in one common room and were supplied with food there and in another common room), being a charitable institution, not kept for purposes of gain, and only open to such persons, under such conditions, and at such times as the keeper chose, did not require registration as a common lodging-house.¹⁹

Salvation Army shelter.

Subsequently another Divisional Court, consisting of Lord Russell, C.J., and Bigham and Darling, JJ., reconsidered this decision on the ground that the case being criminal in its nature could not have been brought under review by appeal, and overruled it on the ground that a house "open to all comers" meant one where practically all comers were received without discrimination, although the keeper might refuse to admit drunken or disorderly and unclean men, or men of known evil reputation, as thieves and the like, or, indeed, any persons whom he chose to exclude; and the fact that by the regulations men who were able to pay for better accommodation were not allowed to make the house in question (another Salvation Army shelter) their permanent home, and that the house was not to be used to assist idle men to live a lazy life, was not considered sufficient to differentiate the house from a common lodging-house; and also on the ground that, as accommodation was afforded by the shelter, not as work of charity only, but on a business basis, so that the inmates were not demoralised by charity, but knew that they paid for what they had and had only what they paid for, the philanthropic motive of the keeper of the house was not relevant.²⁰

This last decision was applied to a house in which a certain number of the inmates were of a better class than those usually found in a common lodging-house;

Victoria home.

(18) *Langdon v. Broadbent* (1877), 37 L. T. 434; 42 J. P. 56.

(19) *Booth v. Ferrett* (1890), L. R. 25 Q. B. D. 87; 59 L. J. M. C. 136; 63 L. T. 346; 55 J. P. 7.

(20) *Logsdon v. Booth*, L. R. 1900, 1 Q. B. 401; 69 L. J. Q. B. 131; 81 L. T. 602; 64 J. P. 165.

Sect. 89, n.

Night refuge.

Community of
accommoda-
tion.Meaning of
keeper.Meaning of
lodger.

but Channell, J., expressed the opinion that in order to make the house a common lodging-house the people admitted must be allowed so to associate with each other as to make the danger of insanitary conditions likely to arise and likely to spread.²¹

An attempt was made to distinguish the two last-cited cases from one in which persons of the class frequenting the cheapest common lodging-houses were received into a house known as "The Dormitory," and treated and dealt with in the manner in which the frequenters of such common lodging-houses are treated and dealt with, the ground of distinction being that in this case no payment of any kind, direct or indirect, was made by or on behalf of the persons admitted. The King's Bench Division, not having before them the Irish Act mentioned in the next case, declined to make the distinction suggested.²²

But in 1905 the Court of Appeal decided that a declaration in the Common Lodging Houses Act (Ireland), 1860,²³ as to the meaning of "common lodging-house" was applicable to that expression as used in the London County Council (General Powers) Act, 1902²⁴; and it appears to follow from that decision that the same meaning must be given to the expression as used in the provisions of the present Act, which are substituted for the Common Lodging Houses Acts, 1851 and 1853.²⁵ The Irish Act above mentioned recited the Common Lodging Houses Acts, and enacted as follows:—"For the purpose of the execution of the said recited Acts and of this Act in Ireland, certain words and expressions used in the said Acts are hereby declared and explained to have been intended to bear the following meanings; (that is to say,) . . . the term 'common lodging house' shall mean a house in which persons are harboured or lodged for hire for a single night, or for less than a week at a time, or any part of which is let for any term less than a week." And notwithstanding the limitation of the enactment to the purpose of the execution of the Acts in Ireland, and notwithstanding the repeal of the whole of the Act of 1860 by the Public Health (Ireland) Act, 1878,²⁶ the Court of Appeal held that the enactment was a legislative declaration of what the expression in question had been intended to mean in the Acts of 1851 and 1853, and that the night refuge in question, for lodging in which no charge, direct or indirect, was made, was not a "common lodging-house."²⁷

This case was considered in one arising under the London County Council (General Powers) Act, 1902.²⁸ A magistrate found that a house in which persons of the poorer class were lodged for hire in separate rooms for periods varying from one night to ten years was not a "common lodging-house," because no room in the house was used by the inmates in common, and it was held that he was right.²⁹

In Ireland it has been held that the landlord of a house, all the rooms of which are let out in tenements by the week at rents less than 3s. per week, although he does not reside upon the premises, is, within the meaning of a definition given in the Dublin Improvement Act, 1864,³⁰ (viz. "the person in the beneficial receipt of the rents of such house or part of a house"), the keeper of a "public lodging-house."³¹

The meaning of the term "lodger" in connection with the parliamentary franchise was considered by the Court of Appeal in a leading case in 1881.³² But in 1905 that court held that the fact that the landlord himself lives in the house is only *prima facie* evidence that the person living in a portion of the house is a lodger.³³

(21) *Logsdon v. Trotter*, L. R. 1900, 1 Q. B. 617; 69 L. J. Q. B. 312; 82 L. T. 151; 64 J. P. 421.

(22) *Gilbert v. Jones*, L. R. 1905, 2 K. B. 691; 74 L. J. K. B. 929; 93 L. T. 520; 69 J. P. 392; 3 L. G. R. 987.

(23) 23 & 24 Vict. c. 26, s. 3.

(24) 2 Edw. VII. c. clxxiii. s. 51; set out in 1 L. G. R. (Statutes) 114.

(25) 14 & 15 Vict. c. 28; 16 & 17 Vict. c. 41; both repealed by s. 343 and Sched. V. of the present Act, except so far as relates to the metropolitan police district.

(26) 41 & 42 Vict. c. 52, s. 294.

(27) *Parker v. Talbot*, L. R. 1905, 2 Ch. 643; 75 L. J. Ch. 8; 93 L. T. 522; 70 J. P. 43; 4 L. G. R. 27.

(28) 2 Edw. VII. c. clxxiii. ss. 46, 51, 52; set out in 1 L. G. R. (Statutes) 112.

(29) *London C.C. v. Hankins*, L. R. 1914, 1 K. B. 490; 83 L. J. K. B. 460; 110 L. T. 389; 78 J. P. 137; 12 L. G. R. 314.

(30) 27 & 28 Vict. c. cccv. s. 24.

(31) *Halligan v. Ganly* (1866), 19 L. T. 268. As to "keeping a boarding house," see *Vecsey v. Smith* (1916, K. B. D.), 86 L. J. K. B. 249; 115 L. T. 833; 81 J. P. 1; 14 L. G. R. 1167.

(32) *Bradley v. Baylis* (1881), L. R. 8 Q. B. D. 195; 51 L. J. Q. B. 183; 46 L. T. 253; 45 J. P. 847; 1 Colt. 163.

(33) *Kent v. Fittall* (No. 1) (1905, C. A.), L. R. 1906, 1 K. B. 60; 75 L. J. K. B. 310; 94 L. T. 76; 69 J. P. 428; 4 L. G. R. 36. See also *Kent v. Fittall* (No. 2) (C. A.), L. R. 1908, 2 K. B. 933; 77 L. J. K. B. 1065; 99 L. T. 761; 72 J. P. 421; 6 L. G. R. 1047; *Kent v. Fittall* (No. 3) (K. B. D.), L. R. 1909, 1 K. B. 215; 78 L. J. K. B. 110; 99 L. T. 776; 73 J. P. 33; 7 L. G. R. 37; *Kent v. Fittall* (No. 4) (C. A.), L. R. 1911, 2 K. B. 1102; 81 L. J. K. B. 82; 105 L. T. 442; 75 J. P. 378; 9 L. G. R. 999; *Kent v. Fittall* (No. 5) (1911, C. A.), 105 L. T. 428; 9 L. G. R. 1186; *Rex (Griffiths) v. Allen* (1910, K. B. D.), 74 J. P. 455; 8 L. G. R.

Sect. 90.

BYE-LAWS AS TO HOUSES LET IN LODGINGS.

Sect. 90. [*The Local Government Board may, if they think fit, by notice published in the London Gazette, declare the following enactment to be in force within the district or any part of the district of*] any local authority [, and from and after the publication of such notice such authority] shall be empowered to make bye-laws for the following matters; (that is to say,)

[*Local Government Board may empower local authority to make*] bye-laws as to lodging-houses.
San. s. 35.
P.H. 1874. s. 47.

- (1.) For fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied :
- (2.) For the registration of houses so let or occupied :
- (3.) For the inspection of such houses :
- (4.) For enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses :
- (5.) For the cleansing and lime-washing at stated times of the premises, and for the paving of the courts and courtyards thereof :
- (6.) For the giving of notices and the taking of precautions in case of any infectious disease.

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses.

Note.

The declaration by the Local Government Board and the notice in the Gazette, which were required by the words printed in italics in the present section in order to render the section available, are obsolete; for by an unrepealed clause of the Housing of the Working Classes Act, 1885,¹ "every sanitary authority shall have power to make bye-laws for the matters specified in sect. 90 of the Public Health Act, 1875."

The present section is applied by sect. 26 of the Housing, Town Planning, &c. Act, 1919,² to houses intended for the working classes.

By another unrepealed clause of the Act of 1885³ the provisions of the present Act relating to bye-laws, where such bye-laws are made by a sanitary authority, are applied to bye-laws made under the Act of 1885.

The provisions with respect to the making, confirmation, etc., of bye-laws will be found in sects. 182-186.

Bye-laws which had been made under the Public Health (London) Act, 1891, and required the owners (as distinguished from the keepers) of lodging-houses to cause certain work to be executed without providing for any notice being given to them before they incurred the penalties imposed by such bye-laws, were held to be unreasonable and bad.⁴

A series of model bye-laws (No. XIII.) was issued by the Local Government Board for the purposes of the present section. In the memorandum prefixed to those bye-laws the Board stated that "in the absence of any express limitation of their scope, bye-laws such as are authorised by the above-cited enactment (sect. 90) would apply to every house or part of a house which, not being a common lodging-house, is let in lodgings or occupied by members of more than one family. But in many districts where the enactment is in force there are to be found houses which, though let in lodgings or occupied by members of more than one family, are of such a character as to render it inexpedient, if not absolutely unnecessary, to bring them within the range of bye-laws having for their primary object the regulation of premises where neglect of sanitary requirements might otherwise

Application of section.

Making and confirmation of bye-laws.

Model bye-laws.

979; *Ainsworth v. Cheshire C.C. Clerk* (1910, K. B. D.), 104 L. T. 62; 75 J. P. 117; 9 L. G. R. 21; *Searle and Gough v. Staffordshire C.C. Clerk* (1910, K. B. D.), 104 L. T. 61; 75 J. P. 116; 9 L. G. R. 24; *Astell v. Barrett* (1911, K. B. D.), 103 L. T. 205; 75 J. P. 225; 9 L. G. R. 253; *Chesterton v. Gardom* (1911, K. B. D.), L. R. 1912, 1 K. B. 176; 81 L. J. K. B. 198; 105 L. T. 300; 76 J. P. 78; 9 L. G. R. 1274; *Smith v. Newman* (1911, K. B. D.), L. R. 1912, 1 K. B. 162; 81 L. J. K. B. 183; 105 L. T. 631; 76 J. P. 25; 9 L. G. R. 1254; *Havercroft v. Dewey* (1912, K. B. D.), 108 L. T. 296;

77 J. P. 115; 11 L. G. R. 28; *Gregory v. Traquair*, 1912 S. C. (S.) 637; 49 Sc. L. R. 179; 3 Glen's Loc. Gov. Case Law 37; *Crow v. Hilleary*, L. R. 1913, 1 K. B. 385; 82 L. J. K. B. 380; 108 L. T. 300; 77 J. P. 164; 11 L. G. R. 226.

(1) 48 & 49 Vict. c. 72, s. 8.

(2) This section has taken the place of s. 16 of the Act of 1909, which was repealed by s. 50 and Sched. V. of the Act of 1919. See *post*, Part II., Div. III.

(3) See s. 10, *post*, p. 174.

(4) See *Nokes v. Islington B.C.* and other cases cited in Note to s. 182, *post*.

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ensue. The Board have, therefore, thought it desirable to suggest in the model series of bye-laws a clause providing for the exemption of lodging-houses as to which it may be reasonably inferred that such supervision as elsewhere a local authority alone can efficiently exercise will, in fact, be exercised by the lodgers themselves. In illustration of the view which has induced them to propose this exemption, the Board may refer to the observations of the judges of the Common Pleas Division who decided the case of *Langdon v. Broadbent*.⁵ The exemption clause, it will be seen, consists of two sections, of which section (a) relates to unfurnished, and section (b) to furnished lodgings. The clause assumes that all houses below a certain rateable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the bye-laws. In the case of houses of higher rateable value, the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will, of course, rest with the local authority when framing bye-laws upon the basis of the model series to determine what limits of rateable value and rent the circumstances of their district may render it desirable to prescribe."

Meaning of house.

Under a similar provision in the Public Health (London) Act, 1891,⁶ a building let in separate tenements was held not to be a "house," but a collection of separate houses separately occupied, although the passages and staircase were common to all the tenements, the water-closets and other conveniences were each used by the occupiers of several tenements in common, and a caretaker, who attended to minor repairs, lived on the ground floor.⁷ But where the landlord of an ordinary six-roomed house, not specially constructed to be let in separate tenements, had let each floor to a separate family, and had been convicted under a bye-law made in pursuance of the same enactment, the court upheld the conviction.⁸

Common lodging-houses.

With respect to the distinction between "common" and other lodging-houses, and with respect to the meaning of "lodger," see the Note to sect. 89.

Sects. 76-89 contain provisions for the registration and regulation of common lodging-houses. With regard to the regulation of certain other lodging-houses, see the Note to sect. 76.

Overcrowded houses.

Overcrowded houses are a "nuisance" within the meaning of sect. 91, and the district council may procure the abatement of the overcrowding under the nuisance clauses. See sect. 109 with regard to a second conviction for overcrowding within three months from the first.

Drainage, etc.

With regard to the drainage of houses generally, see sects. 21-25; the provision of privy accommodation, sects. 35-41; ventilation, sect. 157, sub-sect. (3); cleansing, sects. 46 and 120; and precautions against the spread of disease, sects. 120-130 and 134-140.

Notification of diseases.

The notification of diseases is dealt with, by the Acts of 1889 and 1899,⁹ in such a way as to render bye-laws on the subject unnecessary.

(5) *Ante*, p. 169.

(6) 54 & 55 Vict. c. 76, s. 94.

(7) *Weatheritt v. Cantlay*, L. R. 1901, 2 K. B. 285; 70 L. J. K. B. 799; 84 L. T. 768; 65 J. P. 644.

(8) *Kyffin v. Simmons* (1903), 67 J. P. 227; 1 L. G. R. 381. As to the meaning of "family," see *post*, p. 183.

(9) Set out *post*, Part II., Div. I.

NUISANCES.

Sect. 91. For the purposes of this Act,—

1. Any premises in such a state as to be a nuisance or injurious to health :

2. Any pool ditch gutter watercourse privy urinal cesspool drain or ashpit so foul or in such a state as to be a nuisance or injurious to health :

3. Any animal so kept as to be a nuisance or injurious to health :

4. Any accumulation or deposit which is a nuisance or injurious to health :

5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :

6. Any factory, workshop, or workplace [(not already under the operation of any general Act for the regulation of factories or bakehouses)], not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases vapours dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein :

7. Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill factory dyehouse brewery bakehouse or gaswork, or in any manufacturing or trade process whatsoever; and Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance,
- shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act : Provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health :

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

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Other Enactments as to Nuisances.

The provisions relating to nuisances contained in sects. 91-111 are to be deemed to be in addition to, and not to abridge or affect any other remedies which there may be for abating the nuisances specified in the present section.¹

In addition to the clauses under the heading "nuisances," there are other provisions of the present Act which relate to the prevention of nuisances and acts injurious to health; thus sects. 17, 19, 27, and 29 provide against nuisances from sewers and the disposal of sewage; sects. 40, 41, and 47, against nuisances from drains, water-closets, earth-closets, privies, ashpits, and cesspools; sects. 46 and 120-130 and 134-140, against the spread of infectious and other diseases; sect. 47, against nuisance from the keeping of animals and from the stagnation of water

Definition of nuisances.
N.R. 1855, s. 8.
San. 1886, s. 19.

Other nuisance clauses of present Act.

(1) See ss. 107 and 111, and the *Hemsworth Case*, ante, p. 108 (8).

Sect. 91, n.

in the basements of houses; sect. 48, against nuisance from ditches or open water-courses; sects. 49 and 50, against nuisance from accumulations of manure and other filth; sects. 112-115, against nuisances from offensive trades; sects. 116-119, against injury to health from the sale of unsound food; sect. 171, against nuisances in streets.

Bye-laws may also be made for the prevention of nuisances from the accumulation of filth and refuse, and from the keeping of animals, under sect. 44; for keeping common or other lodging-houses in a proper condition, under sects. 80 and 90; for the proper construction and drainage of new buildings, and the provision of water-closets, earth-closets, privies, ashpits, and cesspools, under sect. 157; for the prevention of nuisances in markets and slaughter-houses, under sects. 167 and 169; and for the prevention of nuisances among persons engaged in hop-picking, under sect. 314, which is extended to persons engaged in picking fruit and vegetables by the Public Health (Fruit Pickers' Lodgings) Act, 1882.²

Public Health Act, 1907.

Where sect. 35 of the Public Health Acts Amendment Act, 1907,³ is in force, the following are, in certain circumstances, to be deemed to be nuisances within the meaning of the present Act, namely, cisterns, gutters, drains, shoots, stack-pipes, down-spouts, and deposits of material.

Unhealthy houses.

Dwelling-houses which are unfit for human habitation may be dealt with under the Housing Acts.⁴

Gipsies.

By an unrepealed provision of the Housing of the Working Classes Act, 1885,⁵ “(1.) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates whether or not members of the same family, shall be deemed to be a nuisance within the meaning of sect. 91 of the Public Health Act, 1875; and the provisions of that Act shall apply accordingly. (2.) A sanitary authority may make bye-laws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same. (3.) Where any person duly authorised by a sanitary authority or by a justice of the peace has reasonable cause to suppose either that there is any contravention of the provisions of this Act or any bye-law made under this Act in any tent, van, shed, or similar structure used for human habitation, or that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disorder, he may, on producing (if demanded) either a copy of his authorisation purporting to be certified by the clerk or a member of the sanitary authority or some other sufficient evidence of his being authorised as aforesaid, enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether in such tent, van, shed, or structure there is any contravention of any such bye-law, or a person suffering from a dangerous infectious disorder. (4.) For the purposes of this section ‘day’ means the period between six o’clock in the morning and the succeeding nine o’clock in the evening. (5.) If such person is obstructed in the performance of his duty under this section, the person so obstructing shall be liable, on summary conviction, to a fine not exceeding forty shillings. (6.) . . .⁶ (7.) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of [His] Majesty’s military or naval forces.”

By another unrepealed provision of the same Act,⁷ “With respect to bye-laws authorised by this Act . . . to be made . . . the provisions of the Public Health Act, 1875, relating to bye-laws, where such bye-laws are made by a sanitary authority, shall apply to such bye-laws, and a fine or penalty under any such bye-law may be recovered on summary conviction.”

A landowner was restrained by injunction from allowing his land to be occupied or used by dwellers in vans or tents, or others being his licensees, in such a way as to be a nuisance, or injurious to the health of the neighbourhood.⁸

Seaside bungalows.

About seventy-four bungalows, which did not comply with the bye-laws, had from time to time been erected, forty to an acre, on land separated from the sea by a sea-wall. The defendant Kerr was the owner of the land, and had power

(2) Quoted in Note to s. 314, *post*.

(3) *Post*, Part I., Div. III.

(4) These Acts form Div. III. of Part II. of this work, *post*.

(5) 48 & 49 Vict. c. 72, s. 9.

(6) As to the Metropolis, repealed by P.H. (L.) Act, 1891 (54 & 55 Vict. c. 76), s. 142.

(7) 48 & 49 Vict. c. 72, s. 10. Omitted words relate to the repealed Labouring Classes Lodging Houses Act, 1851 (as to which see *ante*, p. 9), and to the metropolis.

(8) *A.G. v. Stone* (1895), 60 J. P. 168. See also *A.G. v. Brown*, *Times*, July 23rd, 1898.

to determine the tenancies of the bungalows on one week's notice, and the defendant Ball was the owner of one of these bungalows. The local authority took, from the persons who erected the bungalows, agreements to remove them when called upon to do so. The land was below sea level, and no system of drainage was practicable. The bungalows were raised above the level of the ground on footings. Their water supply was derived from three standpipes, and slops and the contents of pail-closets were emptied on land some distance from the bungalows and merely percolated into the soil, which was sandy. Lush, J., found as a fact that the conditions were not such as to create a public nuisance, declined to exercise his discretion in favour of granting an injunction in respect of the breach of the bye-laws, refused specific performance of the agreements, and dismissed the action with costs.⁹

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The Inclosure Act, 1857,¹⁰ after reciting that it is expedient to provide summary means of preventing nuisances in town greens and village greens, and on land allotted and awarded upon any inclosure under the Acts as a place for exercise and recreation, enacts that, "If any person wilfully cause any injury or damage to any fence of any such town or village green or land, or wilfully and without lawful authority lead or drive any cattle or animal thereon, or wilfully lay any manure, soil, ashes, or rubbish, or other matter or thing thereon, or do any other act whatsoever to the injury of such town or village green or land, or to the interruption of the use or enjoyment thereof as a place for exercise and recreation, such person shall for every such offence, upon a summary conviction thereof before two justices, upon the information of any churchwarden or overseer of the parish in which such town or village green or land is situate, or of the person in whom the soil of such town or village green or land may be vested, forfeit and pay, in any of the cases aforesaid, and for each and every such offence, over and above the damages occasioned thereby, any sum not exceeding forty shillings; and it shall be lawful for any such churchwarden or overseer or other person as aforesaid to sell and dispose of any such manure, soil, ashes, and rubbish, or other matter or thing as aforesaid; and the proceeds arising from the sale thereof, and every such penalty as aforesaid, shall, as regards any such town or village green not awarded under the said Acts or any of them to be used as a place for exercise and recreation, be applied in aid of the rates for the repair of the public highways in the parish, and shall, as regards the land so awarded, be applied by the person or persons in whom the soil thereof may be vested in the due maintenance of such land as a place for exercise and recreation; and if any manure, soil, ashes, or rubbish be not of sufficient value to defray the expenses of removing the same, the person who laid or deposited such manure, soil, ashes, or rubbish shall repay to such churchwarden or overseer or other person as aforesaid the money necessarily expended in the removal thereof; and every such penalty as aforesaid shall be recovered in manner provided by the [Summary Jurisdiction Act, 1848]; and the amount of damage occasioned by any such offence as aforesaid shall, in case of dispute, be determined by the justices by whom the offender is convicted; and the payment of the amount of such damages, and the repayment of the money necessarily expended in the removal of any manure, soil, ashes, or rubbish, shall be enforced in like manner as any such penalty." The above enactment is amended by sect. 29 of the Commons Act, 1876.¹¹ The powers, duties, and liabilities of the churchwardens and overseers with respect to the management of village greens are transferred, where there is a parish council, to that council.¹²

Recreation grounds.

Also, under the Commons Act, 1876,¹³ bye-laws and regulations may be made for the prevention of or protection from nuisances, or for keeping order on, a common to which that Act applies.

In connection with these enactments it should be mentioned that by the Inclosure Act, 1845,¹⁴ and the Local Government Act, 1894,¹⁵ provisions are made for preserving town and village greens for the use of the inhabitants; and for allotments of commons as places of exercise and recreation for the inhabitants of the parish and neighbourhood. These provisions, however, concern the churchwardens and

(9) *A.G. (Wirral R.D.C.) v. Kerr & Ball* (1914, Liverpool Assizes), 79 J. P. 51; 12 L. G. R. 1277.

(10) 20 & 21 Vict. c. 31, s. 12.

(11) Set out *post*, Vol. II., p. 1464.

(12) See L.G. Act, 1894, s. 6 (1) (c) (iii.), *post*, Vol. II., p. 2000.

(13) See s. 5, *post*, Vol. II., p. 1452. For a case relating to a metropolitan common

bye-law in which a public-house signpost was involved, see *Hoare v. Metrop. Bd. of Works* (1874), L. R. 9 Q. B. 296; 43 L. J. M. C. 65; 29 L. T. 804.

(14) 8 & 9 Vict. c. 118, ss. 15 and 73; see also 15 & 16 Vict. c. 79, s. 14.

(15) See ss. 6 (1) (c) (iii.) and 8 (1) (d), *post*, Vol. II., pp. 2000, 2004.

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overseers or councils of the parishes in which the greens and commons may be situated, rather than the urban or rural district councils.

The right of access to commons, which is conferred by sect. 102 of the Law of Property Act, 1922,¹⁶ is not to apply to caravans, etc.

Mine shafts.

By the Metalliferous Mines Regulation Act, 1872,¹⁷ "where any mine to which this Act applies is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of the mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents. Provided that—(1) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect: (2) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort, or in open or uninclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous: (3) Nothing in this section shall exempt any person from any liability under any other Act or otherwise. If any person fail to act in conformity with this section he shall be guilty of an offence against this Act. Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or uninclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning of " the present section.

This Act applied to "every mine of whatever description other than a mine to which the Coal Mines Regulation Act," of 1872 applied.¹⁸ That Act was repealed by the Coal Mines Regulation Act, 1887,¹⁹ which, however, provided that "any enactment or document referring to any Act repealed by this Act or to any enactment thereof, shall be construed to refer to this Act, and to the corresponding enactments thereof."²⁰ The Act of 1887 applies to the same kinds of mine as those to which the Act of 1911 quoted below applies,²¹ so that the result of this legislation by reference appears to be that a "metalliferous mine" is any mine other than the mines to which the Act of 1911 applies.²²

By the Coal Mines Act, 1911,²³ "(1) Where any mine is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred, it shall be the duty of the owner thereof, and of every other person interested in the minerals of the mine to cause the top or entrance of every shaft and outlet to be kept surrounded by a structure of a permanent character sufficient to prevent accidents: Provided that (i) Subject to any contract to the contrary, the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry this section into effect, and to pay any costs charges and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect: (ii) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise. (2) No person shall be precluded by any agreement or otherwise from doing, or be liable to any injunction, damages, penalty, or forfeiture in respect of, such acts as may be necessary in order to comply with the provisions of this section. (3) Any shaft or outlet which is not kept surrounded by a structure as required by this section shall be deemed to be a nuisance within the meaning of " the present section.

For the purposes of the Act of 1911, "owner, when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and in the case of a mine the business whereof is carried on by a liquidator or receiver includes such liquidator or receiver, but does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner

(16) See s. 102 (1) (2), *post*, Vol. II., p. 2359.

(17) 35 & 36 Vict. c. 77, s. 13. As to this section, see *Foster v. Owen* (1892), 62 L. J. M. C. 7; 67 L. T. 712; 57 J. P. 87.

(18) *Ibid.*, s. 3.

(19) 50 & 51 Vict. c. 58, s. 84, Sched. IV.

(20) *Ibid.*, s. 83. This section is repealed by the Act of 1911; but see s. 126 (d) of that Act, which, however, only refers in terms to "documents" and not "enactments."

(21) *Ibid.*, s. 3.

(22) See s. 1 of that Act, *post*, p. 177.

(23) 1 & 2 Geo. V. c. 50, s. 26.

of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability.”²⁴ “The mines to which this Act applies are mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act the expression ‘mine,’ unless the context otherwise requires, means a mine to which this Act applies.”²⁵

It was held that the owners in fee of a mine, demised for a term of years, subject to a rent or royalties, with power of re-entry if the royalties should be in arrear, were guilty of an offence as “persons interested in the minerals of the mine,” although the lease was still in force, the lessees having ceased working the mine and left it insufficiently fenced.²⁶ So also were the owners in fee, where the mine had been a lead mine subject to the Derbyshire Mining Customs and Mineral Courts Act, 1852, under which the owner in fee was entitled to royalties on calc-spar and calk taken out of any lead mine on his land.²⁷ But persons who merely had a revocable licence to take flint and chalk from a quarry on payment of the value of the material removed, were not owners or occupiers of the quarry so as to be liable to fence it under certain rules which had been approved by the Secretary of State under the Metalliferous Mines Act, 1872,²⁸ as applied to quarries by the Quarries Act, 1894.²⁹

A local authority, in whom the shaft of an abandoned mine, used as a public well, was vested under sect. 64 of the present Act, were not liable to fence it as “persons interested in the minerals.”³⁰

By sect. 3 of the Quarry Fencing Act, 1887 ³¹ :—“Where any quarry dangerous to the public is in open or unenclosed land, within fifty yards of a highway or place of public resort dedicated to the public, and is not separated therefrom by a secure and sufficient fence, it shall be kept reasonably fenced for the prevention of accidents, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily in manner provided by the Public Health Act, 1875.” And by sect. 4 of the same Act ³² :—“In this Act the term ‘quarry’ includes every pit or opening made for the purpose of getting stone, slates, lime, chalk, clay, gravel, or sand, but not any natural opening.”

Reference should also be made to the provisions contained in sect. 30 of the Public Health Acts Amendment Act, 1907,³³ and sect. 83 of the Towns Improvement Clauses Act, 1847,³⁴ for fencing dangerous holes and places near streets at the expense of the owners, and to the cases there cited.

A heap of slag or refuse from blast furnaces, consisting of a mixture of lime, fuel, and iron, piled on the natural surface of the ground to a considerable height, which was being worked on its surface for the purpose of loading the slag on railway trucks and removing it by rail, was not a “quarry” within the meaning of the above-mentioned Quarries Act, 1894.³⁵

A bullock belonging to the plaintiff fell into an unfenced quarry on the plaintiff’s land. Damages were recovered from the successor in title to the person to whom the mining rights had been leased by the plaintiff’s predecessor in title, on the ground that the liability to keep the quarry safe was a “continuing” one.³⁶

By sect. 3 of the Barbed Wire Act, 1893 ³⁷ :—“(1) Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve notice in writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance. (2) If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for the local authority to apply to a court of summary jurisdiction, and such court, if satisfied that the said barbed wire is a nuisance

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Mine shafts—
continued.

Unfenced
quarries.

Barbed wire.

(24) 1 & 2 Geo. V. c. 50, s. 122.

(25) *Ibid.* s. 1.

(26) *Evans v. Lady Mostyn* (1877), L. R. 2 C. P. D. 547; 47 L. J. M. C. 25; 36 L. T. 856.

(27) *Stokes v. Arkwright* (1897), 66 L. J. Q. B. 845; 77 L. T. 400; 61 J. P. 775; see also *Duke of Devonshire v. Stokes* (1897), 76 L. T. 424; 61 J. P. 406.

(28) 35 & 36 Vict. c. 77, s. 24.

(29) 57 & 58 Vict. c. 42, s. 2. *Foster v. Newhaven Harbour Trustees* (1897), 61 J. P. 629.

(30) *Knuckey v. Redruth R.D.C.*, ante, p. 152.

(31) 50 & 51 Vict. c. 19, s. 3.

(32) *Ibid.*, s. 4.

(33) *Post*, Part I., Div. III.

(34) *Post*, Vol. II., p. 1629.

(35) *Scott v. Midland Ry. Co.* (1897), 61 J. P. 358.

(36) *M'Morrow v. Layden*, 1919 Ir. K. B. 398.

(37) 56 & 57 Vict. c. 32, s. 3.

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Barbed wire
—continued.

to such highway, may by summary order direct the occupier to abate such nuisance; and on his failure to comply with such order within a reasonable time the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connection therewith." By sect. 2,³⁸ "In this Act—the expression 'barbed wire' means any wire with spikes or jagged projections; and the expression 'nuisance to a highway,' as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway: In England and Wales the expression 'local authority' means any county council, any urban sanitary authority, any sanitary authority in London, [any highway board³⁹] and any [other³⁹] local authorities existing, or that may be hereafter created by Parliament, having control over highways." By sect. 4,⁴⁰ "Where the local authority are the occupiers of the land, proceedings under this Act may be taken by any ratepayer within the district of the local authority, and a notice to the local authority to abate the nuisance shall be deemed to be properly served if it is served upon the clerk of the local authority, and any ratepayer taking proceedings may do all acts and things which a local authority is empowered to do." By sect. 5,⁴¹ "Any expenses incurred by a local authority in the execution of this Act shall be defrayed in like manner as the expenses of the local authority incurred in respect of any highways."

A person recovered damages in the county court in respect of injury to his clothes caused by a barbed-wire fence, which had been substituted some four or five years previously for a post-and-rail fence along the side of a public footway. No negligence or want of skill or care in the erection of the fence was imputed to the defendant, the tenant of the land, but the county court judge having held that the fence as constructed and placed was dangerous to the public using the path and a nuisance, the court dismissed an appeal against the judgment which he gave for the plaintiff. *Per Mathew, J.*: "The judge came to a conclusion of fact that this fence was dangerous and a nuisance. The principle is well illustrated by authorities,⁴² that, if there is a structure or excavation adjoining a footway in such a condition that it is liable to do an injury, a person injured has his right of action."⁴³

Where, however, an iron fence, 4 ft. 6 in. in height, with iron spikes pointing upwards at the top, had been standing at the side of a highway for some seven years, and there was no evidence of any accident at the place until the plaintiff's horse fell against the fence and received fatal injuries from the spikes, it was held that there was no evidence to go to the jury that the fence was a nuisance.⁴⁴

A wall fencing a quarry also formed a retaining wall for the adjoining highway. When part of it fell into the quarry it carried with it part of the roadway. It was held that the owner of the quarry must restore the roadway and re-erect the wall or provide some other reasonable fence between the highway and the quarry.⁴⁵

A local authority erected a post-and-wire fence round a workman's dwelling. The adjoining owner's cattle injured the fence and the tenant of the cottage substituted a barbed-wire fence for it. The adjoining owner then sued the tenant alleging inability to graze his horses in his field because of his apprehension of possible injury to them from the barbed wire. It was held that no such action lay, and an appeal against the award of nominal damages by the county court judge was allowed.⁴⁶ *Per Gibson, J.*: "The fence in this case was on the defendant's holding, it did not overhang the plaintiff's ground so as to constitute a trespass, but it was on the verge of the boundary line, so that plaintiff's stock, without trespassing on defendant, might be pricked . . . As between adjoining owners, if barbed wire is dangerous and likely to cause substantial mischief to stock lawfully grazing on the adjoining owner's land, damage thereby caused may form a cause of action . . . but here the action is *quia timet*, not for actual but for apprehended injury . . . I am aware of no precedent for any such action . . . I would add that a district authority ought to erect fences for labourers' cottages and plots of such character as to supply sufficient protection against collision or

(38) 56 & 57 Vict. c. 32, s. 2.

(39) Repealed by S. L. R. Act, 1908.

(40) 56 & 57 Vict. c. 32, s. 4.

(41) *Ibid.*, s. 5.

(42) See Glen's "Law relating to Highways" (2nd edit.), pp. 234-237.

(43) *Stewart v. Wright* (1893, K. B. D.), 9 T. L. R. at p. 480. For report of this case in Birkenhead County Court, see 57 J. P. 137.

(44) *Gibson v. Plumstead Burial Bd.* (C. A.), 13 T. L. R. 273; 1897 Loc. Gov. Chron. 319.

(45) *A.G. (Knottingley U.D.C.) v. Roe*, L. R. 1915, 1 Ch. 235; 84 L. J. Ch. 322; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335.

(46) *Meara v. Daly* (1914, K. B. D., 1.), 48 Ir. L. T. 223; 5 Glen's Loc. Gov. Case Law 195.

injury by adjoining cattle, and ought not to impose on others the necessity of supplementing the deficiencies of the fence by questionable expedients."

Provisions for the prevention of nuisance from the discharge of noxious and offensive gas from alkali and other chemical works are contained in the Alkali, Etc., Works Regulation Act, 1906.⁴⁷

As to the discharge of oil into navigable waters, see the Act of 1922 on this subject.⁴⁸

It may further be mentioned here that where a constant supply of water is provided within the limits of the Metropolis Water Acts, which extend in some places beyond the metropolis,⁴⁹ the neglect of the owner or occupier of a house to comply with the requirements of the company as to the provision of proper fittings for receiving such supply is to be deemed to be a nuisance within the meaning of the present Act or the Public Health (London) Act, 1891, as the case may be.⁵⁰

A prosecution for hindering an officer of the Metropolitan Water Board from making an inspection or examination of the prescribed fittings on certain premises failed in consequence of the absence of evidence of the regulations prescribing the fittings, though the court were of opinion that it would not have failed merely by reason of the absence of the statutory notice requiring such fittings to be provided.⁵¹

An unsuccessful attempt was made to treat a defective kitchen range as a nuisance under the Public Health (London) Act, 1891.⁵²

Various other enactments relating to nuisances of the several kinds mentioned in the present section are referred to under their appropriate headings in the following parts of this Note.

Meaning of "Nuisance."

"Nuisance, *nocumentum*, or annoyance, signifies anything which worketh hurt, inconvenience, or damage. And nuisances are of two kinds: *public* or *common* nuisances, which affect the public, and are an annoyance to all the King's subjects—for which reason we must refer them to the class of public wrongs, or crimes and misdemeanours; and *private* nuisances, which . . . may be defined as anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another."¹ "Common nuisances are a species of offences against the public order and economical regimen of the State; being either the doing a thing to the annoyance of all the King's subjects, or the neglecting to do a thing which the common good requires."² "Of this nature are . . . all those kinds of nuisances (such as offensive trades and manufactures) which, when injurious to a private man, are actionable, and, when detrimental to the public, punishable by public prosecution and subject to fine according to the quantity of the misdemeanour; and particularly the keeping of hogs in any city or market-town is indictable as a public nuisance."³ *Per* Lord Mansfield, C.J., "to constitute a nuisance it is enough that the matter complained of renders the enjoyment of life and property uncomfortable."⁴ *Per* Kennedy, J., "a common nuisance must be something which causes inconvenience or hurt to the public in the exercise of rights common to all his Majesty's subjects"; and a count of an indictment which only alleged a common nuisance to "such of the liege subjects of our lord the King as inhabited in the said house" was therefore held to be bad.⁵ In an Irish case *Kenny, J.*, described it as "something unwarranted by law, the effect of which is to obstruct or impede the public in the exercise of their right."⁶

It is not, however, to be assumed that everything which would be deemed to be a public nuisance at common law is necessarily a nuisance which can be dealt with under the present Act.

Thus, under the corresponding provisions of the Nuisances Removal Act, 1855,⁷ it was held that a nuisance, which was created upon a highway by water percolating through a railway bridge and dripping on the road beneath, was not "a nuisance

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Alkali works.

Oil in harbours, &c.

Insufficient water fittings.

Defective kitchen range.

Other nuisances.

At common law.

By statute.

(47) *Post*, Vol. II., p. 2190.

(48) Set out *post*, Vol. II., p. 2361.

(49) See *ante*, p. 137.

(50) 34 & 35 Vict. c. 113, ss. 27, 28, 33; and 54 & 55 Vict. c. 76, s. 2 (1, *f.*).

(51) *Metrop. Water Bd. v. Northcott* (1907, K. B. D.), 96 L. T. 708; 71 J. P. 338; 5 L. G. R. 770.

(52) *Warman v. Tibbatts* (1922, K. B. D.), Loc. Gov. Chron. 608.

(1) 3 Bl. Com. 216.

(2) 4 Bl. Com. 166; Bacon's Abr. tit.

Nuisances.

(3) *Ibid.*, and see *Reg. v. Wigg*, *ante*, p. 128, and see Note to s. 251 (under heading "Statutory Remedies"), *post*.

(4) *Rex v. White* (1757), 1 Burr. 337.

(5) *Rex v. Byers* (1907, C. C. C.), 71 J. P. 205.

(6) *Rex v. Hallett* (1911, K. B. D., I.), 45 Ir. L. T. 84; 2 Glen's Loc. Gov. Case Law 141.

(7) 18 & 19 Vict. c. 121, s. 8.

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Injury to health.

or injurious to health," because that expression was to be read in the sense of "a nuisance injurious to health."⁸ This decision was, however, explained by Stephen, J., as follows: "In that case the particular nuisance complained of was not only not injurious to health, but it was not a nuisance that in any kind of way related to the health, or even to the permanent comfort of any of the neighbours. It was a mere common law nuisance like the non-repair of a highway. The appellants allowed rain-water to drip from one of their bridges on the highway, and the court held that that was not the sort of thing the legislature meant by using the words 'nuisance or injurious to health.' I think that case does not throw any light upon what the decision of the court would have been if the nuisance, though not absolutely injurious to health, was one which would interfere with the permanent comfort of those in the neighbourhood, and might probably become injurious to health. . . . The court abstained from bringing within the purview of the Nuisances Removal Act, a nuisance of an entirely different kind from the nuisances the legislature intended to deal with." The learned judge then defined the cases at which the legislature intended to strike by the present Act as "anything which would diminish the comfort of life though not injurious to health, and anything which would in fact injure health."⁹ This decision, however, should not be taken as authority for the proposition that a nuisance to an occupier need not be "injurious to health."

Premises in a State of Nuisance.

Urban district councils have a further power under sect. 47 (2) of the present Act to prosecute persons who suffer waste or stagnant water to remain in cellars or dwelling-houses, and to abate the nuisance arising from such water. Under sects. 45 and 120, any district council may require filthy or infected premises to be cleansed or disinfected, and under sect. 97, they may procure an order of justices prohibiting the use of a house which is not fit for human habitation.

Unhealthy dwelling-houses and areas.

Dwelling-houses in urban districts, which are in a state so dangerous or injurious to health as to be unfit for human habitation, may be closed and, if necessary, demolished under the Housing Acts, and areas in which any houses are in that state, or which are otherwise unhealthy, may be dealt with by improvement schemes under those Acts.¹⁰

Highways.

"Premises" include messuages, buildings, lands, easements, and hereditaments of any tenure.¹¹ But it was held that a nuisance arising from the dripping of rain-water from a railway bridge on to a highway could not be dealt with as "premises in such a state as to be a nuisance or injurious to health."¹²

Public works.

The provisions of the present Act for the abatement of nuisances have been held not to be applicable to the sewage works of a local authority established under sect. 27, and situate in the district of another authority, and causing a nuisance there. *Per Wills, J.*: "We do not attempt to define every class of case to which the first head¹³ applies, but we think it is confined to cases in which the premises themselves are decayed, dilapidated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy, or impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life and limb."¹⁴ And in holding that foul smells which came from a surface sewer ventilator in the roadway could not be dealt with under the nuisance clauses of the Public Health (London) Act, 1891, Day, J., said that the words used were particularly applicable to nuisances arising from private sources, and that what were contemplated were acts of owners of property, as distinguished from anything which might be caused by the construction of great public works.¹⁵

Pools, Privies, Drains, etc.

Under sect. 40 district councils are required to provide that all drains, water-courses, earth-closets, privies, ashpits, and cesspools within their district are constructed and kept so as not to be a nuisance or injurious to health; and under sect. 41 such drains, etc., may be examined, and amended if necessary, on com-

(8) *Great Western Ry. Co. v. Bishop* (1872), L. R. 7 Q. B. 550; 41 L. J. M. C. 120; 26 L. T. 905; 37 J. P. 5.

(9) *Bishop Auckland Loc. Bd. v. Bishop Auckland Iron Co.* (1882), *post*, p. 182.

(10) Set out *post*, Part II., Div. III.

(11) See Note to s. 4, *ante*, pp. 8, 14.

(12) *Great Western Ry. Co. v. Bishop*, *supra*.

(13) Sect. 91 (1), *ante*, p. 173.

(14) *Reg. v. Parlby* (1889), L. R. 22 Q. B. D. 520; 58 L. J. M. C. 49; 60 L. T. 422; 53 J. P. 327. As to the costs of the local authority in this case, see end of Note to s. 262, *post*.

(15) *Fulham Vestry v. London C.C.*, L. R. 1897, 2 Q. B. 76; 66 L. J. Q. B. 515; 76 L. T. 691; 61 J. P. 440. Further as to nuisances from sewer ventilators, see *Russell v. Royston U.D.C.*, and cases cited *ante*, p. 84.

plaint being made of nuisance proceeding from them. As to the cleansing of earth-closets, privies, ashpits, and cesspools by the local authority or their contractors, see sects. 42 and 43. Bye-laws may be made under sect. 44, imposing the duty of such cleansing on the occupiers of premises. Under sect. 47 it is an offence to allow the contents of a water-closet, privy, or cesspool, in an urban district, to overflow or soak therefrom, and this is also an offence at common law.¹⁶

Sewers are, by sect. 19, to be kept in proper condition by the district council; and if the conduit or channel, in which a nuisance exists, is in fact a "sewer" as defined by sect. 4, and is vested in the local authority, they cannot under the nuisance clauses of the Act throw upon an individual the responsibility for a nuisance caused by their own default in repairing or cleansing such sewer.¹⁷ See also sect. 48, with regard to the cleansing of offensive ditches, etc., lying near to, or forming the boundary of the district; and see sects. 15, 17, 68 and 69, and the Notes thereto, with regard to fouling watercourses, ponds, etc., with sewage, gas-washings, etc. Sect. 70 gives power to close polluted wells.

Persons used a space at the side of a public-house as a urinal. The owner was held liable for the nuisance caused thereby, as it was "a probable consequence of the way in which he had arranged the premises."¹⁸

Under the Local Government Act, 1894,¹⁹ parish councils are authorised to deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority. This is not, however, to derogate from any obligation of the district council with respect to the execution of sanitary works.

A drain, coming originally from the defendant's premises, after receiving the drainage of other premises, turned back (unknown to the defendant) and ran through his premises and under the plaintiff's; the defendant was held liable for damage caused to the plaintiff by the defective state of the drain under his (the defendant's) premises; the onus being on him to show his right to allow filth brought artificially on his land to escape on to land of the plaintiff.²⁰ A distinction was drawn between this case and one in which the plaintiff's premises were damaged by water flowing from the defendant's premises through a defect in a pipe which supplied him with water from the waterworks; the court saying, "there is a wide difference between permitting water which a man has himself fouled to flow into his neighbour's premises, and the leakage of pure water from a supply-pipe without any negligence on his part, such mode of supply being the ordinary way of using a man's own property. Damage arising from the latter source is *damnum sine injuriâ*."²¹

In a case arising under the Public Health (London) Act, 1891,²² Channell, J., expressed the opinion that a structurally ineffective drain was not in itself a nuisance which could be dealt with under that Act; though it might be the cause of a nuisance which could be so dealt with. The drain in question was, however, found as a fact to have been "leaking," and this was held to amount to a finding that there was a nuisance within the Act.²³

With regard to the meaning of the term "drain," see the definition of that term in sect. 4, and the Note thereto.²⁴

Animals improperly kept.

It is an offence under the Town Police Clauses Act, 1847,²⁵ to keep "any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence," or to keep "any swine in or near any street so as to be a common nuisance." See also sect. 47, and the cases cited in the Note to that section with reference to keeping swine.

Exposing for show, farrying, or cleaning animals in the public streets is an offence under the Town Police Clauses Act, 1847,²⁶ and that Act also contains

Sect. 91, n.

Urinals.

Powers of parish council.

Damage from over-flow.

Meaning of drain.

Other enactments.

(16) *Tenant v. Goldwin*, ante, p. 128.

(17) See post, p. 195.

(18) *Chibnall v. Paul* (1881, Kay, J.), 29 W. R. 536. See also the Note to s. 39, ante.

(19) See s. 8 (1, f.) (3), post, Vol. II., p. 2004.

(20) *Humphries v. Cousins* (1877), L. R. 2 C. P. D. 239; 46 L. J. C. P. 438; 36 L. T. 180; 41 J. P. 280.

(21) *Sutton and Ash v. Card*, 1886 W. N. 120.

(22) 54 & 55 Vict. c. 76, s. 2.

(23) *Farmer v. Long* (1907, K. B. D.), 72 J. P. 91; 6 L. G. R. 368.

(24) Ante, pp. 8, 31.

(25) See s. 28 [30], post, Vol. II., p. 1649.

(26) *Ibid.*, s. 28 [1].

Sect. 91, n. provisions for protection against mad dogs²⁷ and the prevention of cruelty to animals.²⁸

Under the Dogs Act, 1906,²⁹ "any person who shall knowingly and without reasonable excuse permit the carcase of any head of cattle belonging to him to remain unburied in a field or other place to which dogs can gain access shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding forty shillings."

As to causing unnecessary suffering to animals, and the slaughtering of animals in streets by the police, see the Protection of Animals Act, 1911.³⁰

With regard to the keeping of cattle, see the Milk and Dairies Acts.³¹

Injunction.

A nuisance caused by drainage soaking from a stable and by the noise of the horses was restrained by injunction.³²

An injunction had been granted to restrain a railway company from bringing and keeping cattle in a cattle dock at a station, and from carrying on their business as cattle carriers so as to cause a nuisance to the occupiers of houses in an adjoining street, although there was no evidence of negligence on the part of the company; but the House of Lords held that the company's special Acts authorised the creation of this nuisance, although it gave some discretion with respect to its situation.³³ In this case Lord Halsbury, L.C., said, "the old notion of people losing their rights of complaint because they come to a nuisance has long since been exploded."

Accumulations.

Other enactments.

Sects. 49 and 50 contain other provisions for the removal of accumulations of filth, and the periodical removal of manure from stables and other premises. District councils may remove or contract for the removal of house refuse from premises (see sect. 42); or they may make bye-laws with reference to its removal (see sect. 44). Under sect. 45 they may provide receptacles for the deposit of dust and rubbish. The Towns Improvement Clauses Act, 1847,¹ regulates the deposit in the street of rubbish or building materials during repairs. And penalties are imposed by the Town Police Clauses Act, 1847,² for depositing rubbish and other things in public streets.

With regard to nuisances on village greens caused by accumulations of manure, rubbish, etc., see the provisions of the Inclosure Acts above quoted.³

Meaning of accumulation.

In an Irish case it was held that similar provisions⁴ did not empower the justices to prohibit a railway company from loading and unloading manure at their station. *Per* Sir P. O'Brien, L.C.J., "'Accumulation' implies some gradual accretion . . . 'deposit' means something that is put down in some place and left there."⁵

Refuse.

The accumulation of refuse so as to cause a public nuisance may be restrained by an action for a declaration and injunction on the relation of the local authority.⁶ As to nuisances from refuse tips, see the Note to sect. 42.

Manure.

Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, he was held liable to be convicted under a local Act which imposed a penalty on offensive matter being kept so as to be a nuisance. *Per* Cockburn, C.J., "a dunghill may or may not be a nuisance according to the way in which it is kept. If the dung is kept accumulating so long that a stench arises, and annoyance to the neighbouring inhabitants, then I think the case comes within the enactment, and the party may be convicted."⁷ The droppings and urine from sheep penned in the street during market time were dealt with as a nuisance under the corresponding provisions of the Nuisances Removal Act, 1855.⁸ An offensive accumulation of seaweed was also dealt with under that Act.⁹

An accumulation of cinders which emitted offensive smells was held to have been properly dealt with as a nuisance within the meaning of the present section though there was no evidence of any actual injury to health.¹⁰

(27) See s. 28 [2]-[4], *post*, Vol. II., p. 1647.

(28) *Ibid.*, s. 36; see also the Note to that section, *post*, Vol. II., p. 1661.

(29) 6 Edw. VII. c. 32, s. 6.

(30) *Post*, Vol. II., p. 2223.

(31) *Post*, Part II., Div. II.

(32) *Broder v. Saillard*, *post*, p. 189.

(33) *L. B. and S. C. Ry. Co. v. Truman* (1885), L. R. 11 A. C. 45; 55 L. J. Ch. 354; 54 L. T. 250; 50 J. P. 388.

(1) See ss. 81, 82, *post*, Vol. II., p. 1628.

(2) See s. 28 [23], [26], [29], *post*, Vol. II., p. 1649.

(3) *Ante*, p. 175.

(4) 41 & 42 Vict. c. 52, s. 107.

(5) *Great Northern Ry. Co. v. Lurgan Comrs.*, 1897, 2 Ir. 340.

(6) See *A.G. v. Keymer Brick Co.*, *post*, p. 208.

(7) *Smith v. Waghorn* (1863), 27 J. P. 744.

(8) *Draper v. Sperring*, *post*, p. 194. See also *Bland v. Yates* (1914, Warrington, J.), 58 Sol. J. & W. R. 612; 5 Glen's Loc. Gov. Case Law 194.

(9) *Margate Pier and Harbour Co. v. Margate Loc. Bd.*, *post*, p. 196.

(10) *Bishop Auckland Loc. Bd. v. Bishop Auckland Iron and Steel Co.* (1882), L. R.

As to accumulations which harbour rats, see the Rats and Mice (Destruction) Act, 1919.¹¹

The carrying on of noxious trades or manufactures is not legalised by the first proviso to the present section, which only defines the conditions upon which accumulations or deposits which are injurious to health may remain on the premises; namely, that they are not kept longer than necessary for the purposes of the particular business or manufacture, and that the best available means are taken for protecting the public from injury to health. It is not enough that the precautions ordinarily adopted in the trade have been observed, for they must be the best available means which can be adopted for securing the end in view.¹² In determining this question the justices will doubtless be guided more by the opinions of scientific persons than by considerations of the expense which "the best available means" would cost. Even though the best available means have been adopted, the business or manufacture may continue a nuisance or injurious to health, and though it will not be punishable under this Act, persons injured have their private remedy; for it is provided by sect. 111 that nothing in this part of the Act shall impair any other power of abating nuisances under this or any other Act, or at common law or in equity. See also sects. 112-115 with regard to the establishment and regulation of offensive and noxious trades. Special provision for the suppression of the nuisance caused by noxious or offensive gases from certain specified sulphuric and muriatic acid works, cement works, smelting works, and alkali works is made by the Alkali, etc., Works Regulation Act, 1906, and a comprehensive definition of "best practicable means" is given in sect. 27 of that Act.¹³

Overcrowded Houses.

The last words of sub-sect. (5) were inserted to remove a doubt which had arisen under the Nuisances Removal Acts, whether the nuisance caused by the overcrowding of a house occupied by only one family could be abated. The Court of Queen's Bench had, however, held that it could be abated under those Acts.¹⁴

A public house inhabited by thirteen persons, namely, the landlord, his wife and children, and a servant, barmen, and barmaids, who all slept on the premises, was held to be "a dwelling house occupied as such by not more than two families" within the London Building Act, 1905.¹⁵

Under sect. 109 an order may be made for closing a house where two convictions for overcrowding it have taken place within three months.

By sect. 4, "house" includes schools, also factories and other buildings in which persons are employed; ¹⁶ and for the purpose of the provisions of this Act relating to nuisances, a ship or vessel may in certain cases be treated as a house.¹⁷

A chapel, with adjoining rooms, used for religious purposes by day, and as a free shelter for homeless and destitute persons by night, containing the chairs used by the congregation but not fitted with sleeping accommodation, was held to be a "house," and the superintendent, who was appointed by a committee of the body to which the premises belonged, and gave orders as he thought proper to the caretaker as to the number of persons to be admitted, was held to be "the person by whose act, default, or sufferance, a nuisance from the overcrowding of the premises arose."¹⁸

Under the similar provisions of the Public Health (London) Act, 1891, a Salvation Army "shelter" was held to be a "house," and the persons temporarily sheltered there were held to be "inmates."¹⁹ And under the present section the term "house" was held to include a school (a class room in which was alleged to be overcrowded) and the term "inmates" to include the scholars, though they did not reside on the premises.²⁰

Overcrowded tents, vans, sheds, or similar structures, may be dealt with as nuisances.²¹

Sect. 91, n.
Rats.
Best available means.

House occupied by single family.

Meaning of house.

10 Q. B. D. 138; 52 L. J. M. C. 38; 48 L. T. 223; 31 W. R. 288; 47 J. P. 389; see also ante, p. 180.
(11) Set out post, Vol. II., p. 2339.
(12) See *Scholefield v. Schunck* (1855), 19 J. P. 84; decided under the Factories Act, 1844.
(13) Post, Vol. II., p. 2200.
(14) *Rye Guardians v. Paine* (1875), 44 L. J. M. C. 148; 32 L. T. 757; 23 W. R. 692.
(15) *London C.C. v. Cannon Brewery Co.*,

ante, p. 156.
(16) See ante, p. 29.
(17) See s. 110 and Note, post, p. 214.
(18) *Reg. (Gates) v. Mead* (1895), 64 L. J. M. C. 169; 59 J. P. 150.
(19) *Reg. v. Slade* (1896), 65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358; 18 Cox C. C. 316.
(20) *Wimbledon U.D.C. v. Hastings* (1902), 87 L. T. 118; 67 J. P. 45.
(21) See Note, ante, p. 174.

Sect. 91, n.

Factories, Workshops, and Workplaces.

The words in italics in sub-sect. (6) of the present section, namely, "not already under the operation of any general Act for the regulation of factories or bake-houses," are repealed,²² and the Factory and Workshop Act, 1901,²³ which is now the general Act relating to the regulation of factories, contains the provisions with regard to the sanitary condition of factories and workshops, including bake-houses, which are set out at length in the second volume of this work. It applies the present section to "domestic" factories, and excludes other factories from its operation. As to laundries, see the Act of 1907.²⁴

Sanitary conveniences.

With regard to the provision of water-closets, ashpits, etc., in factories, workshops, and workplaces, see sect. 38 of the present Act, and the Note to that section.²⁵ By sect. 4 the term "house" includes (subject to the context) a factory or other building in which persons are employed.²⁶

Injury to health.

In a case arising under the Factory and Workshop Act, 1878,²⁷ which enabled a factory inspector to require means of ventilation to be provided where dust was generated and inhaled by the workers in a factory "to an injurious extent," it was held not to be necessary to prove that any worker had sustained actual injury from inhaling the dust, but that it was sufficient to prove that dust was generated and inhaled by the workers to an extent that must in the long run be injurious.²⁸

Offensive trades.

Reference should also be made to the clauses relating to offensive trades,²⁹ and to the Alkali, etc., Works Regulation Act, 1906,³⁰ which contains provisions for regulating alkali and certain other works in which noxious or offensive gases are evolved.

Fireplaces and Furnaces.

Black smoke.

The Smoke Abatement Bill, 1922,³¹ proposes to apply the present section to smoke of any colour, and also to "soot, ash, grit, and gritty particles."

Smelting of minerals.

Sect. 334 of the present Act excepts the smelting of minerals, calcining of metals, workings of mines, etc., from any provisions of the present Act which would obstruct or interfere with those processes.

Under the repealed Sanitary Acts a nuisance caused by smoke from furnaces used in the manufacture of bichrome, a product of ore and minerals, was held to be excepted by a similar clause³² from the summary provisions of the Acts.³³

Construction of furnace.

The justices are the judges whether or not an efficient alteration has taken place in respect of furnaces emitting smoke, and if they come to the conclusion that it has not, the court will not interfere.³⁴ In this case, Mellor, J., said that the limitation of six months in the Summary Jurisdiction Act, 1848,³⁵ did not apply to such a case as that of a continuing nuisance.

Consumption of smoke.

A local Act, incorporating the Towns Improvement Clauses Act, 1847, enabled the justices to remit the penalties for the offence under the latter Act³⁶ of using a new factory furnace not so constructed as to consume its smoke, if they were of opinion that the offender had so constructed or altered his furnace as to consume as far as possible all the smoke arising from it, and had carefully attended to it. A wire-drawer was convicted under these Acts of negligently using his furnace so as not to consume its smoke; the evidence being to the effect that the quantity of smoke emitted might be greatly reduced by admitting air, but that if this were done the temperature of the furnace would not be uniform, and the process of annealing the metal for the purpose of making wire would be rendered impossible. The court quashed the conviction, holding that the effect of the qualification introduced by the local Act was to exempt the offender from a penalty where the smoke was consumed as far as was possible consistently with carrying on the trade in which the furnace was used.³⁷

With reference to a definition of "nuisance" in the Public Health (Scotland) Act, 1867,³⁸ which was the same as that given by sub-sect. (7) of the present section, it was held that a furnace must be shown not to consume its own smoke

(22) By 41 Vict. c. 16, s. 107.

(23) *Post*, Vol. II., p. 2138.

(24) *Post*, Vol. II., pp. 2155, 2171.

(25) *Ante*, p. 112.

(26) *Ante*, p. 29.

(27) 41 Vict. c. 16, s. 36.

(28) *Hoare v. Ritchie & Son* (Q. B. D.), L. R. 1901, 1 K. B. 434; 70 L. J. K. B. 279; 84 L. T. 54; 65 J. P. 261.

(29) Sects. 112-115, *post*, p. 215.

(30) *Post*, Vol. II., p. 2190.

(31) For position of Bill at date of going to press, see "Addenda et Corrigenda," *ante*.

(32) 18 & 19 Vict. c. 121, s. 44.

(33) *Norris v. Barnes* (1872), L. R. 7 Q. B. 537; 41 L. J. M. C. 154; 23 L. T. 622.

(34) *Higgins v. Northwich Union*, cited in Note to s. 251 (under heading "Limitation of Time"), *post*.

(35) 11 & 12 Vict. c. 43, s. 11.

(36) 10 & 11 Vict. c. 34, s. 108.

(37) *Cooper v. Woolley* (1867), L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. 539; 31 J. P. 135. But see *Weekes v. King*, *post*, p. 186.

(38) 30 & 31 Vict. c. 101, s. 16 (h).

by reason of faulty construction or else of systematic misuse, and the fact that a well-constructed furnace had on ten occasions in a period of four months sent out quantities of offensive black smoke was held not to be evidence of such systematic misuse as to bring it within the terms of the section.³⁹ And under the same enactment it was held that the mere absence of devices such as mechanical stokers is not in itself evidence of a nuisance, as sometimes hand stoking is preferable.⁴⁰

Local Acts,⁴¹ after providing that a person who used a furnace constructed so as to consume its own smoke should be liable to a penalty if smoke was emitted and he failed to show that its emission was not due to negligent user of the furnace, enacted that no such penalty should be imposed if the emission was "due to the act or default of a stoker, engineer, or other person employed" by such person. A furnace which had been constructed so as to consume its own smoke in fact emitted smoke. Justices convicted though an expert gave evidence that the emission must have been caused by the negligence of a stoker. It was held that, though it was not necessary to call someone who had seen some act or default by a stoker, the justices were not bound to accept the expert's evidence, and the conviction was upheld.⁴²

Sect. 114 of the Railway Clauses Act, 1845,⁴³ enacts that "every locomotive steam-engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke." Where, under this statute, justices convicted a railway company on the ground that one of their engines did not, in fact, consume its own smoke, the court remitted the case to the justices, with their opinion that if the engine was constructed on the principle required by the statute, and the not consuming its own smoke was occasioned by the negligence of the servants of the company, the company were not liable.⁴⁴ But now, by the Regulation of Railways Act, 1868,⁴⁵ where proceedings are taken against a company using a locomotive steam-engine on a railway on account of the same not consuming its own smoke, then, if it appears to the justices before whom the complaint is heard that the engine is constructed on the principle of consuming its own smoke, but that it failed to consume its own smoke, as far as practicable, at the time charged in the complaint through the default of the company, or of any servant in their employment, the company are guilty of an offence under the Act of 1845, above quoted.

A magistrate having convicted a railway company under these enactments on evidence that the engines had between certain points on a rising gradient emitted black smoke for three minutes on each occasion, and were not using Welsh coal but a more smoky coal, and that it was unnecessary for an engine to emit smoke for more than one minute, the court upheld the convictions, though there was no evidence that the engines were not properly constructed so as to consume their smoke, but did not assent to the contention that the mere fact of smoke issuing was itself sufficient without any evidence to show that there was any default on the part of the company or their servants.⁴⁶ But where an engine, properly constructed to consume its smoke, emitted smoke on two occasions, not through any default in the stoking or management of the engine, the foregoing case was distinguished, and it was held that no offence under the Acts had been committed, although less smoke would have been emitted if Welsh coal had been used.⁴⁷

In an action against a railway company for damages for injury to nursery gardens from the smoke emitted by engines on a siding adjoining the gardens, Grantham, J., left it to the jury to determine whether there had been negligence or only a reasonable user of their statutory powers by the company.⁴⁸

The owner of a steam road locomotive which, though fitted with apparatus designed to prevent the emission of sparks, set fire to a plantation, was held liable

Sect. 91, n.
Consumption
of smoke—
continued.

Locomotives.

Sparks.

(39) *Dumfries B.C. v. Murphy* (1884), 11 Ct. of Sess. Cas. (4th Series) 694.

(40) *Leith Magistrates v. Bertram & Sons*, 1915 S. C. (S.) 1133.

(41) *Bradford*, 1910 (10 Edw. VII. & 1 Geo. V. c. cxvii.), s. 53, and 1913 (3 & 4 Geo. V. c. xevi.), s. 72 (3).

(42) *Drummond & Sons v. Nicholson* (1915, K. B. D.), 84 L. J. K. B. 2190; 79 J. P. 525; 13 L. G. R. 958; see also *Armitage, Ltd. v. Nicholson* (1913, K. B. D.), 108 L. T. 993; 77 J. P. 239; 11 L. G. R. 547; distinguishing *Chisholm v. Doulton*, *post*, p. 187.

(43) *Post*, Vol. II., p. 1613.

(44) *Manchester, Sheffield, and Lincolnshire Ry. Co. v. Wood* (1859), 2 E. & E. 344; 29 L. J. M. C. 29; 6 Jur. (N.S.) 70; 1 L. T. 31; 24 J. P. 38.

(45) 31 & 32 Vict. c. 119, s. 19.

(46) *South Eastern and Chatham Ry. Co. v. London C.C.* (1901), 84 L. T. 632; 65 J. P. 568.

(47) *London C.C. v. Great Eastern Ry. Co.*, L. R. 1906, 2 K. B. 312; 75 L. J. K. B. 490; 94 L. T. 586; 70 J. P. 356; 4 L. G. R. 925.

(48) *Cull and Rooke v. Great Eastern Ry. Co.* (1900), 64 J. P. 216.

Sect. 91, n.

Electricity works.

Fumes from gasworks.

Steam-vessels.

in damages.⁴⁸ Further as to locomotives on highways, see sect. 30 of the Highways and Locomotives Act of 1878 and Note.⁴⁹

Sect. 22 of the Electric Lighting Act, 1909,⁵⁰ gives the Commissioners of Works power to protect certain public buildings from smoke and oxides of sulphur from electricity works.

Where fumes from gasworks injured the plaintiff's trees, an injunction was granted.⁵¹

The Public Health (London) Act, 1891,⁵² repealing the Smoke Nuisance Abatement (Metropolis) Act, 1853,⁵³ makes provision for the abatement of nuisances arising from the smoke of furnaces in the metropolis, and from steam-vessels on the river Thames west of the Nore Light. With regard to steam-vessels it imposes penalties on the owners, masters, or other persons having charge of the vessels, but allows the justices to remit the penalties if they are satisfied that the furnaces are constructed to consume the smoke as far as possible, and have been carefully attended to. Under the repealed enactment it was held that a steam-vessel not carrying passengers, but employed in towing ships for hire to and from the various docks on the Thames, for the most part between London Bridge and the Nore Light, but occasionally going eastward of the Nore Light as far as the Downs, was within the statute when towing a ship from Limehouse to Blackwall.⁵⁴

A local Act of 1854 required all furnaces employed in working engines by steam or in buildings within the borough of Liverpool, and those employed in working the engines of steamboats plying on the Mersey between the borough and any place in Cheshire or Lancashire or between the port of Liverpool and any place in the United Kingdom, to be constructed or altered so as to consume their own smoke. By a local Act of 1882 this provision was declared applicable to steamboats plying between the port and the Isle of Man; an Act of 1902 extended it to all steamboats on the river within the port plying between any place in Cheshire or Lancashire and any other place in the United Kingdom; and an Act of 1905 extended it to all furnaces employed for any purpose in the city of Liverpool other than domestic furnaces and the furnaces of vessels not already subject to it. It was held that the provisions did not apply to the furnaces of foreign-going steamboats, such as one plying between Liverpool and Bordeaux.⁵⁵

When the funnel of a steam-vessel sends forth black smoke so as to cause a nuisance, it may be dealt with as a "chimney" under the last clause of subsect. (7), notwithstanding the above-mentioned enactments.⁵⁶

Chimneys.

Meaning of chimney.

The funnel of a steam-tug plying on the river Thames was held to be a "chimney" sending forth black smoke in such quantity as to be a nuisance within the provision of the Public Health (London) Act, 1891,¹ corresponding to subsect. (7) of the present section, and a conviction under that provision was upheld, notwithstanding the above-mentioned express provision of the same Act with respect to smoke from steam-vessels.²

Chimney of furnace.

Although evidence that a furnace was constructed so as to consume its smoke as far as practicable having regard to the trade, etc., and was carefully attended to, would, by virtue of the proviso "secondly," afford a defence to proceedings in respect of a nuisance arising from the furnace not consuming as far as practicable its smoke, it is not, the court held, admissible on proceedings in respect of a nuisance arising from black smoke sent forth from the chimney of such furnace.³

Private dwelling-house.

Queen Anne Mansions, a very large building let in residential flats, and the St. James's Club, Piccadilly, the latter of which had originally been a nobleman's private house, have been held, under the corresponding provisions of the Public Health (London) Act, 1891,⁴ not to be "private dwelling-houses" within the exception.⁵

(48) *Mansell v. Webb* (1919, C. A.), 88 L. J. K. B. 323; 120 L. T. 360.

(49) *Post*, Vol. II., p. 1794.

(50) *Post*, Vol. II., p. 1330.

(51) *Wood v. Conway*, *post*, Vol. II., p. 1255.

(52) 54 & 54 Vict. c. 76, s. 23.

(53) 16 & 17 Vict. c. 128.

(54) *Walker v. Evans* (1859), 2 E. & E. 356; 29 L. J. M. C. 22; 6 Jur. (N.S.) 71; 1 L. T. 59.

(55) *Macaulay v. Moss Steamship Co.* (1910, K. B. D.), 102 L. T. 887; 74 J. P. 243;

8 L. G. R. 615.

(56) See *infra*, and *Tough v. Hopkins*, *infra*.

(1) 54 & 55 Vict. c. 76, s. 24.

(2) *Tough v. Hopkins*, L. R. 1904, 1 K. B. 804; 73 L. J. K. B. 628; 90 L. T. 672; 68 J. P. 274; 2 L. G. R. 1213.

(3) *Weekes v. King* (1885), 53 L. T. 51; 49 J. P. 709; 15 Cox C. C. 723.

(4) 54 & 55 Vict. c. 76, s. 24 (b).

(5) *Queen Anne Mansions Co. v. Westminster Cpn.* (1901), 46 S. J. 70; 1902 Loc. Gov. Chron. 34; *McNair v. Baker*, L. R.

Under the corresponding provision, relating to chimneys sending forth black smoke, which was contained in the repealed Sanitary Act, 1866,⁶ it was held that the proceedings should be taken against the owner or occupier, and not against the person who lights the fire.⁷ And under the present section, the dismissal of a summons against a firm of mill owners, whose furnaces were properly constructed, and who had given strict injunctions to their servants against allowing black smoke to issue, and appointed an efficient foreman to superintend, was reversed, although the justices had found that the smoke was caused by the default of the stoker in charge.⁸

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Responsibility of owner or occupier.

In the last-cited case the court distinguished a previous case, in which, in the absence of personal negligence on the part of the owner and occupier of a manufactory, the emission of smoke caused by the negligence of his servant had been held not to be sufficient to sustain a conviction under the Smoke Nuisance Abatement (Metropolis) Act, 1853,⁹ of such owner and occupier for negligently using a furnace so that the smoke was not effectually consumed.¹⁰

An action in respect of a nuisance caused by smoke from a chimney was brought against the owner of the premises to which the chimney belonged, on the ground that although the premises were let, he had, by erecting the chimney and letting the premises, impliedly authorised the lighting of the fire which caused the smoke; but it was held that the action did not lie.¹¹

Nature of nuisance.

It was held not to be necessary on an information under the corresponding provision of the Sanitary Act, 1866, above mentioned, to show that black smoke sent forth from a chimney was injurious to health as well as a nuisance.¹²

Generally the word nuisance is applied to something which causes a continued annoyance, rather than to a single act the effect of which is temporary; but in the following case an order of abatement of a nuisance made by justices was not complied with, and subsequently nineteen summonses were issued for disobedience of the said order, alleging the disobedience to have occurred on nineteen distinct days, and such summonses were returnable and heard on the same day, when the justices convicted on each of the summonses, and imposed a penalty of ten shillings upon each summons with a separate set of costs in respect of each summons and conviction. It was held that the sending forth black smoke from the chimney was the nuisance, and that each summons was issued in respect of a distinct offence, and that the convictions were right.¹³ A person was convicted in August of allowing black smoke to issue from his factory chimney. In October he was again convicted for allowing black smoke to issue from the same chimney; but it appeared that there were two furnaces which communicated with the same chimney, and that the smoke on the second occasion did not issue from the same furnace as on the first. It was contended that this was only one offence, and that he could not be twice convicted for it. The court, however, thought the chimney did not mean merely the orifice, but that it extended from the fire to the exit, and that therefore two offences had been committed.¹⁴

A number of complaints under the corresponding provisions of the Public Health (London) Act, 1891,¹⁵ respectively alleged that on certain days a tall chimney shaft on premises occupied by the appellant sent forth black smoke in such quantity as to be a nuisance; and it was proved that on each of those days black smoke issued from the chimney for certain periods varying from a few minutes to more than an hour, but there was no evidence that the smoke had been a nuisance to any particular person. The magistrate having found that the smoke amounted to a nuisance on each day, convicted and fined the appellants on each summons, and the court upheld the convictions, though as Lord Alverstone, C.J., said, a magistrate is not bound to convict merely because black smoke has been allowed to issue out of a chimney.¹⁶

1904, 1 K. B. 208; 73 L. J. K. B. 120; 90 L. T. 24; 68 J. P. 66; 2 L. G. R. 143. Further as to meaning of "private dwelling-house," see *post*, Vol. II., p. 1240.

(6) 29 & 30 Vict. c. 90, s. 19 (3).

(7) *Barnes v. Akroyd* (1872), L. R. 7 Q. B. 474; 41 L. J. M. C. 110; s.c. *nom. Barnes v. Akroyd*, 26 L. T. 692; 37 J. P. 116.

(8) *Niven v. Greaves* (1890), 54 J. P. 548.

(9) 16 & 17 Vict. c. 128, repealed by 54 & 55 Vict. c. 76, s. 23.

(10) *Chisholm v. Doulton* (1889), L. R. 22 Q. B. D. 736; 58 L. J. M. C. 133; 60 L. T. 966; 53 J. P. 550; and see *Willcock v. Sands* (1868), 32 J. P. 565; on a similar provision

in a local Act.

(11) *Rich v. Basterfield* (1847), 4 C. B. (O.S.) 783; 16 L. J. C. P. 273.

(12) *Gaskell v. Bayley* (1874), 30 L. T. 516; 38 J. P. 805.

(13) *Reg. v. Waterhouse* (1872), L. R. 7 Q. B. 545; 41 L. J. M. C. 115; 26 L. T. 761; 36 J. P. 471.

(14) *Reg. v. Brayshaw*, *Times*, May 8th, 1873.

(15) 54 & 55 Vict. c. 76, s. 24 (b).

(16) *South London Electric Supply Cpn. v. Perrin*, L. R. 1901, 2 K. B. 186; 70 L. J. K. B. 643; 84 L. T. 630; 65 J. P. 627.

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Continuing
nuisance.**

When a black smoke nuisance abatement notice is served, and a considerable time elapses before the smoke is again emitted, there is no "continuance" of the original nuisance.¹⁷

**Action for
injunction or
damages.**

The nuisance arising from smoke alone, unaccompanied by noise, or from noise alone, or effluvia alone, may be the subject of substantial damages in an action at law; and wherever a jury would give such substantial damages, an injunction will be granted. The mere discontinuance of a nuisance is not in itself a ground for dissolving an injunction. Where the nuisance is capable of renewal, the injunction will be made perpetual.¹⁸

**Grit, ashes,
dust, etc.**

An injunction was granted restraining a local authority from discharging from the chimney of their electricity works, grit, etc., so as to interfere with the plaintiff's sawmills, and the plaintiff also obtained £50 damages.¹⁹

**Access of air
to chimneys.**

Where the rebuilding of a house to a height greater than its previous height caused the chimneys of the adjoining house to smoke, it was held that no action was maintainable against the person who rebuilt the house, either on the ground that the nuisance complained of had been created by him, or that the adjoining owner had acquired an easement (viz. the right to access of air to his chimney) with which he had interfered.²⁰

*Nuisance from Noise.***Bye-laws.**

Bye-laws made by municipal corporations for the prevention of nuisances caused by playing on musical instruments in the streets of the borough have been held to be valid.¹

**Steam
whistles.**

"No person shall use or employ in any manufactory, or any other place, any steam whistle or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues: Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person using the same: Provided also, that it shall be lawful for the [Minister of Health], on representation made to [him] by any person that he is prejudicially affected by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority."²

**Noise by
chimney-
sweepers.**

"Any person who shall for the purpose of soliciting employment as a chimney-sweeper knock at the houses from door to door, or ring a bell, or use any noisy instrument, or to the annoyance of any inhabitant thereof ring the door-bell of any house, or cause any one to do any of the acts aforesaid, shall be liable on summary conviction to a penalty not exceeding ten shillings for the first offence, and to a penalty not exceeding twenty shillings for every subsequent offence."³

Church bells.

An injunction and damages were granted in respect of the noise caused by the ringing of church bells, a contention that the plaintiff had suffered no more annoyance than the rest of the public, and that therefore an information in the name of the Attorney General was the only remedy, being overruled.⁴

Other noises.

The cases cited below dealt with noises from the following causes:—Building operations,⁵ children in crèche,⁶ dancing, etc.,⁷ dogs,⁸ exhibition side shows,⁹

(17) *Battersea B.C. v. Goerg*, cited in Note to s. 251, *post*; applied in *Greenwich B.C. v. London C.C.* (1912, K. B. D.), 106 L. T. 887; 76 J. P. 267; 10 L. G. R. 488. See also *Eddleston v. Barnes*, *post*, p. 205.

(18) *Crump v. Lambert* (1867), 15 L. T. 600; L. R. 3 Eq. 409. Affirmed on appeal (1867), 17 L. T. 133.

(19) *Morrow v. Stepney B.C.* (1920, P. O. Lawrence, J.), 18 L. G. R. 458.

(20) *Bryant v. Lefevre* (1879), L. R. 4 C. P. D. 172; 48 L. J. C. P. 380; 40 L. T. 579. See also *In re King and Duveen*, L. R. 1913, 2 K. B. 32; 82 L. J. K. B. 733; 108 L. T. 844.

(1) See Note to s. 182 (under heading "Validity of Byelaws"), *post*.

(2) Steam Whistles Act, 1872 (35 & 36 Vict. c. 61), s. 2.

(3) Chimney Sweepers Act, 1894 (57 & 58 Vict. c. 51), s. 1.

(4) *Soltau v. De Held* (1851, Kindersley, V.-C.), 21 L. J. Ch. 153; 16 Jur. 326; 2 Sim. (N.S.) 133. See also *Martin v. Nutkin* (1724),

2 Peere Wms. 266.

(5) *Clark v. Lloyd's Bank, Ltd.* (1910, Ch. D.), 79 L. J. Ch. 645; 103 L. T. 211; 74 J. P. 429. Injunction refused on authority of *Harrison v. Southwark Water Co.*, cited in Note to s. 308, *post*.

(6) *Moy v. Stoop* (1909, Channell, J.), 25 T. L. R. 262. Action dismissed.

(7) *Law Land Co. v. Bayer* (A. T. Lawrence, J.), *Times*, May 4th, 5th, 6th, 1910, pp. 4; 1 Glen's Loc. Gov. Case Law 96. Injunction granted. *New Imperial Hotel Co. v. Johnson* (Barton, J.), 1912 Ir. Ch. 327; 3 Glen's Loc. Gov. Case Law 192. Injunction granted.

(8) *Preston v. Owen* (Warrington, J.), *Times*, Jan. 12th, 1912, p. 3; 3 Glen's Loc. Gov. Case Law 192. *Interim* injunction refused.

(9) *Becker v. Earl's Court, Ltd.* (Eve, J.), 56 Sol. J. & W. R. 73; *Times*, Nov. 11th, 1911, p. 3; 2 Glen's Loc. Gov. Case Law, 241. Injunction and damages granted. Appeal against refusal of stay of execution pending appeal dismissed by C. A., 56 Sol. J. & W. R.

fair organs,¹⁰ garage,¹¹ machinery,¹² mortar mill,¹³ night pile driving,¹⁴ skating rink,¹⁵ and theatre.¹⁶ Sect. 91, n.

An injunction was granted to restrain a firm of boiler makers from allowing to be made any noise substantially interfering with services, etc., in an adjoining chapel.¹⁷ The incumbent and trustees of a church were, however, held by Joyce, J., to have no special rights as regards an alleged nuisance from noise proceeding from the neighbouring electrical generating and transforming station of a local authority, by reason of the fact that the premises were used as a place of worship, beyond their right to the ordinary amount of quiet in a town.¹⁸ Action for injunction.

In another case it was held that the playing of skittles in a garden adjoining the plaintiff's premises was a nuisance, and entitled him to an injunction.¹⁹ And in another, the noise caused by the horses in an adjoining stable was held to be ground for an injunction.²⁰ This case was followed and an injunction was granted against a hotel keeper who put up a stove in his cellar, the heat from which rendered the cellar of an adjoining house unfit for storing wine.²¹ So also an injunction was granted against a tramway company in respect of the nuisance arising from their stables, although the company had statutory powers.²²

Where a builder was employed to make alterations in business premises and carried on the work by night, an injunction was granted to restrain the working between the hours of 8 p.m. and 6 a.m., as it interfered with the plaintiff's comfortable, reasonable, and ordinary enjoyment of his residence.²³

With reference to nuisance arising from noise, Mellish, L.J., said, "When in a street like Green Street (Grosvenor Square) the ground floor of a neighbouring house is turned into a stable, we are not to consider the noise of horses from that stable like the noise of a pianoforte from a neighbour's house, or the noise of a neighbour's children in their nursery, which are noises we must reasonably expect, and must to a considerable extent put up with. A noise of this kind, if it materially disturbs the comfort of the plaintiff's dwelling-house, and prevents people from sleeping at night, and still more, if it does really and seriously interfere with the plaintiff's trade as a lodging-house keeper, beyond all question constitutes an actionable nuisance."²⁴ This was followed in a case where a nuisance from noise and also from heat and from smell was caused to the lessee of a residential flat by the conversion of the flat below into a restaurant, Buckley, J., holding that as the lessee of the lower flat was using it for purposes for which the building was not constructed, he was not using it reasonably, and the lessee of the upper flat was therefore entitled to relief.²⁵

206; *Times*, Dec. 22nd, 1911, p. 3; 3 Glen's Loc. Gov. Case Law 141.

(10) *Bedford v. Leeds Cpn.*, post, Vol. II., p. 1472.

(11) *White v. London General Omnibus Co.* (Sargant, J.), 1914 W. N. 78; 58 Sol. J. & W. R. 339; 5 Glen's Loc. Gov. Case Law 194. Owner's action dismissed as no injury to reversion (*cf. McEwen v. Steedman*, infra, and *Jones v. Llanrwst U.D.C.*, ante, p. 72). Leave to add tenant as co-plaintiff granted (*cf. Walcott v. Lyons*, 1885, L. R. 29 Ch. D. 584).

(12) *Gilling v. Gray* (1910, Swinfen Eady, J.), 27 T. L. R. 39; 1 Glen's Loc. Gov. Case Law 95. Injunction and damages granted. *McEwen v. Steedman*, 1912 S. C. (S.) 156; 49 Sc. L. R. 136; 3 Glen's Loc. Gov. Case Law 193. Held that three joint owners of tenement house, one of whom was an occupier, were entitled to bring action in respect of both injury to structure of building and annoyance to tenants caused by vibration of neighbouring gas engine, on ground that each class of injury was calculated to lower letting value of property. *Dexter v. Aldershot U.D.C.* (1915, Neville, J.), 79 J. P. Jo. 580. Injunction granted but suspended during war. *Boswell Smith v. Gwynnes* (1919, Peterson, J.), 87 L. J. Ch. 368; 122 L. T. 15. Injunction granted.

(13) *Anonymous* (1910, Scrutton, J.), 45 L. J. Jo. 598; 1 Glen's Loc. Gov. Case Law 95. Injunction granted and *Harrison v. Southwark Water Co.*, cited in Note to s. 308, post, distinguished.

(14) *De Keyser's Royal Hotel, Ltd. v. Spicer Bros.* (1914, Warrington, J.), 30 T. L. R. 257; 5 Glen's Loc. Gov. Case Law 194. Injunction granted. *Hoare & Co. v. McAlpine* (1922,

Ch. D.), W. N. 329. Damages granted though injured building old.

(15) *Hudson v. Brixton Skating Rink, Ltd.* (Eve, J.), *Times*, March 10th, 18th, 1910, p. 3; 1 Glen's Loc. Gov. Case Law 95. Injunction granted but suspended. *Page v. Watt*, *Times*, Nov. 25th, 1911, p. 3; 2 Glen's Loc. Gov. Case Law 241. Damages granted, injunction refused. *Per Darling, J.*: "No doubt these houses are in a neighbourhood which has very few amenities, but that does not of itself give any right to bring to them another and a different noise."

(16) *Fagan v. Capital Syndicate, Ltd.* (Warrington, J.), *Times*, May 4th, 1911, p. 4, May 5th, 10th, pp. 3; 2 Glen's Loc. Gov. Case Law 240. Injunction granted though nuisance had ceased since issue of writ.

(17) *Baxter v. Bower* (1875), 44 L. J. Ch. 625; 33 L. T. 41; 23 W. R. 805.

(18) *Heath v. Brighton Cpn.* (1908), 98 L. T. 718; 72 J. P. 225; 24 T. L. R. 414.

(19) *Barham v. Hodges* (1876), W. N. 234; L. T. Jo. 230.

(20) *Broder v. Saillard* (1876), L. R. 2 Ch. D. 692; 45 L. J. Ch. 414; 24 W. R. 1011.

(21) *Reinhardt v. Mentasti* (1889), L. R. 42 Ch. D. 685; 58 L. J. Ch. 787; 61 L. T. 328.

(22) *Rapier v. London Tramways Co.* (C. A.), L. R. 1893, 2 Ch. 588; 63 L. J. Ch. 36; 69 L. T. 361.

(23) *Webb v. Barker* (1881), W. N. 158.

(24) *Ball v. Ray* (1873), L. R. 8 Ch. 467; 28 L. T. 346; 21 W. R. 282.

(25) *Sanders-Clark v. Grosvenor Mansions Co., and D'Allessandri*, L. R. 1900, 2 Ch. 373; 69 L. J. Ch. 579; 82 L. T. 758.

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Action for
injunction—
continued.

A surgeon had a house in a street adjoining a private road, which was shut off from the street by gates. On a piece of ground on the other side of the private road a person erected a workshop and sheds, the workshop being only forty feet distant from the nearest corner of the house, and proceeded to carry on there the business of a carpenter, builder, and undertaker. The plaintiff's case was that the noise caused by constant knocking and moving of planks and timber, which went on from six o'clock in the morning until five o'clock in the evening, constituted an intolerable nuisance and rendered his dwelling-house uninhabitable. There was a conflict of evidence as to the nuisance, but Kay, J., said that any one who, in his own house, had experienced the annoyance of intermittent noises, such as knocking, could not doubt that to have a carpenter's shop set up within forty feet of a dwelling-house must be a nuisance to the inhabitants. It was as different as might be from the ordinary noise to which all people who lived in large towns must submit. Those who lived near the great arteries of a city found that the roar of traffic did not affect them, and the reason of that, as every one knew, was because the sound was continuous. But if the noise was an intermittent noise, like knocking, his Lordship thought that no one, whatever his temperament, could fail to experience very great annoyance from it. He was reluctant to interfere with the business of the defendant, although only recently established, but he felt bound to grant an interim injunction to restrain him from making any noise, by knocking, moving timber, or otherwise, upon his premises, so as to be a nuisance to the plaintiff.²⁶ This action was subsequently transferred to the Queen's Bench Division, and at the trial Huddleston, B., directed the jury that in order to succeed, the plaintiff must show that the grievances complained of were material, sensible, and substantial inconveniences or interferences with his full and legitimate enjoyment of his residence, by which any reasonable man might justly consider himself substantially damaged, and not a mere trifling or nominal annoyance; and that the general principle that trade and business must not unreasonably be made to give way to private rights was given more latitude when dealing with residential property situated in towns as opposed to country, the space in towns being limited. The plaintiff called none of his neighbours in support of his case, and the defendant obtained the verdict.²⁷

The principles, on which a legal nuisance arising from an increase of noise in an already noisy neighbourhood may be restrained by injunction, were considered by the Court of Appeal in a case in which an injunction was granted to restrain a nuisance from noise caused by a printing-house in a locality devoted to noisy trades, where the printing-house subjected the occupier of an adjoining residence to such an increase of noise as to interfere substantially with the ordinary comfort of human existence according to the standard of comfort prevailing in the locality.²⁸

The giving of music lessons and musical entertainments by one of two adjoining occupiers was held not to be a nuisance to the other which the court would restrain by injunction; but an injunction was granted against the latter occupier, who had made noises maliciously to annoy the first-mentioned occupier, to restrain him from making noises so as to vex or annoy his neighbour.²⁹ Kekewich, J., however, granted an injunction to restrain the use of a room on the premises of certain musical instrument makers for giving singing lessons so as to be a nuisance to a firm of auctioneers and valuers who occupied the adjoining premises.³⁰ And an injunction was granted to restrain a nuisance from noise caused by carrying on the business of newspaper forwarding agents in Temple Avenue, London, the noise having been proved to interfere with the natural sleep and comforts of residents in the neighbourhood.³¹ In the case of a nuisance caused to the owner of a private hotel on the esplanade at Dover by the contractors of the harbour board in the course of constructing a new breakwater, an injunction and damages were granted.³²

Increase of
noise.

Although the noise from machinery had not been complained of for twenty years, it was held that a neighbour had a right to prevent even a slight increase in the noise.³³

Easement.

User which is neither physically capable of prevention by the owner of the

(26) *Baker v. White*, *Times*, 8th August, 1884, affirmed in C. A., 1 T. L. R. 64.

(27) *Baker v. White* (1885), 1 T. L. R. 536. See also *Heath v. Brighton Cpn.*, ante, p. 189.

(28) *Rushmer v. Polsue and Alferi, Ltd.*, L. R. 1906, 1 Ch. 234; 75 L. J. Ch. 79; 93 L. T. 823; 54 W. R. 161.

(29) *Christie v. Davey*, L. R. 1893, 1 Ch. 316; 62 L. J. Ch. 439.

(30) *Motion v. Mills* (1897), 13 T. L. R. 427.

(31) *Bartlett v. Marshall* (1895), 44 W. R. 251; 60 J. P. 104.

(32) *Howland v. Dover Harbour Bd.* (1898), 14 T. L. R. 355.

(33) *Heather v. Pardon* (1877), 37 L. T. 393.

<p>ancient tenement, nor actionable, cannot support an easement; and this is applicable both to affirmative and negative easements. On this principle the right to make a noise so as to annoy a neighbour cannot be supported by user unless during the period of user the noise has amounted to an actionable nuisance; and in considering whether any act is a nuisance regard must be had not only to the thing done, but to the surrounding circumstances; what would be a nuisance in one locality may not be so in another.³⁴</p> <p>A <i>quia timet</i> injunction was granted to restrain the owner of certain vacant areas in a town from using them or allowing them to be used for steam roundabouts, shows, etc., since he contended that he had a right to do the acts complained of, and refused to give an undertaking, the inference being that there would be a repetition of the nuisance, and the owner who authorised it being responsible, whether the acts in question were done by his lessee or by his licensee.³⁵</p> <p>The court will restrain by injunction a person who takes part in creating a nuisance by noise, where the cause of complaint is the noise as a whole, so far as it constitutes a nuisance affecting the plaintiff, although the nuisance caused by such person taken alone may not be sufficiently serious to be actionable.³⁶ See also sect. 255 of the present Act.</p> <p>But where there are two distinct nuisances caused by separate and independent <i>tort feasons</i>, there is no joint cause of action at law, and the House of Lords doubted whether the <i>tort feasons</i> could be joined as co-defendants in the same action, even if an injunction only were claimed.³⁷</p> <p>A covenant not to carry on certain specific trades "or any trade or business or occupation whatsoever whereby any unwholesome or offensive or disagreeable matter, deposit, or fluid, or any injurious or offensive or disagreeable noise or nuisance, shall or may be collected, occasioned, caused or made," was held to apply to carrying on a boys' school, although the school was carried on in the ordinary way, and was not <i>ejusdem generis</i> with the specified trades.³⁸</p> <p>Sect. 92. It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke.</p> <p style="text-align: center;">Note.</p> <p>See also the general provision in the Housing of the Working Classes Act, 1885, quoted in the Note to sect. 299, <i>post</i>.</p> <p>Inspectors of nuisances are to be appointed by urban district councils under sect. 189, and by rural district councils under sect. 190: regulations have been made by the Minister of Health with respect to their duties, etc.³⁹</p> <p>If the council make default in enforcing the provisions referred to in the above section, the Minister of Health may compel them to enforce such provisions, or appoint a person to enforce them at the expense of the council: see sects. 106, 299.</p> <p>Sect. 93. Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.</p> <p style="text-align: center;">Note.</p> <p>As to the meaning of the expression "person aggrieved," see the Note to sect. 253. A person aggrieved, or any inhabitant of, or owner of premises within the district may make complaint of a nuisance to a justice under sect. 105, without the intervention of the local authority; or should the district council, on information of a nuisance, fail to do their duty to procure its abatement, the Minister of Health may be requested to authorise a police-officer to take proceedings under sect. 106.</p> <p>If a person aggrieved takes proceedings for the recovery of a penalty under the Act, and the application of the penalty is not otherwise provided for, he will be entitled to one half of the penalty recovered: see sect. 254. Persons not</p>		<p>Sect. 91, n.</p> <p>Noise made by licensee.</p> <p>Noise caused by several persons.</p> <p>Covenant against noise.</p> <p>Duty of local authority to inspect district for detection of nuisances. San. 1866, s. 20.</p> <p>Inspectors of nuisances.</p> <p>Default in enforcing enactments.</p> <p>Information of nuisances to local authority. N.R. 1855, s. 10.</p> <p>Person aggrieved.</p>
<p>(34) <i>Sturges v. Bridgman</i> (1879, C. A.), L. R. 11 Ch. D. 852; 48 L. J. Ch. 785; 41 L. T. 219.</p> <p>(35) <i>Phillips v. Thomas</i> (1890), 62 L. T. 793.</p> <p>(36) <i>Lambton v. Mellish</i>, L. R. 1894, 3 Ch. 163; 63 L. J. Ch. 929; 71 L. T. 385; 58 J. P. 835.</p> <p>(37) <i>Sadler v. Great Western Ry. Co.</i>, <i>post</i>, p. 207.</p> <p>(38) <i>Wauton v. Coppard</i> (1898), 68 L. J. Ch. 8.</p> <p>(39) See Sanitary Officers' Order, 1922, <i>post</i>, Vol. II., Part V.</p>		

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aggrieved can only prosecute for penalties with the consent of the Attorney General: see sect. 253.
Proceedings in a superior court may be taken by the district council under sect. 107, if summary proceedings would not afford an adequate remedy. It is also provided by sect. 111, that the nuisance clauses of this Act are not to take away any right or remedy under other clauses of this Act or of other Acts.

Local authority to serve notice requiring abatement of nuisance.
San. 1866, s. 21.

Sect. 94. On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose: Provided—
First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:
Secondly. That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order.

Note.

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Abatement of Nuisances.

Steps to abate nuisances.

A public nuisance which is not unsubstantial or very temporary may be abated in any of the following ways: it may be physically dealt with by a person inconvenienced by it,¹ though this is generally a dangerous course to adopt; it may be made the subject of an indictment for misdemeanour at common law;² it may be restrained by injunction at the instance of the Attorney General³; and where it is the subject of special statutory enactment, proceedings may be taken in the manner, summary or otherwise, which may be prescribed by the statute.⁴ Private nuisances, on the other hand, are the subjects of actions for damages or for injunction at the suit of the persons injured by them, even though they may at the same time be public nuisances; or, where they are dealt with by statute, such persons may adopt the prescribed statutory procedure.⁵ If an action for damages is brought in the county court, that court has jurisdiction to grant an injunction to restrain the continuance of the nuisance which caused the damage, and to enforce the injunction if necessary by attachment.⁶ In a proper case, the Attorney General will grant his *fiat* for a county court action.⁷

Default of council.

Should the district council make default in doing their duty with respect to the abatement of a nuisance, the Minister of Health may cause proceedings to be instituted under sect. 106; see also sects. 92 and 299.

Notice to Abate Nuisance.

Form of notice.

A notice requiring the owners of certain fish manure works “forthwith after the service of this notice” to abate a nuisance from accumulations of filth and noxious vapours at the works, was held to indicate a sufficiently specific time within which the nuisance was to be abated, to comply with the present section.⁸ The time specified must be reasonably sufficient to enable the person served with the notice to carry it out properly.⁹ Further as to “forthwith,” see footnote.¹⁰

As to the necessity for specifying in detail the work which is required, see the Note to sect. 96.

(1) See *Jones v. Williams*, *post*, p. 212.
(2) *Rex v. White*, *post*, p. 222.
(3) As to the necessity for obtaining the *fiat* of the Attorney General, see the Note to s. 107, *post*, p. 208.
(4) As to the “exclusiveness” of statutory remedies, see the Note to s. 299, *post*.
(5) See also the Note to s. 107, *post*, p. 206.
(6) *Martin v. Bannister* (1879, C. A.), L. R. 4 Q. B. D. 491; 28 W. R. 143; s.c. *nom. Reg. v. Harington*, 48 L. J. Q. B. 677; 43 J. P. 829.
(7) In the case in which this opinion was expressed by the Attorney General’s Depart-

ment, it was decided that the plaintiff had sufficient interest to proceed without the *fiat*. M.S.
(8) *Thomas v. Western Steam Trawling Co.* (1894), 59 J. P. 232.
(9) See *Ryall v. Cubitt Heath*, cited in Note to H. T. P. Act, 1919, s. 28, *post*, Part II., Div. III.
(10) *Thomas v. Nokes* (1868), L. R. 6 Eq. 521; 58 J. P. 672; “forthwith” is sufficient statement of time for purposes of Order LI., rule 5. Followed in *Halford v. Hardy* (1900), 81 L. T. 721.

A form for the notice is given in the Fourth Schedule of the present Act (Form A.); and it will be seen from sects. 255 and 267 that the name of the owner or occupier need not necessarily be inserted. Sect. 267 also provides for the mode of service of notices, and sect. 266 for their authentication. The case of a nuisance caused by several persons jointly is provided for by sect. 255; and the case of one caused by an act or default committed or taking place without the district, by sect. 108.

Under the corresponding section of the Public Health (London) Act, 1891,⁷ the service of a nuisance abatement notice during the vacation was held valid in these circumstances. In July the chairman of a public health committee was given power to deal with urgent cases during that period. In September the medical officer of health served a nuisance intimation notice, it was not complied with, and the officer reported that fact to the chairman. He considered the matter urgent and directed the service of a statutory abatement notice. In October the council approved what had been done, and directed the taking of summary proceedings. These were based on the statutory notice and were successful. A rule *nisi* for *certiorari* quashing the conviction was discharged (Atkin, J., dissenting).⁸

A notice under the present section is a step in the process which, if the nuisance is not abated, empowers the local authority to enter the premises and abate it themselves, and the remedy is not merely a personal remedy against the person to whom the notice is given. On this ground it was held that an order might be made against a person who had ceased to be owner of the premises since the notice was served upon him.⁹

In cases in which "the person by whose act, default, or sufferance, the nuisance arises or continues," and "the owner of the premises on which the nuisance arises," are different persons, it may not always be clear whether the latter is the only person who can be served with the notice when the premises are unoccupied, or when the nuisance arises from the want or defective construction of a structural convenience. If the person causing the nuisance is not always to be sought for in the first instance, the question may arise whether the "want or defective construction" of the structural convenience has reference only to cases in which the owner neglected to provide a properly constructed convenience before the commencement of the tenancy, or has reference to all cases in which the convenience is absent or its construction is defective for the time being, even though its absence or condition may be due to the act or negligence of a tenant still in occupation.

Under sect. 12 of the Nuisances Removal Act, 1855,¹⁰ summary proceedings were to be taken against the person who caused the nuisance, or, if he could not be found, against the owner or occupier of the premises; and a provision corresponding to the present section and containing similar provisos was only introduced by the Sanitary Act, 1866,¹¹ which required the preliminary notice to be served before proceedings under the earlier enactment were commenced. And in 1868, Cockburn, C.J., pointed out¹² that the justices had to consider by whose act, etc., the nuisance was caused, and that if no such person could be discovered they had authority to summon the owner or occupier of the premises. In re-enacting the two provisions above mentioned in the present and following sections of this Act, an alteration in the language used has been made, and the summary proceedings are to be taken against the person on whom the notice is served. It may be that this has had the effect of applying the first proviso, not only to cases in which the person actually causing the nuisance cannot be found, and consequently either the owner or the occupier must be served, but also to every case in which the nuisance arises on unoccupied premises, and to every case in which it arises from want of or defect in a structural convenience; but it is difficult to see any sufficient reason why, when the person who caused the nuisance is known and can be found, the responsibility for such nuisance should be shifted from him to the owner of the premises, either because the premises are unoccupied, or because he has caused the nuisance by removing a structural convenience and not by depositing filth, or in some such manner.

The dismissal of a summons under sect. 95 against the owner of several houses drained by a single line of pipes, on the ground that the line of pipes was a

Sect. 94, n.

Service in vacation.

Person to be served with notice.

(7) 54 & 55 Vict. c. 76, s. 4.
 (8) *Rex (Arlidge) v. Chapman*, L. R. 1918, 2 K. B. 298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525. *Firth v. Staines*, cited in Note to s. 200, *post*, followed; *Shoreditch Vestry v. Holmes*, cited *ibid.*,

distinguished. See also *Mather's Case*, *post*, p. 231 (46).

(9) *Broadbent v. Shepherd*, *ante*, p. 21.

(10) 18 & 19 Vict. c. 121, s. 12.

(11) 29 & 30 Vict. c. 90, s. 21.

(12) In *Brown v. Bussell*, *post*, p. 194.

Sect. 94, n.
Person to be
served with
notice—*cont.*

"sewer," and that the nuisance, which arose from defects in the pipes, was due to the default of the local authority and not of the owner, was upheld by the Divisional Court; but the only question discussed in that court was whether the structure was a "sewer" vested in the local authority.¹³

The Divisional Court held that the words in the present section "cannot be found" do not impose upon the local authority any obligation to find out (e.g., by opening the ground or pushing rods through a drain) what is the cause of a nuisance before they select the person upon whom to serve the notice to abate.¹⁴ The remedy, therefore, of an owner who is served with such a notice is either to ascertain for himself the cause of the nuisance, and, if he finds that it has been caused by his tenant, defend the proceedings on that ground, or to submit to the imposition of a penalty and recover his expenses from the tenant. As the latter would, in most cases, be an unsatisfactory remedy, the practical result of the decision seems to be that an owner must, on receipt of such a notice, himself at once ascertain the cause of the nuisance. If the defect is structural, he must abate the nuisance. If it is not, then he can defend the proceedings. Where a tenant is served, the converse follows.¹⁵

Proof of
service.

As to the admissibility of secondary evidence to prove the service of a notice under the present section, see the case referred to below.¹⁶

Person causing Nuisance.

Chapel super-
intendent.

The person who was appointed by a committee of a religious body to superintend a chapel used at night as a shelter for destitute persons, and who gave orders to the caretaker as to the admission of persons, without consulting the committee, was held to be the person by whose act, default, or sufferance a nuisance arose from the overcrowding of the premises.¹

Owner of
market.

A., claiming to be owner of the markets and fairs held in a town, erected an inclosure of hurdles as a sheep-pen in front of a house, and took toll for sheep exposed for sale therein. After the removal of the sheep their droppings and urine remained, and a complaint was lodged against him by the inspector of nuisances in respect thereof. For fifty-five years the occupiers of the houses before which sheep were penned, had been in the habit of clearing away the droppings. It was held that A. was a person by whose "permission or sufferance" the nuisance was created, that the sheep-pen was "premises" within the meaning of the Nuisance Removal Act, 1855,² and that the nuisance was a recurring nuisance.³

Person
discharging
sewage.

In the two following cases, judgment was delivered at the same time. In the one case, B. was the owner of a brewery, and sent the refuse and sewage from his premises on to the land of A, where it met the refuse from other sewers, and caused a nuisance on the land of A. No nuisance was caused on the land of B.; but B.'s contribution of refuse was the main cause of the nuisance. B., under such circumstances, was held liable for the nuisance as the person by whose "act, default, permission, or sufferance" the nuisance arose. In the other case, C. was the owner of certain houses, for the use of which he had constructed a drain leading under a private road, and thence to a stream in the lands of D. The refuse polluted this stream, and caused a nuisance on the lands of D., though none was caused on the lands of C. C. was held to be liable for the nuisance on the lands of D., as the person by whose act it was caused, though he claimed to discharge his refuse as an easement.⁴

A. was the owner of property on which certain cesspools existed, which contained the sewage from several houses also his property. This sewage, together with the sewage of houses belonging to other persons, overflowed in rainy weather and passed through pipes under the highway, into an open ditch on a field belonging to B., where it became a nuisance. The cesspools and pipes were properly constructed and no default was attributable to the tenants of the houses. The justices refused to make an order on A. for the abatement of the nuisance, and it was held that they were right; but the case was remitted to them for the finding of

(13) *Travis v. Uttley*, ante, p. 34.

(14) *Rhymney Iron Co. v. Gelligaer U.D.C.*, L. R. 1917, 1 K. B. 589; 86 L. J. K. B. 564; 116 L. T. 339; 81 J. P. 86; 15 L. G. R. 240.

(15) See *Gebhardt v. Saunders*, cited in Note to s. 257, post.

(16) *Andrews v. Wirral R.D.C.*, cited in Note to s. 157, post.

(1) *Reg. v. Mead*, ante, p. 183.

(2) 18 & 19 Vict. c. 121, s. 2.

(3) *Draper v. Sperring* (1861), 10 C. B. (N.S.) 113; 30 L. J. M. C. 225; 4 L. T. 365; 25 J. P. 566.

(4) *Brown v. Bussell*, and *Francomb v. Freeman* (1868), L. R. 3 Q. B. 251; 37 L. J. M. C. 65; 18 L. T. 19; 32 J. P. 196; 9 B. & S. 1.

further facts.⁵ The case was restated, and the court held that an order might be made on each party whose sewage assisted in causing the nuisance, and that the justices therefore in such a case should ascertain whether the discharge from the premises of the defendant was sufficient to create a nuisance, and make an order accordingly.⁶ Sect. 255 expressly allows proceedings to be taken against any one or more of the persons who jointly cause a nuisance, although his or their acts or defaults separately would not have caused it.

From one of two barrel drains connecting the appellant's works with the public sewers, a liquid containing muriatic acid was discharged, and from the other a liquid containing sulphur, and the liquids mingling together in the sewer, sulphuretted hydrogen was produced and escaped into the streets and houses in such quantities as to be dangerous to health. It was held that, though the appellant's drains were not kept so as to be a nuisance, the Nuisances Removal Act, 1855, which did not define "drain" or "sewer," did not limit the word "drains" to the two barrel drains, or prevent it from applying to the sewer in which the gas was generated; and that the fact that the respondents had neglected to cleanse or trap the sewer was no answer.⁷

The owner of land, without the occupier's consent, made a sewer under the land, and sewage passed through it for two years. Pecuniary compensation was claimed at the time; but the occupier could get no satisfaction from the owner, and he therefore stopped up the sewer. Whereupon the local board, in whom the sewer was vested, obtained a conviction against him under sects. 94 and 96; and although no nuisance existed on the land in his occupation, it was held that he was rightly convicted, as the person by whose act the nuisance arose and continued.⁸

Where a nuisance existed on a common which was managed by a committee of the copyholders, the committee, and not the lord of the manor, were the persons by whose act and default the nuisance arose, and were the persons to be proceeded against.⁹

If the nuisance arises from the default of the local authority in repairing or cleansing a conduit or channel, which is a "sewer" as defined by sect. 4, and is vested in them, they cannot under the nuisance clauses of the Act throw upon an individual the responsibility for the nuisance.¹⁰ And an owner was held not to be responsible for a nuisance which had arisen in certain privies by reason of the neglect of the local authority to cleanse them under sect. 42.¹¹ But a person who discharged into a highway drain sewage which caused a nuisance at a spot at which the drain had been broken, was held to be responsible as the person by whose act the nuisance arose, even if the drain was a "sewer,"¹²

In a case which arose under the Public Health (London) Act, 1891, with reference to a drain of which the upper part was used to convey the drainage from adjoining premises and the lower part was used as a combined drain (made under an order of the local authority, and therefore not a "sewer" within the meaning of the Metropolis Management Acts), it had been decided on appeal from a county court that the lessee of the adjoining premises was not liable under any implied contract to contribute to the expenses incurred by the lessee of the premises, through which the drain was laid, in complying with a magistrate's order to abate a nuisance by repairing the drain, and the action had been sent back for a new trial. On the second trial the county court judge held that as there was nothing to show that the defendant was liable to repair the drain, he was not a person by whose act or default the drains allowed sewage to escape and cause the nuisance; and on appeal the Divisional Court declined to interfere with his decision, holding that although the defendant might have been entitled to enter the plaintiff's premises to repair the drain if he had thought fit to do so, there was not, and the local authority could not impose upon him, any duty to repair it, the statutory liability not depending upon user of the drain, but upon obligation to prevent the nuisance.¹³

Sect. 94, n.

Person
discharging
sewage—*cont.*

Occupier
stopping
discharge of
sewage.

Committee of
commoners.

Nuisance
caused by
default of
local
authority.

Nuisance
caused by
neglect to
repair.

(5) *Hendon Union v. Bowles* (1868), 17 L. T. 597.

(6) *Hendon Union v. Bowles* (1869), 20 L. T. 609; 16 W. R. 510; 34 J. P. 19.

(7) *St. Helen's Chemical Co. v. St. Helen's Cpn.* (1876), L. R. 1 Ex. D. 196; 45 L. J. M. C. 150; 34 L. T. 397; 40 J. P. 471.

(8) *Riddell v. Spear* (1879), 40 L. T. 130; 43 J. P. 317. See also *Hinckley R.D.C. v. Cockerill*, *ante*, p. 54.

(9) *Richmond Guardians v. Dean and Chapter of St. Paul's* (1868), 18 L. T. 522; 32

J. P. 374.

(10) See *ante*, p. 34.

(11) *Barnett v. Laskey*, *ante*, p. 118.

(12) *Wincanton R.D.C. v. Parsons*, L. R. 1905, 2 K. B. 34; 74 L. J. K. B. 533; 93 L. T. 13; 69 J. P. 242; 3 L. G. R. 771. See also *ante*, p. 39, and *Graham v. Wroughton*, *ante*, p. 88.

(13) *Nathan v. Rouse*, L. R. 1905, 1 K. B. 527; 74 L. J. K. B. 285; 92 L. T. 321; 69 J. P. 135; 3 L. G. R. 354. See also *post*, p. 207 (11).

Sect. 94, n.

Meaning of owner.

Owner without right of entry.

Statutory body.

Workman.

Landlord and tenant.

Order for specific works.

On non-compliance with notice complaint to be made to justice.

N.R. 1855, s. 12.

Owner.

The "owner" of the premises is the person for the time being receiving the rackrent, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rackrent.¹⁴

A corporation deposited manure and ashes on certain land in pursuance of an agreement with the occupier. The deposit caused a nuisance, but the court held that the corporation could not be ordered to abate the nuisance, since the occupier of the land was responsible for the nuisance from the time when the deposit was placed upon the land, and the corporation had no right to enter on such land to remove the deposit, though they could be prohibited, under sect. 96, from causing a recurrence of the nuisance, by making further deposits.¹⁵ But it has since been held that the justices may make an order on the owner of premises to abate a nuisance arising from defective construction of a structural convenience, although such owner, under a lease granted by him, may have no right to enter on the premises for the purpose of executing the necessary works. In such circumstances it is for the owner subsequently to satisfy the court, under sect. 98, that he has used all due diligence to carry out the order, and in that case the local authority will have power to enter and execute the works.¹⁶

Under the Factory and Workshop Act, 1891,¹⁷ it was held that a magistrate rightly dismissed a summons for non-compliance with a requirement made by the local authority on the owner of premises to provide means of escape from fire, when the carrying out of the requirement would have necessitated the commission of a trespass on the premises of an adjoining owner.¹⁸

Sea-weed was, by the action of the sea, drifted into a harbour belonging to a company of proprietors, and being left there became a nuisance. The company were held bound to remove it, and as they had not effectually done so, an order made upon them under the Nuisances Removal Act, 1855,¹⁹ was held to have been rightly made.²⁰ But the Conservators of the River Thames, having regard to the limited character of their statutory powers, were held not to be liable under the Public Health (London) Act, 1891 (which contains a similar definition of "owner" to sect. 4 of the present Act, and a more extended definition of "premises"), to abate a nuisance on a part of the foreshore of the river which was vested in them.²¹

Occupier.

The occupier of the premises, and not a workman employed by him, was held to be the proper person against whom proceedings should be taken, where a nuisance arose from smoke from a factory chimney, although the fire from which the smoke proceeded was lighted by the workman.²²

With regard to the liability to defray the expenses incurred in complying with a notice to abate a nuisance, as between landlord and tenant, and with regard to the recovery of such expenses by a person not ultimately liable who has incurred them under compulsion, see the Note to sect. 257; and with regard to the person liable to indictment or action for damages or injunction in respect of a nuisance, see the Note to sect. 107.

Works for Abatement of Nuisance.

With regard to the question whether the notice of the district council, and the subsequent order of justices made on default of compliance with the notice, may direct the execution of specified works, or whether these are to be left to the discretion of the person to whom the notice is given, see the Note to sect. 96.

Sect. 95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time

(14) See Note on this definition, *ante*, p. 15.

(15) *Scarborough Cpn. v. Scarborough R.S.A.* (1876), L. R. 1 Ex. D. 344; 34 L. T. 768; 40 J. P. 726; followed in *Letterkenny Comrs. v. Collins* (1891), 28 L. R. Ir. 235. And see *Reg. v. Trimble* (1877), 36 L. T. 508; s.c. *nom. Reg. v. Cumberland JJ.*, 41 J. P. 45; and "refuse tip" cases collected in Note to s. 42, *ante*.

(16) *Parker v. Inge* (1886), L. R. 17 Q. B. D. 584; 55 L. J. M. C. 149; 55 L. T. 300; 51 J. P. 20. See also *Lancaster v. Barnes U.D.C.*, cited in Note to P. H. Act, 1890, s. 19, *post*, Part I., Div. II.

(17) 54 & 55 Vict. c. 75, s. 7 (2).

(18) *London C.C. v. Brass* (1901, K. B. D.), 17 T. L. R. 504; Loc. Gov. Chron. 600. See also *post*, Vol. II., p. 2146.

(19) 18 & 19 Vict. c. 121, s. 12, corresponding to s. 96 of the present Act.

(20) *Margate Pier and Harbour Co. v. Margate Cpn.* (1869), 20 L. T. 564; 33 J. P. 437.

(21) *Thames Conservators v. Port of London P.S.A.*, L. R. 1894, 1 Q. B. 647; 63 L. J. M. C. 121; 69 L. T. 803; 58 J. P. 335.

(22) *Barnes v. Akroyd or Ackroyd* (1872), L. R. 7 Q. B. 474; 41 L. J. M. C. 110; 26 L. T. 692; 37 J. P. 116.

specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction. **Sect. 95.**

Note.

The local authority must give either a special or a general authority to prosecute.²³ **Authority to prosecute.**
A form for the summons is given in the Fourth Schedule of the present Act (Form B). **Procedure.**

A definition of "court of summary jurisdiction" is given by sect. 4; see also sects. 251 and 252 with regard to summary proceedings, and sect. 259 with regard to the appearance of the district council thereon.

With regard to the notice and the person on whom it is to be served, see sect. 94, and the Note thereto.

If the council think that summary proceedings would afford an inadequate remedy, they may proceed by action in the High Court: see sect. 107. If they make default in procuring the abatement of a nuisance, the Minister of Health may be asked to act under sect. 106.

The jurisdiction of the justices under the Nuisances Removal Act did not arise if the nuisance were only consequential to an act done by persons in another district: therefore where in a parish having a local authority acting under that Act, there was a nuisance in a stream of water occasioned by the acts of certain persons in an adjoining parish not within the district of the local authority, it was held that the authority had no powers under the Act to proceed summarily against the person causing the nuisance.²⁴ Now, however, sect. 108 of the present Act empowers district councils to procure the abatement of nuisances arising without their district. **Jurisdiction of justices.**

It was held that a metropolitan police magistrate, who had heard an applicant for a summons under the Sunday Observance Act, 1822,²⁵ and refused to issue the summons on the ground that, even if the facts stated were proved, the summons would be dismissed as vexatious, had exercised his discretion properly.²⁶ It is doubtful, however, whether this decision would be followed if sought to be applied to the present section, having regard to the use of the words "shall thereupon issue." **Discretion of justices.**

Sect. 96. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance. **Power of court of summary jurisdiction to make order dealing with nuisance.**

The court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made, and shall also give directions as to the payment of all costs incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance. **N.R. 1855, s. 13.**

Note.

The complaint must be made within six months from the time when the cause of complaint arose, but this does not prevent proceedings from being taken, in the case of a continuing nuisance, more than six months after the nuisance first commenced—see the Note to sect. 251 under the heading "Limitation of Time." **Limitation of of time.**

A form for the order of the justices is given in the Fourth Schedule of the present Act (Form C). An appeal against it lies to quarter sessions: see sects. 99 and 269. The order may be signed by one justice only, whether he is or is not a stipendiary or other magistrate having the powers of two justices.²⁷ **Form of order.**

(23) See *Bowyer Philpott & Payne, Ltd. v. Mather*, and other cases cited in Note to s. 259, *post*.
(24) *Reg. v. Cotton* (1858), 1 E. & E. 203; 28 L. J. M. C. 22; 5 Jur. (N.S.) 311; 23 J. P. 532.
(25) 3 Geo. IV. c. cvi. s. 16.
(26) *Rex (Vinters) v. Bros* (1901, K. B. D.), 85 L. T. 581; 66 J. P. 54; 20 Cox C. C. 89.
(27) S. J. Rules, 1915, r. 53, under Crim. J. Adm. Act, 1914 (4 & 5 Geo. V. c. 58), s. 40. For previous law on this subject, see *Wing*

**Sect. 96, n.
Penalty.**

**Order for
specific
works.**

Under the Nuisances Removal Acts the person causing a nuisance was not liable to a penalty unless he disobeyed an order to abate it; under the present section, however, the justices may, by the order for the abatement of the nuisance, impose a penalty of £5 and costs on the person on whom such order is made.

In an action in the county court against a rural sanitary authority for pulling down a hut under a justices' order under sect. 97, it appeared that the plaintiff had for twenty years occupied a mud hut, on waste land. He had been summoned for occupying a house which was unfit for human habitation, and ordered to vacate it in thirty days. He was fined for non-compliance with the order, and was imprisoned for non-payment of the fine. The order of justices to the inspector of nuisances was in general terms, namely, to "take the necessary steps to abate the nuisance." This the inspector did by pulling the hut down. The county court judge held that the authority had *bonâ fide* carried out the order of the justices, and the plaintiff was non-suited. On appeal, the court said the nuisance was the house, and the order was to do all that was necessary to abate the nuisance, and the only way in which it could be abated was by pulling it down. The authority were not bound to repair or rebuild, and the owner would not do it nor abate the nuisance, and so the authority were called upon to do so and were fully justified in what they had done; and the judgment of the county court judge was upheld.²

In a case in which a sanitary authority had directed an existing work to be entirely abolished, namely, an ashpit to be filled up, and the justices made an order accordingly, it was held that the sanitary authority and the justices had exceeded their jurisdiction.³ But, as was pointed out in a later case, the fact that the forms given in Sched. IV. form part of the Act was not brought to the attention of the court.⁴ And in the next case on the subject, it was held that a specific alteration of an existing work might be ordered. A water-closet in the centre of a house being a nuisance, the sanitary authority gave notice to the owner of the house to abate that nuisance, and for that purpose to remove the closet from the centre of the house and place it near an outer wall where there might be efficient ventilation, and to fix the soil pipe outside the walls. The owner making default in so doing, the justices ordered him to do the things specified. This order was upheld by the court.⁵

Again, a privy discharged night-soil and offensive matter on the bank of a river. The sanitary authority served the owner of the premises with a notice to abate the nuisance, and for that purpose "to remove the present pipes and pan, level the floor under the seat of the privy, and provide a galvanized double handle fixed under the seat, the cover of which said seat to be movable, so that the premises should no longer be a nuisance or injurious to health," and the justices at sessions made an order in the terms of the notice. It was held that they had jurisdiction to make the order.⁶ So in another case they were held to have power to make an order to deodorize and fill in certain privies, and convert them into proper pan water-closets, and connect them with the main drains.⁷ And, lastly, the court has held that the order of justices *must* specify the works and things to be done, and made absolute a rule for a *certiorari* to quash an order which only required the defendant to abate the nuisance, "and for that purpose to execute such works as may be necessary to completely remove the nuisance, and prevent its recurrence."⁸ This was followed in a case in which the proceedings had been taken by a private person under sect. 105, and not by the local authority. The order, however, was only quashed so far as it required the appellant to take steps as might be necessary to abate the nuisance, and was confirmed so far as it prohibited him from doing any such acts as might lead to a recurrence of the nuisance.⁹

A notice which merely required an owner "to drain off the water, and to fill

v. Epsom U.D.C., L. R. 1904, 1 K. B. 798; 73 L. J. K. B. 389; 90 L. T. 543; 68 J. P. 259; 2 L. G. R. 714; distinguished in *Rex (Donnell) v. Londonderry JJ.* (1910), 1 Glen's Loc. Gov. Case Law 83. See also *Rex v. Down JJ.*, 1904 Ir. K. B. 648, as to entries in order books.

(2) *Brown v. Biggleswade Guardians*, *Times*, 19th May, 1879; 43 J. P. 554, n.

(3) *Ex parte Whitchurch* (1881), L. R. 6 Q. B. D. 545; 50 L. J. M. C. 41, 99; 29 W. R. 507; s.c. *nom. Whitchurch v. Nottingham JJ.*, 45 J. P. 392.

(4) *Reg. v. Kent JJ.* (1885), 49 J. P. 404, n.;

1 T. L. R. 539.

(5) *Ex parte Saunders* (1883), L. R. 11 Q. B. D. 191; 52 L. J. M. C. 89; 47 J. P. 584.

(6) *Reg. v. Llewellyn* (1884), L. R. 13 Q. B. D. 681; 33 W. R. 150; 49 J. P. 101.

(7) *Whitaker v. Derby U.S.A.* (1885), 55 L. J. M. C. 8; 50 J. P. 357.

(8) *Reg. v. Wheatley* (1885), L. R. 16 Q. B. D. 34; 55 L. J. M. C. 11; 54 L. T. 680; 50 J. P. 424. Followed in *Reg. v. Meath JJ.* (1899), 34 Ir. L. T. 47.

(9) *Reg. v. Horrocks* (1900), 69 L. J. Q. B. 688; 82 L. T. 767; 64 J. P. 661.

up the cellar, and to execute all such other works, and do all such other things as may be necessary for the abatement of the said nuisance," was held bad as being too vague.¹⁰ *Per* Lush, J.¹¹ : "It may mean that the respondent was to effectively drain the water from the cellar, or it may mean that he was only to pump out the water in the cellar." *Per* Ridley, J.¹² : "I think that the notice must say whether it is drainage, building, or bricks, or whatever it is that is required to be done in a general way. I do not think it is necessary to set out everything that is to be done, or the way in which it is to be done."

In the case, however, of such a nuisance as that caused by a chimney sending forth black smoke, the execution of works may not be necessary, and in that case it is sufficient to require the person responsible to abstain from permitting the smoke to issue from the chimney.¹³

An order of justices prohibiting a person "from doing any such acts as might lead to a recurrence of the nuisance" was confirmed, no works being necessary to prevent the nuisance, which had arisen from an accumulation of offal and filth in a slaughter-house, from recurring.¹⁴

The district council must exercise their discretion with respect to each particular case in which a nuisance is alleged to exist, and not merely carry out a general rule which they have laid down, requiring the execution of certain works wheresoever they may not already be provided, without regard to the circumstances of the case.¹⁵

The wife of an occupier wrote to the inspector of nuisances asking him to inspect her premises and compel the landlord to cleanse and repair them. The inspector inspected the premises and served on the occupier, under sect. 94 of the present Act, a notice requiring him to abate the nuisance caused by the dirty condition of the premises. The occupier failed to comply with this notice, and the inspector, on the instructions of the local authority, took summary proceedings against him under sect. 95 of the present Act for the penalty imposed by the present section. These proceedings were dismissed with five guineas costs. The occupier then brought an action for damages for malicious prosecution against the inspector and the local authority. Horridge, J., ruled that the defendants had no reasonable and probable cause for taking the above proceedings, and the jury found that they had taken them maliciously and awarded £250 damages. The case was reserved for further consideration, and it was then contended by the plaintiff that he was entitled to judgment for the amount awarded by the jury because there was,¹⁶ (1) damage to his "fame, as if the matter whereof he is accused be scandalous," the proceedings before the justices having been "criminal," and (2) damage to his "property, as where he is forced to expend his money in necessary charges, to acquit himself of the crime of which he is accused," his solicitor and client costs having amounted to £5 15s. more than the sum allowed by the justices. It was contended by the defendants, as to (1) that the nuisance abatement proceedings did not involve scandal to the plaintiff's fame, and, as to (2), that the costs awarded by the justices must be taken to have been in satisfaction for any injury under this head. Horridge, J., decided, as to (2), that the defendants' contention succeeded,¹⁷ but, as to (1), that the plaintiff's contention succeeded,¹⁸ and that judgment must be entered for the plaintiff against both defendants. The Court of Appeal, however, held that judgment must be entered for the defendants, as the imputation conveyed by the notice did not necessarily and naturally attack the fair fame of the person on whom it was served.¹⁹

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Prohibiting recurrence of nuisance.

General rule.

Malicious prosecution.

Sect. 97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on the court being satisfied that it

Order of prohibition in case of house unfit for human habitation.
N.R. 1855, s. 13.

(10) *Whatling v. Rees* (1914), 84 L. J. K. B. 1122; 112 L. T. 512; 79 J. P. 209; 13 L. G. R. 274.

(11) *Ibid.*, 13 L. G. R. at p. 283.

(12) *Ibid.*, 13 L. G. R. at pp. 281, 282.

(13) *Millard v. Wastall*, L. R. 1898, 1 Q. B. 342; 67 L. J. Q. B. 277; 77 L. T. 692; 62 J. P. 135. Followed in *Central London Ry. Co. v. Hammersmith B.C.* (1904), 73 L. J. K. B. 623; 90 L. T. 645; 68 J. P. 217; 2 L. G. R. 446.

(14) *Reg. v. Horrocks*, ante, p. 198.

(15) See ante, p. 110, and post, p. 203.

(16) Within Lord Holt's judgment in *Saville*

v. Roberts, 1699, 1 Lord Raymond 374.

(17) Applying *Barnett v. Eccles Cpn.*, L. R. 1900, 2 Q. B. 423.

(18) Applying *Reg. v. Whitchurch*, 1881, L. R. 7 Q. B. D. 534; and *Rayson v. South London Tramways Co.*, L. R. 1893, 2 Q. B. 304.

(19) *Wiffen v. Bailey and Romford U.D.C.* (C. A.), L. R. 1915, 1 K. B. 600; 84 L. J. K. B. 688; 112 L. T. 274; 79 J. P. 145; 13 L. G. R. 121. For a successful action of this kind, see *Maas v. Gaslight and Coke Co.*, post, Vol. II., p. 1207.

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has been rendered fit for that purpose the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

Note.

Houses unfit for habitation.

See also sect. 109 as to closing an overcrowded house on a second conviction within three months after the first, and see the power given by sect. 157 to urban district councils to make bye-laws with respect to houses which have been erected after the constitution of the urban district and are unfit for habitation. See also sects. 17 and 18 of the Housing, etc., Act of 1909.²⁰

Implied condition.

Sect. 75 of the Housing of the Working Classes Act, 1890, re-enacting a provision of the Housing of the Working Classes Act, 1885,²¹ created, in every contract made after 14th August, 1885, for letting for habitation a house or part of a house at a rent not exceeding the sum mentioned as the limit for composition for rates in the Poor Rate Assessment and Collection Act, 1869,²² an implied condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. This provision was extended by sects. 14 and 15 of the Act of 1909.²⁰

Empty house.

The fact that certain houses had for five and a half years been closed by the owner for all purposes of human habitation, and had not been used for such purposes during that period, and that the owner had no intention of allowing them to be so used in their then condition, did not prevent a closing order under the Housing of the Working Classes Act, 1890,²³ from being made with respect to the houses.²⁴

Penalty for contravention of order of court.
N.R. 1855, s. 14.

Sect. 98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance, shall, if he fails to satisfy the court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default; and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action; moreover, the local authority may enter the premises to which any order relates, and abate the nuisance, and do whatever may be necessary in execution of such order, and recover in a summary manner the expenses incurred by them from the person on whom the order is made.

Note.

Penalties.

With regard to the recovery of penalties, see sects. 251-253.
The penalty under the present section cannot be recovered without a fresh summons being taken out for disobeying the justices' order to abate the nuisance.²⁵
Sect. 306 imposes penalties on persons obstructing the district council or their officers in the execution of the Act, and on occupiers of premises preventing the owners from obeying the provisions of the Act.

Contravention of order.

An order to abate a nuisance by removing offensive privies, etc., was directed to "the owner or to the Nuisances Removal Committee," the owner being required to remove the privies, etc., within seven days, and the committee being authorised and required, if such order should not be complied with, to enter and remove the nuisance complained of. The seven days elapsed without the owner or the committee having removed the nuisance. It was held that the justices had power to fine the owner, under the corresponding clause of the Nuisances Removal Act, 1855,²⁶ for disobedience to the order, although it was directed to the committee as well as to him.²⁷

Execution of works by local authority.

Under sects. 102 and 305 the district council can enforce the admission of their officers to premises for the purpose of carrying out the provisions of the Act in certain cases.
The clause of the Nuisances Removal Act, 1855, above mentioned, which imposed a penalty on persons, on whom an order of justices had been made under the Act,

(20) These Acts are set out and annotated post, Part II., Div. III.
(21) 48 & 49 Vict. c. 72, s. 12.
(22) 32 & 33 Vict. c. 41, s. 3.
(23) 53 & 54 Vict. c. 70, s. 32, repealed by Act of 1909, post, Part II., Div. III.
(24) *Robertson v. King*, L. R. 1901, 2 K. B. 265; 70 L. J. K. B. 630; 84 L. T. 842; 65 J. P. 453. See also *Slight v. Portsmouth Cpn.*, cited in Note to s. 182, post.
(25) See *Reg. v. Jenkins* (1862), 3 B. & S. 116; 32 L. J. M. C. 1; 9 Jur. (N.S.) 570; 7 L. T. 272; 26 J. P. 775.
(26) 18 & 19 Vict. c. 121, s. 14.
(27) *Tcmllins v. Great Stanmore Nuisance Removal Committee* (1865), 12 L. T. 118; 29 J. P. 117.

for disobedience to the order, and authorised the local authority to enter on the premises and abate the nuisance, was merely permissive in the latter respect; and an application for a *mandamus* to compel the local authority to enforce the order on the default of the person upon whom it was made was refused on the ground that the board had a discretion in the matter.²⁸ But a body under a statutory obligation to “ drain effectually ” cannot escape by calling their powers “ permissive ” or by claiming a discretion as to “ method,” and, where their Acts provide no special remedy, the prerogative writ of *mandamus* will be granted, and, if the return to the writ is not satisfactory, damages will be granted and a “ peremptory ” writ issued.²⁹

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Sect. 99. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted.

Appeal against order.
N.R. 1855, ss. 15, 16.

Note.

With regard to appeals to quarter sessions, see sect. 269. See also the provision in sect. 268 with regard to appeals to the Minister of Health.

Appeals.

Sect. 100. Whenever it appears to the satisfaction of the court of summary jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the court may be addressed to and executed by the local authority.

In certain cases order may be addressed to local authority.
N.R. 1855, s. 17

Note.

A form for an order under the present section is given in the Fourth Schedule of the present Act (Form D).

Form of order.

Sect. 101. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Power to sell manure, &c.
N.R. 1855, s. 8.

Note.

The marginal note “ power to sell manure, etc.,” suggests the kind of “ matter or thing ” which may be sold under this section.
See sect. 49 with regard to the sale or disposal of filth in the cases there mentioned.

Sale of matter removed.

Sect. 102. The local authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Power of entry of local authority.
N.R. 1855, s. 11.
San. 1866, ss. 20, 31.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made

(28) *In re Ham Loc. Bd. of Health* (1857), 26 L. J. M. C. 64; s.c. *nom. Ex parte Bassett*, 7 E. & B. 280; 3 Jur. (N.S.) 136.

Comrs. (1919, K. B. D.), 17 L. G. R. 679. See also as to this case, *ante*, pp. 81, 90, and *post*, Vol. II., p. 1989.

(29) *Rex (Whittome) v. Marshland Smeeth*

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after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises), may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand authorise the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

Note.**Order for admission.**

The Fourth Schedule of the present Act (Form F) gives a form for the order requiring the person having the custody of premises to admit the district council or their officer. See also the following section, imposing a penalty on any person disobeying an order to admit the council.

On an application to a justice for an order for admission to premises for the purposes of examining as to the existence of a nuisance, the justice can consider whether there is reasonable ground for suspecting the existence of a nuisance, though he has not to decide whether or not there is a nuisance in fact, and the order made by him must be made with reference to a particular subject-matter.¹

Under sect. 305, also, a district council may obtain an order requiring the owner or occupier to admit them or their officer to his premises for certain purposes there mentioned; and sect. 306 imposes a penalty on any person obstructing the execution of the Act. See also sect. 98, which authorises the council to enter on premises to abate a nuisance in respect of which an order of abatement has been made.

Entry on vans, sheds, &c.

As to the power to enter tents, vans, sheds, or similar structures used as human habitations, see sub-sect. (3) of the unrepealed sect. 9 of the Housing of the Working Classes Act, 1885, already quoted in full.²

Notice of intended entry.

A notice of intention to enter premises to examine them³ was held not to be necessary in order to justify proceedings for the abatement of an alleged nuisance.⁴ But before entering upon premises under the present section, permission must first be asked from the occupier; otherwise interference with the member or officer of the local authority who enters on the premises without a justice's order will not constitute obstruction of a person employed in the execution of the Act so as to be an offence under sect. 306.⁵

Inspection of premises.

The present section only gives a power of inspection to the district council and their officers. Constables and other persons may be authorised to enter premises under sect. 105.

Procedure.

Having obtained admission to the premises, the inspection of them should be so conducted as to enable the district council to determine whether the alleged nuisance exists, or whether it existed at the time when the notice was given, and whether, although it has since been removed or discontinued, it is likely to recur or to be repeated; and in all cases it will be the most expedient course to reduce to writing the result of the inspection. When the inspection has been made, it will also be expedient for the council, on receiving the report of their officer, formally, and in writing, to record the conclusions to which they have come after considering his report, in order to ground further proceedings.

Inspection for purposes of action.

When certain persons filed a bill to restrain a nuisance from the manufacture of chemicals, and then applied to the Court of Chancery for leave to inspect the works to ascertain how the nuisance was occasioned, the court held that the nuisance must be proved by something altogether external, and refused the application.⁶

Entry for execution of works.

It should be borne in mind that the Act gives no power to the district council to enter upon any premises to execute works, such as are contemplated by the

(1) *Wimbledon U.D.C. v. Hastings* (1902), 87 L. T. 118; 67 J. P. 45. See also *Vines v. North London Collegiate and Camden School* (1899), 63 J. P. 244, under P. H. (London) Act, 1891; *Duncan v. Dowding*, L. R. 1897, 1 Q. B. 575, under the Licensing Act, 1874; and *McVittie v. Turner* (1915), 80 J. P. 25; 13 L. G. R. 1181, under Cinematograph Act, 1909 (9 Edw. VII. c. 30), s. 4.

(2) *Ante*, p. 174.

(3) Under 18 & 19 Vict. c. 121, s. 11; corresponding to the present section.

(4) *Amys v. Creed* (1868), L. R. 4 Q. B. 122; 38 L. J. M. C. 22; 17 W. R. 118.

(5) *Consett U.D.C. v. Crawford*, L. R. 1903, 2 K. B. 183; 72 L. J. K. B. 571; 88 L. T. 836; 67 J. P. 309; 1 L. G. R. 558.

(6) *Barlow v. Bailey* (1870), 22 L. T. 464; 18 W. R. 783.

present section, except in the event of disobedience of an order of justices; and that, if they make such an entry without an order, they may be restrained; for if a tribunal having a limited jurisdiction goes beyond that jurisdiction, it is unnecessary to resort to the appeal clause of the Act, as the court interferes for the purpose of restraining the exercise of powers beyond the jurisdiction of the bodies exercising them. And further, Turner, L.J., said that it might be as well to caution the defendants, intrusted as they were by the Act ⁷ with very extensive powers, that it was their bounden duty to look well that they kept strictly within their powers, and not to be guided by any fancied opinions of their own as to the "spirit" of the Act by which they were governed. This was in a case in which an injunction to restrain a district board in the Metropolis from pulling down or converting into water-closets the privies attached to certain cottages belonging to the plaintiff was granted on the plaintiff undertaking to proceed without delay to construct at his own expense proper and sufficient works and conveniences on the premises, so as not to be objectionable as a nuisance or liable to removal under the Nuisances Removal Act, 1855. The injunction was confirmed by Knight-Bruce and Turner, L.JJ.; their Lordships holding that, assuming that a district board had jurisdiction to order water-closets to be provided instead of privies in particular cases where such an alteration might be required, yet they were bound to exercise their discretion in each particular instance, and were not empowered to lay down any general rule requiring that in all cases water-closets should be provided in the place of privies; and that the jurisdiction of the court to interfere by injunction was not ousted by the provision ⁸ giving an appeal to the Metropolitan Board of Works.⁹ There is, however, no objection to a general rule applicable to ordinary cases being laid down, provided that in each particular case the circumstances are considered by the council, or the party concerned is afforded the opportunity of bringing to their attention any special circumstances rendering the general rule inapplicable.¹⁰

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Entry for
execution of
works---cont.

Further as to the provision of water-closets, see sect. 36 and Note.

Sect. 103. Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds.

Penalty for
disobedience
of order.
N.R. 1855, s. 36.

Note.

With regard to the recovery of penalties, see sects. 251, *et seq.* See also the penalties imposed by sect. 306, for obstructing the execution of the Act in other ways.

Penalties.

Sect 104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the local authority, or if no order is made, but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises: Provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises.

Costs and
expenses of
execution of
provisions
relating to
nuisances.
N.R. 1855, s. 19.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in any county or superior court; and the court shall have power to divide costs expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just.

San. 1866, s. 34.

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent:

(7) The Metrop. Man. Act, 1855.
(8) 18 & 19 Vict. c. 120, s. 211.
(9) *Tinkler v. Wandsworth Dist. Bd.* (1858),
2 De G. & J. 261; 27 L. J. Ch. 342; 4 Jur.

(N.S.) 293; 22 J. P. 223.
(10) See *ante*, p. 110, and *Frost v. Fulham Vestry*, *post*, p. 392 (5).

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Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier :

Provided also, that nothing herein contained shall affect any contract between any owner or occupier of any house building or other property whereby it is or may be agreed that the occupier shall pay or discharge all rates dues and sums of money payable in respect of such house building or other property, or to affect any contract whatsoever between landlord and tenant.

Note.**Recovery of expenses.**

The expenses of executing a justice's order to abate a nuisance, on default of the person on whom the order is made, may be recovered summarily under sect. 98. The " person on whom the order is made," however, appears to include a person on whom a notice to abate a nuisance is served, although no order of justices has been made.¹

Generally it may be observed with regard to the recovery of expenses, that where a pecuniary obligation is created by a statute, and a remedy is expressly given for enforcing it, that remedy must be adopted.²

Change of ownership.

The real owner of premises was abroad, and on the 21st of May he executed a power of attorney to the defendant to receive the rents for him. This reached the defendant on the 22nd of July, and the rent being payable yearly at Michaelmas, he received the past year's rent at the Michaelmas following. In June, that is, after the execution, but before the delivery of the power of attorney, an order of justices was made under the Nuisances Removal Act, 1855, on the defendant as " owner " of the premises, requiring him to remove a nuisance, and in default the local authority themselves executed the necessary works for abating the nuisance. It was held that the defendant was not liable, under sect. 19 of the Act, to an action for money paid, as he was not the agent or " owner " when the order was made and the works were commenced.³

Contracts between landlord and tenant.

With regard to the construction of contracts between landlord and tenant, and the right of the landlord to recover from the occupier expenses which the district council may recover from " the owner " under the Act, and also with regard to the recovery of expenses incurred under compulsion, see the Note to sect. 257.

Payment of expenses by occupier.

The Metropolis Management Act, 1862,⁴ contains a similar provision for the recovery of expenses from the occupier, and the deduction of them from the rent payable by him to his landlord. Under that provision the tenant of a house received notice from the vestry of the parish to pay his rent to them on account of the expenses of paving a road, and the landlord, being aware of such notice, after the rent became due, but before the tenant had paid any part of it to the vestry, put in a distress. In an action for wrongful distress it was held that as the landlord's right of distress was not taken away by the Act, the tenant was not protected till he had actually paid his rent to the vestry.⁵

Power of individual to complain to justice of nuisance.

N.R. 1860, s. 13.
P.H. 1874, s. 53.

Sect. 105. Complaint may be made to a justice of the existence of a nuisance under this Act on any premises within the district of any local authority by any person aggrieved thereby, or by any inhabitant of such district, or by any owner of premises within such district, and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal, and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the local authority :

Provided that the court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance

(1) See *Andrew v. St. Olave's Bd. of Works*, cited in Note to s. 257, *post*.

(2) *St. Pancras Vestry v. Batterbury*, cited in Note to s. 251, *post*.

(3) *Blything Union v. Warton* (1863), 3 B. & S. 352; 32 L. J. M. C. 132; 9 Jur. (N.S.) 867; s.c. *nom. Warton v. Blything Union*,

7 L. T. 672; 27 J. P. 87. See also *East Ham U.D.C. v. Aylett*, cited in Note to s. 257, *post*.

(4) 25 & 26 Vict. c. 102, s. 96.

(5) *Ryan v. Thompson* (1868), L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. 506; 32 J. P. 135.

is alleged to exist, and may authorise the entry into such premises of any constable or other person for the purposes of such examination : **Sect. 105.**

Provided also, that the court may authorise any constable or other person to do all necessary acts for executing an order made under this section, and to recover the expenses from the person on whom the order is made in a summary manner.

Any constable or other person authorised under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the local authority authorised under the provisions of this Act relating to nuisances to enter any premises and do any acts thereon.

Note.

For the proceedings consequent on a complaint by a district council, see, as to the summons, sect. 95; as to the order, sects. 96, 97, and 100; as to contravention of the order, sect. 98; and as to appeals to quarter sessions, sects. 99 and 269. The provisions of these clauses relating to the abatement of nuisances do not abridge any rights which persons have of procuring their abatement or prohibition under other clauses or independently of this statute altogether; see sect. 111. **Procedure.**

When the complaint is made to a justice by an inhabitant, it is not necessary for any notice to abate the nuisance to be given by the district council.⁶

As to when a person may be said to be "aggrieved," see the Note to sect. 253. **Person aggrieved.**

A person cannot be convicted under this section and also under sect. 98 in respect of disobedience to orders relating to the same offence. Thus, where an order was made, in 1871, under the Nuisances Removal Act, 1855,⁷ to cease sending forth black smoke from a chimney so as to be a nuisance, and another order was made in 1874 under a clause of the Nuisances Removal Act, 1860,⁸ which corresponded to the present section, to discontinue a similar nuisance, and prohibiting its recurrence; and in 1875 the appellant was convicted for disobeying both the order of abatement of 1871, and the order of prohibition of 1874, upon the same evidence, the conviction for disobeying the second order was quashed.⁹ **Double conviction.**

Sect. 106. Where it is proved to the satisfaction of the [Minister of Health] that a local authority have made default in doing their duty in relation to nuisances under this Act, the [Minister of Health] may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority : **Power of officer of police to proceed in certain cases against nuisances.**

But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

Note.

To set in motion the powers of the Minister of Health under the present section, some person aggrieved by the nuisance should address a memorial to that Minister on the subject. See also sect. 299 with regard to the enforcement of the duty of a district council, on their default in its performance, by *mandamus*, or by the appointment of a person to perform such duty. Under the Local Government Act, 1894,¹⁰ the county council may call upon a rural district council to perform their duty under the present Act, on complaint of their default being made by the parish council or meeting. **Enforcement of duty by Minister of Health.**

As to summary proceedings, see sect. 251.

Sect. 107. Any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in any superior court of law or equity to enforce the abatement or prohibition of any nuisance under this Act, or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act **Local authority may take proceedings in superior court for abatement of nuisances.**

(6) *Cocker v. Cardwell* (1869), L. R. 5 Q. B. 15; 39 L. J. M. C. 28; 21 L. T. 457; 34 J. P. 516.

(7) 18 & 19 Vict. c. 121, ss. 12, 13, as extended by 29 & 30 Vict. c. 90, s. 19.

(8) 23 & 24 Vict. c. 77, s. 13.

(9) *Eddleston v. Barnes* (1875), L. R. 1 Ex. D. 67; 45 L. J. M. C. 73; 34 L. T. 497; 40 J. P. 88.

(10) See ss. 16, 19 (8), *post*, Vol. II., pp. 2018, 2024.

N.R. 1855, s. 30.

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relating to nuisances, and may order the expenses of and incident to all such proceedings to be paid out of the fund or rate applicable by them to the general purposes of this Act.

Note.

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Public Nuisances and Private Nuisances.

Public nuisance.

The creation of a nuisance to the public at large is a misdemeanour for which the person creating the nuisance may be indicted on the prosecution of the district council or of a private individual. And a threatened nuisance to the public, or the continuance of a public nuisance, may be restrained by injunction in an action brought in the name and with the consent of the Attorney General on the relation of the district council or an individual.

Private nuisance.

A nuisance to an individual, whether or not it is also a public nuisance, is the subject for an action by such individual in his own name for damages or for an injunction.¹

Liability for Nuisance at Common Law.

Licensors and licensee.

In distinguishing between the liability of the person in possession of land or houses, and that of the owner of a movable personal chattel, such as a carriage, Littledale, J., said : “ The rule of law may be that in all cases where a man is in possession of fixed property he must take care that his property is so used and managed that other persons are not injured, whether his property be managed by his own immediate servants or by contractors or their servants. The injuries done upon land or buildings are in the nature of nuisances for which the occupier ought to be chargeable when occasioned by any acts of persons whom he brings upon the premises. The use of the premises is confined by the law to himself, and he should take care not to bring persons there who do any mischief to others.”² This statement was adopted by Jessel, M.R., in holding that the owner of a brickfield as well as his co-defendant, a person to whom he had granted a revocable licence to burn bricks on the premises, might be restrained by injunction from burning bricks so as to be a nuisance to the occupiers of the plaintiff’s cottages.³

Landlord and tenant.

But where the person in possession divests himself of the right to occupy the premises by leasing or letting them to another, he does not necessarily remain liable for a nuisance arising on such premises. Thus, at common law, the occupier, and not the owner, is *primâ facie* liable for the repair of the drains and sewers of the premises in his occupation; and a declaration against an owner for not cleansing the drains or sewers, which did not allege that he was the occupier, or show a reason for the alleged liability was held to be bad.⁴

If the owner lets the premises subject to a covenant by the tenant to repair, and damage is caused by reason of the want of repair, the owner is not liable.⁵

If, however, the owner lets the premises with the nuisance existing on them, or for such a purpose that the necessary and natural consequence will be that the use of them for that purpose will create the nuisance, or with an undertaking that he will himself keep them in such a condition as will not give rise to the nuisance, he will be liable for such nuisance.

For instance, a person who let several houses which drained into a common sink or cesspool was held liable, on indictment, for a nuisance to the public, which arose from the cesspool not being emptied and cleansed.⁶ In this case the opinion was expressed by Taunton, J., that the landlord should have exacted from his tenants an obligation to cleanse the sink or cesspool, with a right of entry on their default, and that he was at all events liable for the nuisance which arose from the want of cleansing; but the court in a subsequent case disapproved of that opinion;⁷ and Cresswell, J., in delivering the judgment of the Court of Common Pleas, said that “ if *Rex v. Pedley* is to be considered as a case in which the defendant

(1) See *Soltau v. De Held*, ante, p. 188.

(2) *Laugher v. Pointer* (1826), 5 B. & C. 547.

(3) *White v. Jameson* (1874), L. R. 18 Eq. 303; 22 W. R. 761; 38 J. P. 694.

(4) *Russell v. Shenton* (1842), 3 Q. B. 449; 11 L. J. Q. B. 289; 6 Jur. 1083.

(5) *Pretty v. Bickmore* (1873), L. R. 8 C. P. 401; 28 L. T. 704; 21 W. R. 733. *Gwinnell*

v. Eamer (1875), L. R. 10 C. P. 658; 32 L. T. 835; see also *Cavalier v. Pope*, L. R. 1906 A. C. 428; 75 L. J. K. B. 609; 95 L. T. 65; *Ryall v. Kidwell*, cited in Note to Housing Act, 1909, s. 14, post, Part II., Div. III.

(6) *Rex v. Pedley* (1834), 1 A. & E. 822; 3 L. J. M. C. 119.

(7) *Rich v. Basterfield*, post, p. 207.

was held liable because he had demised the buildings when the nuisance existed; or because he had relet them after the user of the buildings had created a nuisance; or because he had undertaken the cleansing, and had not performed it; we think the judgment right, and that it does not militate against our present decision. But if it is to be taken as a decision that a landlord is responsible for the act of his tenant in creating a nuisance, by the manner in which he uses the premises demised, we think it goes beyond the principle to be found in any previously decided cases; and we cannot assent to it." Here the action was brought against the owner of a house in respect of a nuisance caused by smoke from one of the chimneys; and it was contended that he was liable, although the premises were let, because he had by erecting the chimney and letting the premises, impliedly authorised the lighting of the fire which caused the smoke; but it was held that there was no cause of action against him, for the previous tenant had used coke, which caused no nuisance, and it had been quite possible for the tenant in that or some other way to use the premises without creating any quantity of smoke that could be deemed a nuisance, and (as Lush, J., pointed out in a later case ⁸) the court found as a fact that the house was not let for the purpose of being used in the ordinary way and for burning ordinary fuel in it.⁹

Erle, C.J., in delivering a considered judgment of the Court of Common Pleas said, "these cases ¹⁰ are authorities for saying that, if the wrong causing the damage arises from the non-feasance or the misfeasance of the lessor, the party suffering damage from the wrong may sue him. And we are of opinion that the principle so contended for on behalf of the plaintiff is the law, and that it reconciles the cases"; and it was accordingly held that an action for damages would lie where a person was alleged to have let certain houses when the chimneys were known by him to be ruinous and in danger of falling, and to have kept and maintained them in that state, and was therefore guilty of the wrongful non-repair which led to the damage, the fall of the chimneys having arisen from no default of the lessee, but by the laws of nature.¹¹

And in a later case it was laid down that a landlord, who lets premises for a fixed and definite purpose, as for instance, in order that they may be worked as a lime quarry, is liable for any nuisance that arises naturally and of necessity from the use of such premises as contemplated by the demise.¹²

A landlord is not liable for a nuisance arising from his tenant's neglect, merely because he has had the opportunity of determining the tenancy since the neglect commenced: forbearing to give notice to quit not being equivalent to reletting the premises with the nuisance existing on them.¹³

Where the landlords retained possession and control of a rainwater gutter in the roof of a building, and neglected to have it cleared out for several days after receiving from the tenant of one floor of the building notice that it was stopped up, they were held liable for the consequent damage to the tenant's premises.¹⁴

In the case of one joint nuisance to which several persons contribute, actions may be brought against any of them, although the contribution of each towards the nuisance may not be sufficiently serious to be a nuisance in itself.¹⁵

Where the acts of several separate and independent wrong-doers cause similar nuisances at the same time to another person, so that there is not one nuisance but several, there is no joint cause of action against the wrong-doers, and they cannot be joined as defendants in the same action for damages. And an order directing such an action to be stayed unless one of the defendants should be struck out, was accordingly affirmed by the House of Lords. It was, moreover, doubted whether one action could have been maintained against both defendants, even if an injunction only had been claimed.¹⁶

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nuisance.

(8) *Harris v. James*, *infra*.
(9) *Rich v. Basterfield* (1847), 4 C. B. 783; 16 L. J. C. P. 273.
(10) *Tenant v. Goldwin*, *ante*, p. 128. *Cheetham v. Hampson* (1791), 4 T. R. 318 (in which an action for non-repair of fences was held not to lie against the landlord); *Russell v. Shenton*, *ante*, p. 206; *Payne v. Rogers* (1794), 2 H. Bl. 350 (in which an action for non-repair of a cellar trap-door was held to lie against the landlord); *Rosewell v. Prior* (1701), 2 Salk. 460; 1 Ld. Raym. 713, 12 Mod. 635 (a similar decision with reference to obstruction of light by a wall); and *Rex v. Pedley*, *ante*, p. 206.
(11) *Todd v. Flight* (1860), 9 C. B. (N.S.) 377; 30 L. J. C. P. 21; 3 L. T. 325; *Rex v.*

Pedley, cited in Note to s. 257 (under heading "Landlord and Tenant"), *post*. But see *Whymark v. Abrahams* (1922, Portsmouth C. Ct.), 57 L. J. Jo. 282.
(12) *Harris v. James and Senhouse* (1876), 45 L. J. Q. B. 545; 35 L. T. 240.
(13) *Gandy v. Jubber* (1865, Exch. Ch.), 9 B. & S. 15.
(14) *Hargroves Aronson & Co. v. Hartopp*, L. R. 1905, 1 K. B. 472; 74 L. J. K. B. 233; 92 L. T. 414. See also *Hart v. Rogers*, L. R. 1916, 1 K. B. 646; 85 L. J. K. B. 273; 114 L. T. 329.
(15) *Lambton v. Mellish*, *ante*, p. 191.
(16) *Sadler v. Great Western Ry. Co.*, L. R. 1896 A. C. 450; 65 L. J. Q. B. 462.

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Sect. 111 allows proceedings under other sections of the Act than the nuisance clauses,¹⁷ or independently of the Act altogether, to be taken whether those clauses would afford an adequate remedy or not; and sect. 341 renders the whole of the powers given by the Act cumulative.

Injunction to restrain Nuisance.

Public nuisance.

A local authority may act as relators in an action in the name of the Attorney General to abate a public nuisance, whether or not their property sustains any damage; and in a case of a public nuisance, such as an accumulation of refuse kept for purposes of business, which has in the past caused annoyance to persons in the neighbourhood by giving off an offensive smell and occasioning a plague of flies, they need not prove actual injury or damage to health.¹⁸ And where their property does sustain damage, they may bring an action at common law even though the defendant may be protected from proceedings under the Act by sect. 334.¹⁹

The Court of Appeal granted an injunction at the instance of the Attorney General to restrain the owner of a vacant piece of land in the metropolis from allowing it to remain in such a state as to be a nuisance or injurious to health. The land had been surrounded by a hoarding, but the hoarding had become dilapidated, and persons deposited filth and refuse on the land. The court declared that it was the duty at common law of the owner of such vacant land to prevent it from being a public nuisance; and that the statutory powers of the local authority for dealing with the nuisance did not prevent the court from granting the injunction.²⁰

Even where it is shown that the granting of an injunction would be injurious to a greater number of persons than refusing it, the court will not on that ground refuse an injunction, since that would interfere with the discretion of the Attorney General in granting his *fiat* for the commencement of proceedings.²¹

Attorney General.

If property vested in a district council is interfered with, they may sue without the Attorney General,²² but if they sustain no damage they cannot generally bring an action to restrain a public nuisance, such as the deposit of refuse on land in such a manner as to create a nuisance and danger to the health of the occupiers of neighbouring premises, without the *fiat* of the Attorney General.²³ But where a local authority had themselves leased a sewage farm to a company, who undertook to keep the works in proper order, the court overruled objections that the Attorney General was not a party to an action for an injunction to restrain a nuisance arising at the works, and that no special damage was alleged.²⁴ And Joyce, J., overruled a similar objection in an action brought by an urban district council to restrain the removal of posts which they had erected to prevent carts from using a path which had been set out as a public footway by an inclosure award.²⁵

But Romilly, M.R., in an action by a metropolitan vestry to restrain an obstruction to a highway, said that the local Act applicable to the vestry had not conferred upon them "any powers or authorities previously vested in the Attorney General, and that, accordingly, if the vestry indict anyone under that Act, they must proceed in the name of the Queen before a grand jury, who must find a true bill before it can be tried; and if they apply to the Court of Chancery, it must be with the name of the Attorney General as plaintiff in an information."²⁶

And an enactment imposing obligations on a waterworks company with reference to the quantity and quality of the water to be supplied to the district of a local authority, did not give that authority the right to bring an action in their own name without the Attorney General to enforce those obligations.²⁷

An action by a parish council as to the use of a spring of water was dismissed

(17) With regard to such other clauses, see the note to sect. 91, *ante*, p. 173.

(18) *A.G. v. Keymer Brick Co.* (1903), 67 J. P. 434; 1 L. G. R. 654.

(19) *A.G. v. Logan*, L. R. 1891, 2 Q. B. 100; 65 L. T. 162; 55 J. P. 615.

(20) *A.G. v. Tod Heatley*, L. R. 1897, 1 Ch. 560; 66 L. J. Ch. 275; 76 L. T. 174; 61 J. P. 164.

(21) *A.G. v. Leeds Cpn.* (1870), L. R. 5 Ch. 583; 39 L. J. Ch. 711; 19 W. R. 19. See also *A.G. v. Basingstoke Cpn.* (1876), 45 L. J. Ch. 726; 24 W. R. 817, as to the intervention of the Attorney General.

(22) *Holmfirth Loc. Bd. v. Shore*, *ante*, p. 151; *A.G. v. Logan*, *supra*.

(23) *Wallasey Loc. Bd. v. Gracey* (1887),

L. R. 36 Ch. D. 593; 56 L. J. Ch. 739; 57 L. T. 51; 51 J. P. 740; followed in *Tottenham U.D.C. v. Williamson & Sons* (C. A.), L. R. 1896; 2 Q. B. 353; 65 L. J. Q. B. 591; 75 L. T. 238; 60 J. P. 725.

(24) *Nuneaton Loc. Bd. v. General Sewage Co.* (1875), L. R. 20 Eq. 127; 44 L. J. Ch. 561.

(25) *Sheringham U.D.C. v. Holsey* (1904), 91 L. T. 225; 68 J. P. 395; 2 L. G. R. 744. See also *Behrens v. Richards*, L. R. 1905, 2 Ch. 614; 74 L. J. Ch. 615; 93 L. T. 623; 69 J. P. 381; 3 L. G. R. 1228.

(26) *Bermondsey Vestry v. Brown* (1865), L. R. 1 Eq. at p. 212; 11 Jur. (N.S.) 103; 13 L. T. 574; 14 W. R. 213; 35 Beav. 226.

(27) *A.G. v. Pontypridd Water Co.*, L. R. 1908, 1 Ch. 388; 72 J. P. 48; 6 L. G. R. 397.

because the Attorney General was not a party, the right in question being a public right;²⁸ and an action by a rural district council, in the name of the Attorney General, against a person who had damaged roadside herbage was dismissed because the owners of the herbage, the parish council, were not parties, and the action was not in respect of a public right.²⁹ *Per* Channell, J.: "The rights, which the Attorney General intervenes in order to protect, as representing the Crown, in the capacity, as it is stated in some of the cases, of *parens patriae*, must be rights of the community in general, and not rights of a limited portion of His Majesty's subjects, especially when the limited portion in question, the inhabitants of a parish, have representatives who can bring the action."

The fact that a burgess was in point of law a member of the corporation consisting of the mayor, aldermen, and burgesses of a municipal borough, was held by Warrington, J., not to enable him to sustain, without the concurrence of the Attorney General, and in the absence of damage to himself, an action based on the alleged illegality of a resolution of the council of the borough.³⁰

In an action by certain market gardeners on behalf of themselves and all other growers of fruit, etc., within the meaning of an Act for the regulation of Covent Garden Market, for a declaration that the owner of the market was not entitled to exclude them from certain preferential rights claimed by them under the Act, it was held by the Court of Appeal that the plaintiffs could maintain the action, but that the Attorney General must be added as a defendant to represent the public who were interested in resisting the claim.³¹

In an action claiming an injunction to restrain certain building owners from committing or continuing to commit what was alleged to be a breach of a bye-law prescribing the width at which new streets were to be laid out, and an order requiring them to remove the work already executed, or a declaration that the local authority were entitled to remove it themselves, the Court of Appeal affirmed the decision of Joyce, J., that the action could not be maintained by the local authority without the Attorney General.³² But where another local authority, who had commenced an action in their own name, amended the proceedings in consequence of the above-mentioned decision of Joyce, J., by joining the Attorney General as co-plaintiff, it was held that the action could be maintained.³³ And in a later case a mandatory injunction was granted by Farwell, J., in an action in the name of the Attorney General to compel a company to pull down so much of a house erected by them as contravened the Public Health (Buildings in Streets) Act, 1888, although summary proceedings had already been taken by the local authority against the company, and they had been convicted, the justices having declined to impose a continuing penalty on them.³⁴

Where, however, an action under sect. 26 of the Local Government Act, 1894,³⁵ was commenced without the Attorney General, the defendant pleaded that the action did not lie in consequence, but the parties came to terms and the action was set down as a short cause on motion for judgment on agreed minutes. On the hearing of this motion, the plaintiffs' counsel stated that the plaintiffs desired to avoid the expense of adding the Attorney General if an order could be made without him. The defendants apparently raised no objection to this course, and the order was made as prayed without the Attorney General.³⁶ And in the case cited below,³⁷ Swinfen Eady, J., said: "There is no objection in the pleadings that the Attorney General is not a party, so I have to decide this question [as to dedication of a highway] simply between the plaintiffs and the defendants."

In an action to restrain a local authority from approving certain deposited plans, and the persons who had deposited them from carrying them out, the Court of Appeal held, with regard to the second matter, that, as the plaintiffs had not joined the Attorney General, and had not sued on behalf of themselves and all other ratepayers in the borough, and had not shown any special injury to them—

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(28) *Stoke P.C. v. Price*, L. R. 1899, 2 Ch. 277; 68 L. J. Ch. 447; 80 L. T. 643; 63 J. P. 502.

(29) *A.G. v. Garner*, L. R. 1907, 2 K. B. 480, at p. 487; 76 L. J. K. B. 965; 97 L. T. 486; 71 J. P. 357; 5 L. G. R. 944.

(30) *Watson v. Hythe B.C.* (1906), 70 J. P. 153; 4 L. G. R. 340.

(31) *Ellis v. Duke of Bedford*, L. R. 1899, 1 Ch. 494; 68 L. J. Ch. 289; 80 L. T. 332.

(32) *Devonport Cpn. v. Tozer*, cited in Note to s. 157, *post*.

(33) *A.G. v. Ashbourne Recreation Ground Co.*, L. R. 1903, 1 Ch. 101; 72 L. J. Ch. 67;

87 L. T. 561; 67 J. P. 73; 1 L. G. R. 146. See also *A.G. v. Dorchester Cpn.*, cited in Note to s. 299, *post*; and *Boyce v. Paddington B.C.*, which ultimately became *Paddington B.C. v. A.G.*, L. R. 1906 A. C. 1.

(34) *A.G. v. Wimbledon House Estate Co.*, L. R. 1904, 2 Ch. 34; 73 L. J. Ch. 593; 91 L. T. 163; 68 J. P. 341; 2 L. G. R. 826.

(35) *Post*, Vol. II., p. 2041.

(36) *Newton Abbot R.D.C. v. Wills* (1913, Ch. D.), 77 J. P. 333. Cf. *Leckhampton Quarries Co. v. Ballinger*, 1905, 68 J. P. 464.

(37) *St. Ives Cpn. v. Wadsworth* (1908), 72 J. P. at p. 73, col. ii.

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selves beyond a mere grievance as rival cinematograph theatre proprietors, they could not succeed without amending their writ, and that leave to amend would not be given for the purpose of an interlocutory application.³⁸ Subsequently the plaintiffs applied for an order that "on production of the certificate of His Majesty's Attorney General" the writ, etc., be amended, and that there be added to the description of the plaintiffs the words "on behalf of themselves and all other ratepayers of the borough of Dover." It was held by Master Bonner that this application was premature, and that it must be adjourned for the Attorney General's *fiat* to be obtained first. The Attorney General, however, declined to give his *fiat*, and the action was discontinued.³⁹

In an action against a local authority for refusing to let a cottage to the plaintiff in breach of an Irish Statute, O'Connor, M.R., said: "The present action is brought by the plaintiff in two characters, as an agricultural labourer, and as a ratepayer. If one ratepayer can bring an action, then every other ratepayer can, and we should have the very thing that the policy of the law forbids. It is, however, admitted that he is not in fact a ratepayer. Has he, then, any right of action in his character of agricultural labourer? If he has, the right of action is common to him and all other agricultural labourers in the district, unless he can show special damage. . . . Here the plaintiff had no preferential right. . . . It is not enough for him to say that he is the only agricultural labourer who applied for the cottage. . . . For these reasons I should be obliged to dismiss the action with costs, unless the amendment asked for [to have the Attorney General made the plaintiff] is to be granted. But before the plaintiff establishes his right to have the amendment made, he must show that even if it were made there would be, at all events, a possibility of success. In my opinion, even if the application were granted, the Attorney General would not succeed in the action, inasmuch as the plaintiff has no interest in the subject-matter merely as an agricultural labourer. He had nothing more than a mere chance of being selected by the district council, who might easily have selected any other agricultural labourer in the district."⁴⁰

In the case last cited, the Master of the Rolls made an observation at the end of his judgment which, if acted upon, would enormously increase the financial responsibility of members of local authorities. His Lordship said⁴¹: "I shall add, for the guidance of members of the Bar, that, in my opinion, in actions of this kind when misconduct in the performance of their duties is alleged against a public body, and when it becomes necessary to take legal proceedings against it, the individual members who are principally responsible ought to be made special defendants for the purpose of visiting them with the costs of the action. It is very unsatisfactory for ratepayers who take proceedings in the interest of their body to find that all the costs must eventually come out of their own pockets when in justice they ought to be paid by individual wrongdoers."

An Irish statutory order required that a proposal for the formation of a new road formulated by a local authority must embody a decision as to the number of years within which the loan is to be paid off. A ratepayer sought an injunction to restrain a local authority from carrying out a proposal which did not embody such decision. It was held that as he had not obtained the *fiat* of the Attorney General his action must be dismissed, the decision of the court below, that "the liability to pay additional rates is special or particular damage within the meaning of the rule," being overruled.⁴²

The jurisdiction of the Attorney General to decide whether he will sue on behalf of a relator is absolute, and the exercise of his discretion cannot be questioned by the court.⁴³

Thus, in an Irish case⁴⁴ the relator was not co-plaintiff, and the writ and statement of claim were endorsed by the relator in person. The Attorney General refused his *fiat* until the relator gave security for costs. A *mandamus* requiring him to give his unconditional *fiat* was refused by the King's Bench Division and the Court of Appeal. Security was then given, and the Attorney General

(38) *Dover Picture Palace, Ltd. v. Dover Cpn.*, post, p. 395 (43).

(39) 4 Glen's Loc. Gov. Case Law 131, 132.

(40) *O'Shea v. Cork R.D.C.* (Ch. D., I.), 1914 Ir. Ch. 16; 4 Glen's Loc. Gov. Case Law 110.

(41) See 1914 Ir. Ch. at p. 22 and 4 Glen's Loc. Gov. Case Law at p. 111.

(42) *Weir v. Fermanagh C.C.* (C. A., I.),

1913 Ir. Ch. 193; 47 Ir. L. T. 51; 4 Glen's Loc. Gov. Case Law 109.

(43) *London C.C. v. A.G.*, L. R. 1902 A. C. 165; 71 L. J. Ch. 268; 86 L. T. 161; 66 J. P. 340.

(44) *Attorney General for Ireland (Humphreys) v. Erasmus Smith's Schools Governors*, 1910 Ir. Ch. 325; 1 Glen's Loc. Gov. Case Law 79.

gave his *fiat*. The defendants' solicitors entered an unconditional appearance. An application was then made by the defendants to stay the action. The application was granted by the Chancery Division, "it appearing to the Court that the writ of summons in this action has been issued and signed, and the statement of claim signed and delivered, by the relator alone, who is not a party to this action, and not by or on behalf of the Attorney General, the sole plaintiff in this action, or by a solicitor or counsel acting on his behalf." On appeal the Court of Appeal offered to amend the pleadings by substituting the relator's solicitor's name, but the offer was declined. It was contended by the appellant that, as he was substantially the only person interested in maintaining the suit, and was personally responsible for its miscarriage or failure, it was unreasonable that he should be denied the right, which every other litigant enjoyed, of conducting his case in person. It was held that a relator cannot appear and conduct such an action in person, and the appeal was dismissed, but, having regard to the unconditional appearance, without costs.

The Attorney General is not entitled to an injunction as a matter of right, on proving that a public body is committing an offence against a statute.⁴⁵ *Per* Farwell, L.J.⁴⁶ : "It is for the court to say, acting as His Majesty's judges, whether an injunction is the proper remedy."⁴⁷

Moreover, the relator's motives can be challenged. Thus, Knight-Bruce, L.J.,⁴⁸ said : "With regard to the public question, there is another consideration not to be forgotten. I agree that motives are very often immaterial with reference to the manner of disposing of a suit. . . . Where, however, the public interest purports to be asserted, it is not wholly immaterial, at least upon an interlocutory application, to look into the motives from which, or under which, the matter is brought forward. Now, in the present case, though the Attorney General's name is used, it is impossible not to see that the suit has been instituted more from regard to private than to public good. If the public interest clearly required the immediate interposition of the Court, that might not be material. But we find as a fact, that the majority of the town council is in favour of what the defendants are proposing to do; and, on a question of discretion, it is impossible, with reference to a community of this description, not to look with some degree of attention at what the governing body of the borough think on the subject."

Delay in bringing an action may also affect the exercise of the discretion of the court in granting an injunction although the application may be made by the Attorney General on behalf of the public. And therefore Joyce, J., in 1909, refused to grant an injunction to restrain a canal company from taking from the springs or streams feeding a certain river more water than they were allowed to take under an Act of 1810, although the action was brought in the name of the Attorney General at the relation of an urban district council; the company's works having been completed in 1837, and water having since that time been diverted from the river without any complaint being made until 1901.⁴⁹

An injunction to restrain a general in the army from permitting rifle practice on a common was refused, and it was held that land vested under the Defence Acts in the Secretary of State for War in trust for the Crown might be used for all reasonable military purposes, free from the control of the court, and that if the action were sustainable, the Secretary of State was a necessary party.⁵⁰

The occupier should be a party to an action by the owner for an injunction to restrain a nuisance to premises in his occupation, where such nuisance is of a temporary nature. It was held with respect to drainage matter, soaking from an adjoining stable on a higher level, and on made ground placed there by the defendants' predecessor in title, that the possessor was responsible for nuisances arising on the land by whatever means occasioned, and, with regard to noise from the stable, that it was so situated that the ordinary use of it occasioned a nuisance; and an injunction was granted, but without costs.⁵¹

To induce the court to restrain the use of works alleged to be injurious to neighbouring property, the plaintiff must prove that his property has sustained

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Attorney
General—
*continued.*Relator's
motives.

Delay.

Secretary of
State.Temporary
nuisance.Substantial
nuisance.

(45) See *A.G. v. Birmingham, etc., Drainage Bd.*, affirmed in H. L., see *ante*, p. 77.

(46) L. R. 1910, 1 Ch. at p. 60.

(47) But see *Ware v. Regent's Canal Co.*, cited in Note to s. 308, *post*.

(48) In *A.G. v. Sheffield Gas Consumers Co.* (1853), 3 De G. M. & G. 311; 22 L. J. Ch. 811; 17 Jur. (N.S.) 677. See also *ante*, p. 74, as to this case.

(49) *A.G. v. Grand Junction Canal Co.*, L. R. 1909, 2 Ch. 505; 78 L. J. Ch. 681; 101 L. T. 150; 73 J. P. 421; 7 L. G. R. 1014.

(50) *Hawley v. Steele* (1877), L. R. 6 Ch. D. 521; 46 L. J. Ch. 782; 37 L. T. 625.

(51) *Broder v. Saillard* (1876), L. R. 2 Ch. D. 692; 45 L. J. Ch. 414; 24 W. R. 1011. See also *White v. London General Omnibus Co.*, and other cases cited, *ante*, p. 189.

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actual substantial damage which is apparent to an ordinary person, and not merely such damage as can only be perceived by means of scientific or microscopic investigation. In the case in which this was laid down the extent and character of the damage necessary to sustain an application for an injunction, the province of scientific evidence, the effect of the previous existence of similar nuisances, and the circumstances under which the court will direct an issue or send an expert to report, were discussed. It was unsuccessfully sought, on the ground of nuisance from smoke, to stop a large commercial work.⁵²

Continuing nuisance.

An injunction to restrain a limited company from continuing a nuisance which had caused damage was granted, notwithstanding the fact that since the action was commenced the company had gone into liquidation and their works had in consequence been stopped.⁵³

Nuisance by council.

Cases in which injunctions have been granted to restrain nuisances caused by the local authority themselves are cited in the Note to sect. 17.

Acquiescence.

Where a person had lain by and allowed expenditure to be incurred, and a trade in the carriage of manure to a railway siding near his house, which might be a nuisance in point of law, to be established and carried on for a considerable time without asking for the interference of the court or bringing an action, it was held that he was precluded by acquiescence from obtaining relief by injunction, though the trade had been gradually increasing; and it was laid down that occurrences of nuisances, if temporary and occasional only, were not grounds for the interference of the court.⁵⁴

Undertaking in damages.

Where an interim injunction is granted at the instance of a local board, the usual undertaking in damages may be given by the board itself as a corporation, and the court will not require the undertaking to be given by a responsible officer on their behalf.⁵⁵ Such an undertaking is not implied merely by the defendant undertaking to abate the nuisance until the trial.⁵⁶

Where an injunction to restrain a nuisance is granted (or an undertaking given), the court will give damages, not by way of compensation, but as an acknowledgment of the wrong.⁵⁷

Abatement of Nuisance by Person aggrieved.

Entry on private land.

It was held that an entry on the land of another in order to remove a nuisance of filth, by a person injured thereby, was justifiable without previous notice, where the owner of the land was himself the original wrongdoer by placing it there. So possibly also where the nuisance arises from a default in the performance of some obligation on him. But where the nuisance is created by another, and the owner succeeds to the *locus in quo*, he is entitled to notice before an injured person can enter to remove it. The case of an abatement of a nuisance dangerous to life may, however, be an exception.⁵⁸

Best, J., after stating that the injured party may abate a nuisance caused by an act of commission, without notice to the person who caused it, added, "there is no decided case which sanctions the abatement by an individual of nuisances from omission, except that of cutting the branches of trees which overhang a public road or the private property of the person who cuts them."⁵⁹

Costs.

Funds.

As to the funds and rates applicable to the general purposes of the Act in urban districts, see sect. 207; in rural districts, sect. 229.

Taxation.

As to solicitor and client costs, see the cases cited in the Note to sect. 1 of the Public Authorities Protection Act, 1893.⁶⁰

(52) *Salvin v. North Brancepeth Coal Co.* (1874), L. R. 9 Ch. App. 705; 44 L. J. Ch. 149; 31 L. T. 154.

(53) *Dean and Chapter of Chester v. Smelting Cpn., Ltd.* (1901), 85 L. T. 67.

(54) *Swaine v. Great Northern Ry. Co.* (1864), 4 De G. J. & S. 211; 33 L. J. Ch. 399; 10 Jur. 191; 9 L. T. 745.

(55) *East Molesey Loc. Bd. v. Lambeth Water Co.*, L. R. 1892, 3 Ch. 289; 62 L. J. Ch. 82; 67 L. T. 493.

(56) *Howard v. Press Printers, Ltd.* (1904, C. A.), 74 L. J. Ch. 100; 91 L. T. 718; 53 W. R. 98.

(57) *Lipman v. Pulman & Sons* (1904), 91 L. T. 132.

(58) *Jones v. Williams* (1843), 11 M. & W. 176; 12 L. J. Ex. 249; see also *Nield v. London and North Western Ry. Co.*, cited in Note to s. 332, post, and *Roberts v. Rose*, ante, p. 79.

(59) *Earl of Lonsdale v. Nelson* (1823), 2 B. & C. 311; discussed in *Lemmon v. Webb*, L. R. 1895 A. C. 1; 64 L. J. Ch. 205; 71 L. T. 647; 59 J. P. 564; and in *Campbell Davys v. Lloyd*, post, p. 298 (22).

(60) *Post*, Vol. II., p. 2045.

Sect. 108. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by [*any nuisance authority*] in the metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such [*nuisance authority*] . . .

Note.

Before the passing of the present Act, it was generally considered that under the Sanitary Acts local authorities could not protect the inhabitants in their respective districts against nuisances existing therein, but originating in another district.¹

The consent of the Attorney General to the proceedings is not required although the act or default is committed or the premises are situated without the district of the council that institute the proceedings: see sect. 253.

The last clause of the present section, defining the expression "nuisance authority," is repealed by the Public Health (London) Act, 1891;² but that Act enacts that "Sect. 108 of the Public Health Act, 1875, set out in the first schedule to this Act, shall continue to extend to London, with the substitution of a sanitary authority under this Act for any nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis shall include a nuisance within the meaning of this Act."³

In the city of London and the liberties thereof, the Commissioners of Sewers were the sanitary authority, but their functions have now been transferred to the Common Council.⁴ In the Inns of Court, and other places mentioned in Sched. C. of the Metropolis Management Act, 1855, the guardians or overseers; and elsewhere in the metropolis, the borough councils (who superseded the vestries and district boards when the London Government Act, 1899,⁵ came into operation), are the sanitary authorities.⁶

Sect. 108.

Power to proceed where cause of nuisance arises without district.

Nuisance arising beyond the district.

Metropolis.

Sect. 109. Where two convictions against the provisions of any Act relating to the overcrowding of a house have taken place within a period of three months (whether the persons convicted were or were not the same) a court of summary jurisdiction may on the application of the local authority of the district in which the house is situated direct the closing of the house for such period as the court may deem necessary.

Provision in case of two convictions for over-crowding. San. 1866, s. 36.

Note.

"Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family," is a nuisance within the meaning of sect. 91, which may be dealt with summarily under sects. 93-96; so also is any "tent, van, shed, or similar structure used for human habitation, which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family";⁷ and so also is a workshop, workplace, or domestic factory (included in the term "house" by the definition in sect. 4, as amended⁸) "so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein."⁹ The Factory and Workshop Act, 1901, contains provisions with regard to the overcrowding of factories other than domestic factories, and limits the number of

Over-crowded houses, etc.

(1) See *Reg. v. Cotton*, ante, p. 197.

(2) 54 & 55 Vict. c. 76, s. 142, and Sched. IV.

(3) *Ibid.* s. 14 (2).

(4) 60 & 61 Vict. c. cxxxiii.

(5) 62 & 63 Vict. c. 14.

(6) 54 & 55 Vict. c. 76, s. 99.

(7) 48 & 49 Vict. c. 72, s. 9.

(8) See ante, pp. 8, 29.

(9) See s. 91 and Note, ante, pp. 173, 183.

Sect. 109, n.

persons who may be employed in a room in a factory or workshop, such number being proportionate to the number of cubic feet of space in the room.¹⁰

See also the power given by sect. 97 to prohibit the use of a house, when, by reason of *any* of the nuisances mentioned in sect. 91, it is "unfit for human habitation."

Provision as to ships.

San. 1866,
ss. 30, 32.

Sect. 110. For the purpose of the provisions of this Act relating to nuisances, any ship or vessel lying in any river harbour or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river harbour or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the [Minister of Health], and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge of any officer bearing [His] Majesty's commission, or to any ship or vessel belonging to any foreign government.

Note.**Nuisances on ships.**

The Public Health (Ships, etc.) Act, 1885, which is to be "construed as one with" the present Act, therein referred to as "the principal Act,"¹¹ provides that the present section "shall have effect not only for the purpose of the provisions of that Act relating to nuisances, but also for the purpose of such of the provisions of that Act relating to infectious diseases and hospitals as are referred to in the schedule to this Act."¹² The schedule to the Act of 1885 refers to sects. 120, 121, 124-126, 128, and 131-133 of the present Act.¹³

Persons on board ship suffering from dangerous infectious disorders may be removed therefrom under sect. 124; see also sects. 125 and 134, and the Note to the latter section, with reference to infection on board ship; and see sects. 287-292, as to port sanitary authorities. Provisions against danger arising from ships carrying petroleum are contained in the Petroleum Act, 1871.¹⁴

Oil from ships.

As to nuisances caused by the discharge of oil into navigable waters, see the Act of 1922 on this subject.¹⁵

Provisions of Act relating to nuisances not to affect other remedies.

Sect. 111. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any right remedy or proceeding under any other provisions of this Act or under any other Act, or at law or in equity :

Provided that no person shall be punished for the same offence both under the provisions of this Act relating to nuisances, and under any other law or enactment.

Note.**Other remedies.**

A list of "other provisions of this Act," and of provisions of other Acts relating to nuisances of various kinds, is given in the Note to sect. 91.¹⁶

Sect. 107 authorises district councils to take proceedings in the superior courts for the abatement of nuisances. See also the Note to that section.

Where a local Act makes provisions for purposes similar to those of the present Act, the district council may at their option institute proceedings either under such local Act or under the present Act, but not under both : sect. 340. By sect. 341 "all powers given by this Act" are cumulative, save that when a person has been adjudged to pay a penalty under this Act he shall not *for the same offence* be liable to a penalty under any other Act.

(10) See ss. 1-3, *post*, Vol. II., p. 2138.

(11) 48 & 49 Vict. c. 35, s. 1.

(12) *Ibid.*, s. 2.

(13) *Ibid.*, Sched.

(14) See ss. 4 and 5, *post*, Vol. II., p. 1690.

(15) *Post*, Vol. II., p. 2361.

(16) *Ante*, p. 173.

Sect. 112.

OFFENSIVE TRADES.

Sect. 112. Any person who, after the passing of this Act, establishes within the district of an urban authority, without their consent in writing, any offensive trade; that is to say, the trade of—

Blood boiler, or
Bone boiler, or
Fellmonger, or
Soap boiler, or
Tallow melter, or
Tripe boiler, or

Any other noxious or offensive trade business or manufacture,

shall be liable to a penalty not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.

Restriction on establishment of offensive trade in urban district.
P.H., s. 64.

Note.

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Restrictions on Offensive Trades.

These provisions with regard to offensive trades are applicable only in urban districts. If a rural district council desire that they should be put in force in their district or any part of it, an application should be made to the Minister of Health under sect. 276 for an order declaring them to be in force therein.

Application of enactment.

Where sect. 51 of the Public Health Acts Amendment Act, 1907,¹ is in force, for the words “ any other noxious or offensive trade business or manufacture ” in the present section, the following words are substituted, namely, “ any other trade, business, or manufacture which the local authority declare by order confirmed by the [Minister of Health], and published in such manner as the [Minister directs], to be an offensive trade ”; and they may make bye-laws with respect to offensive trades, whether newly established or not, in order to prevent or diminish any noxious or injurious effects of the trade.

The consent of the local authority may be conditional, see the Note to sect. 51 of the Act of 1907.¹

Consent.

With respect to the recovery of penalties, see sects. 251, *et seq.*

If an offensive trade of the character mentioned in sect. 114 is certified to be a nuisance or injurious to health, summary proceedings may be taken under that section and penalties recovered against the person by or on whose behalf the trade is carried on.

Legal proceedings.

With respect to proceedings by indictment or by action for damages or injunction in relation to offensive trades, see the latter part of this Note, and the Note to sect. 114.

See also sects. 91 and 107 and the Notes to those sections with regard to nuisances generally, and the proceedings available for their abatement.

The Public Health Act, 1848,² placed a similar restriction on the establishment of offensive trades after the application of that Act to a district; but it expressly included the business of a slaughterer of cattle, horses, or animals of any description, as well as the trades above mentioned. For the provisions now in force which specially relate to slaughterers of cattle, etc., see sects. 169 and 170, and Notes.

Slaughter-houses.

Slaughter-houses may be dealt with under sect. 114, if they are certified in the manner there mentioned to be nuisances or injurious to health. See also the incorporated provisions of the Towns Improvement Clauses Act, 1847,³ with regard to the regulation of slaughter-houses; and the unincorporated provisions of the Markets and Fairs Clauses Act, 1847.⁴

The burden of a restrictive covenant against the use of certain lands or premises for specified purposes, such as carrying on offensive trades, will generally run with the land; ⁵ but where such a covenant was made with a vendor who had no other land to which the benefit of the covenant was annexed, it was held by

Restrictive covenants.

(1) *Post*, Part I., Div. III.

(2) 11 & 12 Vict. c. 63, s. 64.

(3) Namely, ss. 125-131, *post*, Vol. II., pp. 1630-1634.

(4) Namely, ss. 17-20, *post*, Vol. II., p. 1431.

(5) See *Duke of Devonshire v. Brookshaw*, *post*, p. 217.

Sect. 112, n.
Slaughtering
of cattle.

the Court of Appeal to be merely personal and collateral, so that it could not be enforced against the assignees of the purchaser.⁶

Establishment of a Trade.

A company, established under a local Act, erected a market in the district before the Public Health Act, 1848, was adopted. No part of the market had been previously used as a slaughter-house; but in November, 1865, the company erected slaughter-houses, and the slaughtering of cattle was commenced in them in March, 1866; the course of business being that the company permitted owners of cattle, by their own servants, to slaughter their beasts on the company's premises, the owners using the tackle in the building, and paying 2s. for each beast slaughtered. The company having been convicted, it was held that they had offended against the enactment,⁷ as they, and they only, had newly established the business of a slaughterer of cattle, and no one else under the circumstances could have been convicted of the offence.⁸

Trade of Fellmonger.

Fellmongers.

A fellmonger is one whose business consists of removing the wool from sheepskins either by warmth or by lime.

In an action for a nuisance caused by the erection of buildings for the purpose of carrying on the business of a fellmonger, Channell, B., in summing up the case to the jury, said that a then recent case⁹ had certainly very materially modified the law of nuisance as hitherto understood. He therefore asked the jury to say in accordance with the old law, first, whether the plaintiff was sensibly hindered in the reasonable enjoyment of his property by reason of the smells alleged to proceed from the defendant's premises; and he told them that it need not be a smell injurious to health, nor was it necessary that it should annoy the dwelling-house—it was enough if it fouled the air in the grounds and in the garden; secondly, was the business carried on by the defendant a lawful and proper business; thirdly, was it carried on in a proper manner; fourthly, was it carried on in a proper place. To these several questions the jury returned that the plaintiff was so hindered in the enjoyment of his property; secondly, that it was a lawful and proper business; thirdly, that it was conducted in a proper manner; fourthly, but that it was not in a proper place. A verdict was thereon taken for the plaintiff with 40s. damages.¹⁰

Other Offensive Trades.

With regard to trades not specifically mentioned in the present section, see sect. 51 of the Public Health Amendment Act, 1907, above mentioned.¹¹ Where that provision is not in force, "other noxious or offensive trades, etc.," in order to be brought within the operation of the section, must be analogous to those which are specifically mentioned.

Brick-
making.

With reference to proceedings against a brick-maker, Erle, C.J., said: "Is brick-making of necessity a business of a noxious or offensive nature analogous to those specified at the beginning of the clause? I am of opinion that it is not. The business of brick-making may be carried on in such a manner as not to be a nuisance to anybody." And Willes, J., pointed out that the substances which are dealt with in the trades which are specified are substances which, without anything being done to them, must be, or by progress of time must necessarily become, a nuisance and annoyance to the neighbourhood.¹²

Artificial
manure trade.

A person established the trade of an artificial manure merchant, and had kept on his premises at one time as much as twenty-five tons of corn manure composed of beans and sulphuric acid, but the local board gave no evidence that the trade as carried on had been either noxious or offensive to persons residing in the locality. He was convicted, but it was held that though it was a question of fact for the justices whether the trade was offensive, the evidence did not support the finding that it was so, and the court could not say that as a matter of law the business was within the section and was offensive.¹³ So also a manure company, that steamed bones in metal cylinders hermetically closed without creating any nuisance, were held to have been wrongly convicted of establishing the trade of bone boilers without the consent of the sanitary authority.¹⁴ Where a nuisance

(6) *Formby v. Barker*, post, p. 361 (23).

(7) 11 & 12 Vict. c. 63, s. 64.

(8) *Liverpool New Cattle Market Co. v. Hodson* (1867), L. R. 2 Q. B. 131; 8 B. & S. 184; 36 L. J. M. C. 30; 15 L. T. 534; 31 J. P. 245.

(9) *Hole v. Barlow*, post, p. 220.

(10) *Pinckney v. Ewens* (1861), 4 L. T. 741.

(11) *Ante*, p. 215.

(12) *Wanstead Loc. Bd. of Health v. Hill* (1863), 13 C. B. (N.S.) 479; 32 L. J. M. C. 135; 7 L. T. 744; 9 Jur. (N.S.) 972.

(13) *Cardell v. New Quay Loc. Bd.* (1875), 39 J. P. 742.

(14) *Cardiff Manure Co. v. Cardiff Guardians* (1890), 54 J. P. 661.

did arise from an artificial manure manufactory the case was dealt with under sect. 114.¹⁵ Sect. 112, n.

Cockburn, C.J., said that it was not enough for the justices to find as a matter of fact that the trade was a noxious trade: it must also be one that is *ejusdem generis* with those specified in the section. The trade then in question was that of a rag and bone merchant, and the learned judge said, "I notice that those mentioned seem to include animal matter in some form. Here there is animal matter in the bones, and the mere exposure of green bones may be very offensive;" and a conviction by the justices was upheld.¹⁶

Rag and bone trade.

In a case of a business of frying fish for sale by retail, the quarter sessions, on appeal against a conviction, found as a fact that the business as carried on by the respondent was an offensive trade, but were of opinion that fish frying was not a trade which was either specified in the section, or covered by the general words; and quashed the conviction. On a case stated, the court held that whether the sessions meant to find, as matter of fact or of law, that the case of fish frying was not covered by the general words used in the section, they were right, and their judgment was affirmed. Day, J., said that in order to bring the case within the section the court ought to have found that the business was *per se* offensive; and not merely offensive as carried on by the respondent.¹⁷

Fish frying.

A nuisance arising from the business of fish frying may, however, be dealt with under sect. 114.¹⁸

An injunction was granted by Kekewich, J., to restrain a person from carrying on the business of a fried-fish seller on certain premises, which his predecessor in title had covenanted not to use "as a public-house or beer-shop, or for carrying on any offensive trade or business whatsoever."¹⁹

A butcher slaughtered beasts on his premises. An attempt to restrain this as a breach of a covenant against carrying on an offensive trade failed.²⁰ In a similar case, Chitty, J., said that a butcher's business could be "offensive" within the meaning of a restrictive covenant without being a "nuisance at common law."²¹

Butcher.

An order made under a Metropolitan Act²² included in "offensive trades" the "business of a gut-scraper, that is any business in which gut is cleansed, scraped, or dealt with otherwise than for the manufacture of cat-gut." This was held not to include the business of persons who purchased the intestines of sheep, already cleansed and scraped, from gut-scrappers, sorted them into different sizes and lengths, and, after repacking them, sold them to sausage-makers as coverings for sausages. The magistrate in this case had found that, though there was a disagreeable smell arising from the business, it was not of the character connected with a gut-scraper's business.²³

Gut-scraper's trade.

A smallpox hospital is not a "noxious or offensive business" within the meaning of sect. 112; and such a hospital may be established by one local authority within the district of another, without the consent of the latter authority being given under the present section or under sect. 285.²⁴ With regard to nuisances caused by smallpox hospitals, see the Note to sect. 131.

Smallpox hospital.

The establishment of a public laundry by the purchaser of a plot of building land, who had covenanted not to permit or to suffer any noxious or offensive trade on the plot, was held not to amount to a breach of the covenant.²⁵

Laundry.

Sect. 113. Any urban authority may from time to time make byelaws with respect to any offensive trades established with their consent either before or after the passing of this Act, in order to prevent or diminish the noxious or injurious effects thereof.

Bye-laws as to offensive trades in urban district.
P.H., s. 64.

Note.

Sects. 182-187 regulate the making, confirmation, etc., of bye-laws. The Local Government Board issued a model series of bye-laws (No. XVI.), for adoption under the present section.

Bye-laws.

(15) *Malton U.S.A. v. Malton Farmers', etc., Co.*, post, p. 219.

(16) *Passey v. Oxford Loc. Bd.* (1879), 43 J. P. 622.

(17) *Braintree Loc. Bd. v. Boyton* (1884), 52 L. T. 99; 48 J. P. 582.

(18) See *Houldershaw v. Martin*, post, p. 219.

(19) *Duke of Devonshire v. Brookshaw* (1899), 81 L. T. 83; 63 J. P. 569.

(20) *Cleaver v. Bacon* (1887, Kekewich, J.), 4 T. L. R. 27.

(21) *Rapley v. Smart* (1893), 10 T. L. R. 174.

(22) 37 & 38 Vict. c. 67, s. 3; similar to P. H. (London) Act, 1891 (54 & 55 Vict. c. 76), s. 19 (1).

(23) *London C.C. v. Hirsch & Co.* (1899), 81 L. T. 447; 63 J. P. 822.

(24) *Withington Loc. Bd. v. Manchester Cpn.*, L. R. 1893, 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. 330; 57 J. P. 340.

(25) *Knight v. Simmonds*, L. R. 1896, 1 Ch. 653; 65 L. J. Ch. 307; 74 L. T. 188; affirmed in C. A. on another point, L. R. 1896, 2 Ch. 294; 65 L. J. Ch. 583; 74 L. T. 563.

Sect. 113, n.

Having regard to the decisions as to the meaning of "offensive trade" in sect. 112,²⁶ the Local Government Board refused to confer on a rural district council the urban powers of this and the preceding and following sections with a view to bye-laws being made by the council for regulating the frying of fish for sale.

Duty of urban authority to complain to justice of nuisance arising from offensive trade.
N.R. 1855, s. 27.
San. 1866, s. 18.
N.R. 1855, s. 30.

Sect. 114. Where any candle-house melting-house melting-place or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling burning or crushing bones, or any manufactory building or place used for any trade business process or manufacture causing effluvia, is certified to any urban authority by their medical officer of health, or by any two legally qualified medical practitioners, or by any ten inhabitants of the district of such urban authority, to be a nuisance or injurious to the health of any of the inhabitants of the district, such urban authority shall direct complaint to be made before a justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a court of summary jurisdiction.

The court shall inquire into the complaint, and if it appears to the court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier,) shall be liable to a penalty not exceeding five pounds nor less than forty shillings, and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds :

Provided that the court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the court of quarter sessions in manner provided by this Act.

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in any superior court of law or equity against any person in respect of the matters alleged in such certificate.

Note.

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Procedure.

Similar proceedings under the corresponding repealed sections of the Nuisances Removal Acts could only be taken by the nuisance authority in a city, town, or populous district; but these proceedings may now be taken in any urban district; or, if an order for the purpose under sect. 276 has been obtained from the Local Government Board or Minister of Health, in a rural district. It must also be noticed that the burden of proving that the best practicable means are used for abating the nuisance, is thrown on the defendant, and that the council are not required to prove that such means are not used. The clause of the Nuisances Removal Act, 1855,¹ under which the defendant could compel the nuisance authority to abandon summary proceedings under the Act, and to take action in a superior court, has not been re-enacted, as it was sometimes found practically to deprive the authority of their remedy altogether.

If a district council fail to take proceedings under the present section in a proper case, they may be liable to have their default dealt with under sect. 299.²

A "legally qualified medical practitioner" means one who is registered under the Medical Acts : see the Note to sect. 189.

An objection to proceedings under a similar provision in the Public Health (London) Act, 1891,³ was taken on the ground that notice under another provision⁴ similar to sect. 94 of the present Act, had not been given by the sanitary authority requiring the nuisance to be abated; but the objection was overruled.⁵

(26) *Wanstead Loc. Bd. of Health v. Hill*, ante, p. 216; and *Braintree Loc. Bd. v. Boyton*, ante, p. 217.

(1) 18 & 19 Vict. c. 121, s. 28.

(2) See *London C.C. v. Bermondsey B.C.*, cited in Note to s. 299, post.

(3) 54 & 55 Vict. c. 76, s. 21.

(4) *Ibid.*, s. 4.

(5) *Bird v. Kensington Vestry*, L. R. 1895, 1 Q. B. 912; 64 L. J. M. C. 215; 72 L. T. 599; 59 J. P. 391.

Application of sections.

Duty of Council.
Medical practitioner.
Notice.

With regard to the recovery of penalties, see sects. 251-253; the last of which sections allows proceedings by district councils in respect of offensive trades to be taken without the consent of the Attorney General, although the act or default is committed or the premises are situated without the district. With regard to appeals to quarter sessions, see sect. 269.

Sect. 114, n.
Penalties, &c.

Nuisance from Offensive Trades.

The present section is not confined to the noxious or offensive trades to which sect. 112 relates.

The business of a company that manufactured artificial manure had been certified by a medical officer of health to be a nuisance, and was proved to have caused offensive effluvia, which materially interfered with the comfort and enjoyment of the inhabitants in the street, and penetrated into some of the houses. Certain cases of nausea and vomiting were attributed to it by a witness; while on the other hand, evidence was given that though it might make sick persons worse, it would probably do no permanent injury to health. It was held that the effluvia, being proved to interfere with the comfort and enjoyment of the inhabitants, constituted a "nuisance" within the meaning of the section, and was moreover "injurious to health"; but Stephen, J., held that it was not necessary, in order to bring a nuisance within the section, to prove injury to health.⁶ And in like manner, in a case of nuisance from the business of fish frying, a medical certificate under the present section had only stated that the business was a nuisance; and the justices, considering the certificate insufficient, because it did not state that the business was also injurious to health, had refused to entertain the complaint; but the court sent the case back to them to be heard and decided, holding that the certificate was sufficient.⁷

Injury to
health.

Lord Kenyon said,⁸ "what is a nuisance in one place is not so in another. In places where offensive trades have been long carried on they are not nuisances, though they would be so in any of the squares or other places where such trades have not been exercised. . . . Where manufactories have been borne with in a neighbourhood for many years it will operate as a consent of the inhabitants to their being carried on, though the law might have considered them as nuisances had they been objected to in time; but if another man comes, and by his manufacture renders that which was a little unpleasant before very disagreeable and uncomfortable, though it would not amount to a nuisance by itself, still he is answerable for it."

Long-
continued
nuisance.

Where a manufacturer discharged arsenic and other injurious matters from his works into a stream, which he might have avoided doing by certain expedients, it was held that he could not defend himself in an action arising therefrom by showing that his trade was a lawful trade carried on in a proper manner. If to an action for carrying on a trade in such a manner as to cause injury to the plaintiff, the defendant relies for a defence upon the fact of the trade being carried on in a reasonable and proper manner, the onus of proving that it is so carried on is on the defendant, and the onus is not on the plaintiff of showing that it is not so carried on.⁹

Lawful trade.

In another case a person carried on a manufacture in itself lawful, but which required the greatest precaution to prevent accidents; he used due precaution, but occasionally, by accidents happening at very long intervals, caused to his neighbouring manufacturers injuries not irreparable, but such as could be compensated by damages. In this case the court refused to grant an injunction.¹⁰ But in an action to restrain a nuisance caused by the business of a fat-melter, the question whether the defendant was acting reasonably from his own point of view was held not to be material; and although he was carrying on the business in a proper manner, an injunction was granted, because he was not acting reasonably towards his neighbours.¹¹

Where an interlocutory injunction was granted restraining a private nuisance from a bone-boiling business, Chitty, J., said that the inclusion of this business in sect. 112 was "an element to be considered," but "not conclusive."¹²

(6) *Malton Loc. Bd. v. Malton Farmers' Manure and Trading Co.* (1879), L. R. 4 Ex. D. 302; 49 L. J. M. C. 90; 40 L. T. 755; 44 J. P. 155.

(7) *Houldershaw v. Martin* (1888, Q. B. D.), 49 J. P. 179 n.; 1 T. L. R. 323.

(8) In *Rex v. Neville* (1791), 1 Peake 125.

(9) *Stockport Water Co. v. Potter* (1861),

7 H. & N. 160; 31 L. J. Ex. 9; 7 Jur. (N.S.) 880; see also *St. Helen's Smelting Co. v. Tipping*, post, p. 222.

(10) *Cooke v. Forbes* (1868), L. R. 5 Eq. 166; 37 L. J. Ch. 178; 17 L. T. 371.

(11) *A.G. v. Cole & Sons*, L. R. 1901, 1 Ch. 205; 70 L. J. Ch. 148; 83 L. T. 725; 65 J. P. 88.

(12) *Verco v. Morris* (1881), 26 Sol. J. 126.

Sect. 114, n.
Liability for
acts of
servants.

Previous
conviction.

Public
nuisance.

Private
injury.

It has been decided that the owner of works carried on for his benefit by his agents and servants is liable to an indictment for a nuisance resulting from the mode of carrying on the business, although such nuisance was committed in opposition to his orders, and without his knowledge, the proceedings by indictment in such case being criminal in form only.¹²

An indictment charged the commission of a nuisance by keeping up furnaces for making animal charcoal. It appeared that the defendants used such furnaces for the manufacture of animal charcoal, and that the manufacture had been conducted for some years before the time of the indictment in the same manner as at that time. A witness was called to prove that in 1855 the defendants were convicted in a penalty under the Smoke Nuisance Abatement Act, 1853.¹³ His evidence was received, and a verdict taken for the Crown—whereupon a rule *nisi* was obtained for a new trial on the ground of the improper reception of such evidence. The whole court held that it was improperly received, the offence of which the defendant was convicted not necessarily being a nuisance; and by Lord Campbell, C.J., and Coleridge, J. (Wightman, J., not concurring), even if it had been a conviction for an offence precisely similar to that charged against the defendant, except that it was anterior in time, it would not have been admissible.¹⁴

Brick-burning.

In the year 1736, the Duke of Grafton filed a bill to restrain the defendant from burning brick-earth in the fields close to Hanover Square, but the court refused the injunction, observing that the manufacture of bricks, though near the habitations of man, if carried on for the purpose of making habitations for them, was not a public nuisance.¹⁵

And it was formerly held that, although the carrying on of a lawful trade might annoy another person, yet an action for damages would not lie for the reasonable use of a lawful trade in a convenient place; and therefore that an action would not lie for burning bricks for the purpose of building houses on the land on which the burning was carried on, though the doing so caused noxious vapours to the injury of another.¹⁶ But this decision was overruled, and it is now settled law that an action lies for a nuisance to the house or land of a person, whenever, taking all the circumstances into consideration, including the nature and extent of the owner's enjoyment before the act complained of, the annoyance is sufficiently great to amount to a nuisance according to the ordinary rule of law; and this whatever the locality may be where the act complained of is done.¹⁷ And in an action for a nuisance caused by the defendant burning bricks on his own land near the house and land of the plaintiff, it is no misdirection for the judge to refuse to leave to the jury the question whether the bricks had been burnt in a convenient place for that purpose; such form of question having been previously decided¹⁸ to be a misdirection; but *semble, per* Erle, C.J., it would be a misdirection if the judge told the jury to consider solely the evidence adduced to show discomfort to the plaintiff, and not to take into their consideration any evidence showing that the act complained of was an act of ownership on the part of the defendant which was clearly lawful, if it did not cause actionable discomfort to a neighbour, and that it was done with full attention to prevent discomfort in respect of time and place and manner and degree.¹⁹

Wood, V.-C., said that, whatever might have been the case formerly, when there was considerable conflict of opinion as to whether the smoke and vapour arising from brick-burning were to be considered as prejudicial to health and comfort, it was clearly settled that the fumes of a brick-kiln, if they reached dwelling-houses, were a nuisance to the inhabitants, which the court would restrain without requiring any scientific evidence upon the subject.²⁰

And an injunction to restrain brick-burning was granted by Kay, J., on the ground that the nuisance was to be considered "as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering

(12) *Reg. v. Stephens* (1866), L. R. 1 Q. B. 702; 35 L. J. Q. B. 251; 12 Jur. (N.S.) 961; 14 L. T. 593; 7 B. & S. 710.

(13) 16 & 17 Vict. c. 128, s. 1 (repealed by 54 & 55 Vict. c. 76, s. 142).

(14) *Reg. v. Fairie* (1857), 8 E. & B. 486; 4 Jur. (N.S.) 300; 6 W. R. 56.

(15) *Duke of Grafton v. Hilliard* (1736), 18 Vesey Jun. 219, n.

(16) *Hole v. Barlow* (1858), 4 C. B. (N.S.) 334; 27 L. J. C. P. 207; 4 Jur. (N.S.) 1019;

22 J. P. 530.

(17) *Bamford v. Turnley* (1860), 3 B. & S. 62; 31 L. J. Q. B. 286; 9 Jur. (N.S.) 377; 6 L. T. 721.

(18) *Bamford v. Turnley*, *supra*.

(19) *Cavey v. Leadbitter* (1863), 13 C. B. (N.S.) 470; 32 L. J. C. P. 104; 9 Jur. (N.S.) 798. See also with regard to this case, 3 F. & F. 14.

(20) *Evans v. Smith*, Trinity Term, 1867.

with the ordinary comfort, physically, of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people,"²¹ and also because it would depreciate the value of neighbouring property.²²

In a brick-burning case, in which an injunction only was prayed for, damages were awarded, with the plaintiff's consent, instead of an injunction, and a memorandum of the decree was ordered to be endorsed on her title-deed, that future purchasers might have notice of it.²³

The question whether brick-burning is a nuisance must depend upon circumstances, and no general rule as to distance can be laid down.²⁴

Where a person purchased a piece of land, about an acre in extent, situated at a distance of less than 100 yards from the house and pleasure-grounds of another person, and commenced burning bricks made out of the clay taken from the grounds so purchased, the owner of the house and grounds obtained an injunction.²⁵

Again, a person who had contracted to supply large quantities of bricks for the erection of fortifications at Portsdown Hill, obtained a lease of a great extent of land containing brick-earth, upon which he erected numerous brick-kilns within 340 yards of a mansion, and close to the boundary of the property of the owner of the mansion, and proceeded with the burning of the bricks, which the owner alleged was an annoyance to her, and that it destroyed her property. Stuart, V.-C., granted an injunction to restrain the nuisance, and directed that the contractor should not burn any bricks within a distance of 653 yards from the house of the owner of the adjoining property—observing that where a man is injuring his neighbour to a very material extent, in a way not absolutely necessary and unavoidable in order to the enjoyment of his own fair private right, the court is always disposed to interfere, and that in such a case the balance of convenience must be attended to.²⁶

A nuisance against which the court will grant an injunction must, however, be a material injury to property or to the comfort or the existence of those who dwell in the neighbourhood. A. took lands adjoining the residence, lake, and grounds of B., and made preparations for burning bricks upon them, and commenced building one clamp at a distance of 1,447 feet from the residence, and 422 feet from the lake, upon the margin of which was a cottage, occupied by a person in B.'s employment. B. obtained an *ex parte* injunction, upon which the fire was at once extinguished, and nothing further was ever done, though it was admittedly the intention to burn bricks. Rolt, L.J., held (reversing the decision of Stuart, V.-C.) that the actual facts did not amount to a nuisance, that as to future injury there was not sufficient material, having regard to the proximity of the clamp, or to the estimated degree of damage, or to the circumstances generally, to warrant the injunction. Further, that there is nothing to compel the court to take judicial notice that a brick-clamp at a distance of 140 yards from another person's property is a nuisance, and that each case must depend on its own circumstances; and *semble*, that in such cases the recovery of a verdict at law did not necessary entitle the plaintiff to an injunction; but the fact that there was legally and technically a nuisance must be considered together with the amount of damage and the duration of the nuisance complained of.²⁷

In a later case, brick-burning was held to be a nuisance to persons living within the limit affected by it, and 240 yards was held not to be an extreme limit; and the court granted an injunction.²⁸ In the same case it was held, with reference to the re-establishment of a nuisance, that when the nuisance had been of long standing, but the exercise of it had been interrupted for a space of twenty years, there had been a cesser of the right.

A brick-kiln sufficiently near a dwelling-house to affect it with smoke is a nuisance, and the owner's prescriptive right to another kiln nearer to the house and almost in a line with the kiln complained of cannot be urged as a reason for the court not granting an injunction.²⁹

Sect. 114, n.

Distance
from houses.Re-establish-
ment of
nuisance.Prescriptive
right.

(21) Quoted from *Walter v. Selfe*, *infra*.

(22) *A.G. (Chiswick Loc. Bd.) v. Hussey* (1890), 89 L. T. Jo. 180; *Times*, 27th June, p. 3, col. iv.

(23) *Crawford v. Hornsey Steam Brick and Tile Co.* (1876), 45 L. J. Ch. 432; 34 L. T. 923.

(24) *Cleve v. Mahany* (1861), 9 W. R. 882; 25 J. P. 819.

(25) *Walter v. Selfe* (1851), 4 De G. & S.

315; 20 L. J. Ch. 433.

(26) *Beardmore v. Treadwell* (1862), 3 Giff. 683; 31 L. J. Ch. 892; 9 Jur. (N.S.) 272; 7 L. T. 207.

(27) *Luscombe v. Steer* (1867), 17 L. T. 229; 15 W. R. 1191.

(28) *Roberts v. Clarke* (1868), 18 L. T. 49.

(29) *Bareham v. Hall* (1870), 22 L. T. 116.

Sect. 114, n.

Nuisance at
common law.Prescriptive
right.Manufac-
turing neigh-
bourhood.Acquiescence
by vendor.

Tobacco mill.

Alkali works.

Power to
proceed where
nuisance arises
from offensive
trade carried on
without district.

Metropolis.

Smoke and Vapours.

With regard to nuisances from smoke, see also the Note to sect. 91.

It has been long settled that it is a common nuisance to make acid spirit of sulphur, and thereby impregnate the air with noisome stinks; and the person so causing the nuisance may be indicted at common law.³⁰

As to smells from the burning of swabs, dressings, etc., at a tuberculosis surgical hospital, see the case cited below.³¹

An injunction went to restrain the emission of smoke and vapours from certain glassworks as to the whole of such works, though one of the chimneys had been erected more than twenty years before filing the bill.³²

In an action against a smelting company for injuring trees and shrubs by noxious vapours, the judge at the trial directed the jury to find for the plaintiff, if the evidence satisfied them that real sensible injury had been done to the enjoyment or value of the property by such vapours; and the jury having found for the plaintiff, it was held by the House of Lords that the judge had rightly directed the jury, and that the defendants were liable for sensible injury done to the plaintiff's property, notwithstanding that their business was an ordinary business, carried on in a proper manner, and in a neighbourhood more or less devoted to manufacturing purposes.³³

In the foregoing case a landowner had sold part of his land to one person with the knowledge that works of a certain kind were to be erected on it, and had afterwards sold another part to the plaintiff. The works caused a nuisance and the plaintiff recovered damages, but the question of acquiescence by the vendor does not appear to have been raised in the action. This question was subsequently raised in Chancery, but the plaintiff nevertheless obtained an injunction, the mere knowledge of the vendor being distinguished from the case of a vendor who had created works and then sold them.³⁴

The erection of a tobacco mill near to the house of another has been held to be a nuisance and actionable.³⁵

As to alkali, etc., works, see the Act of 1906 set out elsewhere.³⁶

Sect. 115. Where any house building manufactory or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house building manufactory or place were situated within such district: so, however, that summary proceedings shall not in any case be had otherwise than before a court having jurisdiction in the district where the house building manufactory or place is situated.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by [*any nuisance authority*] in the metropolis in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any urban authority in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such [*nuisance authority*] . . .

Note.

The last clause of the present section, defining the expression "nuisance authority," is repealed by the Public Health (London) Act, 1891;³⁷ but that Act enacts that the present section "shall continue to extend to London, with the substitution of a sanitary authority under this Act for a nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis or to any building, manufactory, or place in the metropolis which is injurious to health, shall include any nuisance within the meaning of this Act, and any manufactory, building, or place which is dangerous to health."³⁸

With regard to the meaning of "sanitary authority" in the metropolis, see the Note to sect. 108.

(30) *Rex v. White and Ward* (1757), 1 Burr. 333.

(31) *Frost v. King Edward VII. Welsh National Memorial Association*, post, p. 256.

(32) *Savile v. Kilner* (1872), 26 L. T. 277.

(33) *St. Helen's Smelting Co. v. Tipping* (1865), 11 H. L. C. 642; 35 L. J. Q. B. 66; 11 Jur. (N.S.) 785; 12 L. T. 776. See also *Wood v. Conway Cpn.*, post, Vol. II., p. 1255.

(34) *Tipping v. St. Helen's Smelting Co.* (1865), L. R. 1 Ch. App. 66.

(35) *Styan v. Hutchinson* (1800), 2 Selw. N. P. 1068.

(36) *Post*, Vol. II., p. 2190.

(37) 54 & 55 Vict. c. 76, s. 142, and Sched. IV.

(38) *Ibid.*, s. 21 (5).

UNSOUND MEAT, ETC.

Sect. 116. Any medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk appears to such medical officer or inspector to be diseased or unsound or unwholesome or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice.

Power of medical officer of health to inspect meat, etc.
N.R., 1863, s. 2.
T.L., s. 131.
P.H., s. 63.
P.H., 1874, s. 54.

Note.

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Inspection of unsound Meat, etc.

This and the three following sections may be acted upon in rural as well as in urban districts.

Sect. 118 imposes a penalty for hindering the inspection; and under sect. 119 a search warrant may, if necessary, be obtained from a justice.

The Local Government Board issued a memorandum, dated 6th September, 1901, on tuberculosis and tuberculous carcasses of cattle, and with respect to the inspection of meat, and the qualifications of meat inspectors.

Where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted, sects. 116 to 119 of the present Act are applicable to all articles intended for the food of man and not merely to the articles above specified.¹

Where that Act has not been adopted, it might be contended that "meat" is not confined to flesh, which is specially mentioned. Thus, potato chips were, in one case,² held to be "meat" for the purposes of the Sunday Observance Act, 1677,³ and, in another,⁴ it was said that ice cream might be "meat" for those purposes, but it has since been held that it is not,⁵ though Darling, J., observed: "Where we speak of a thing being 'meat' I do not think it necessarily means flesh and nothing but flesh."

Meaning of "meat."

Unsound meat was found in a butcher's safe on a Monday, while the shop was being cleansed under the manager's direction, and it was proved that the safe had not been opened since the previous Saturday, and that in the ordinary course of business the meat would have been examined after the shop was cleansed and before it was set out for sale. In these circumstances it was held that there was no evidence that the meat was deposited for sale and intended for the food of man, and the conviction of the butcher was quashed.⁶

Meaning of deposit for sale.

Meat deposited in a warehouse pending distribution under the directions of the local agent of the Minister of Food was held to have been "deposited for sale."⁷

As to "preparation for sale," and "exposure for sale," see the Note to sect. 117.

It was considered that Sunday afternoon might, under some circumstances, be a reasonable time for the inspection of meat under these provisions.⁸

Meaning of reasonable time.

(1) See s. 28 (1), *post*, Part I., Div. II.

(2) *Bullen v. Ward* (1905, K. B. D.), 74 L. J. K. B. 916; 93 L. T. 439; 69 J. P. 422.

(3) 29 Car. II., c. 7, ss. 1, 3, set out in Note to S. F. D. Act, 1875, s. 6, *post*, Part II., Div. II. See also as to these provisions: *Fairburn v. Evans*, L. R. 1916, 1 K. B. 218; 85 L. J. K. B. 479; 114 L. T. 363; 80 J. P. 63; 14 L. G. R. 306; *Hawkey v. Stirling*, L. R. 1918, 1 K. B. 63; 117 L. T. 724; 82 J. P. 17; 16 L. G. R. 52; *Elder v. Kelly*, cited in Note to S. F. D. Act, 1875, s. 6.

(4) *Amorette v. James*, L. R. 1915, 1 K. B. 124; 84 L. J. K. B. 563; 112 L. T. 167; 79 J. P. 116; 13 L. G. R. 598.

(5) *Slater v. Evans*, L. R. 1916, 2 K. B. 403; 85 L. J. K. B. 1686; 115 L. T. 190; 80 J. P. 303; 14 L. G. R. 889.

(6) *Wieland v. Butler-Hogan* (1904), 73 L. J. K. B. 513; 90 L. T. 588; 68 J. P. 310; 2 L. G. R. 1074; 20 Cox C. C. 630.

(7) *Ollett v. Henry*, L. R. 1919, 2 K. B. 88; 88 L. J. K. B. 998; 121 L. T. 86; 83 J. P. 165; 17 L. G. R. 349. And see *Williams v. Allen*, *post*, p. 224.

(8) *Small v. Bickley*, *post*, p. 235.

Sect. 116, n.
Meaning of
place.

A butcher carried on business at his shop in a town, but resided at and occupied a house and some land at the outskirts, nearly a mile distant from his shop. A quantity of diseased meat, loaded in carts, was carried into the yard belonging to the shop and there seized by the police. Within this yard there was a slaughter-house. It was held first that the yard was a "place" within the meaning of sect. 2 of the Nuisances Removal Act, 1863,⁹ which corresponded to sects. 116 and 117 of the present Act; secondly, that assuming that the word was used in the same sense in sect. 2 as in sect. 3 (which corresponded to sect. 118 of the present Act), the word "place" in sect. 3 was not to be limited to places *ejusdem generis* with "slaughter-house, shop, building, or market."¹⁰

An inspector seized unsound meat (partially prepared for sale) while it was being taken in a cart to the owner's premises, where the preparation was to be completed. The owner's conviction was upheld, as the court held that the meat had been deposited in a "place" for the purpose of sale or preparation for sale within the present section. The conviction of the driver of the cart, who had also performed the preliminary preparation, for "aiding and abetting" was also upheld.¹¹

Common law.

The exposure for sale in a public market of meat, etc., which is unfit for human food is an offence indictable at common law.¹² A farmer and butcher was sentenced to eight months' imprisonment with hard labour for selling meat which caused the death of a woman from ptomaine poisoning.¹³ But a person who sends unsound food to a meat salesman knowing that it is unsound, but not that it is to be sold for human food, is not indictable.¹⁴

Other Enactments as to Sale of Food.

Markets and
Fairs Clauses
Act.

Provisions for the inspection and seizure of unwholesome meat and provisions in markets established by a district council under the present Act, and other markets or fairs to which the Markets and Fairs Clauses Act, 1847,¹⁵ applies, are contained in that Act, which imposes penalties on persons selling or exposing for sale any unwholesome meat or provisions in the market or fair.

Towns
Improvement
Clauses Act.

Sect. 131 of the Towns Improvement Clauses Act, 1847,¹⁶ which is incorporated by sect. 169 of the present Act, contains provisions similar to the present and two following sections. Those provisions, however, relate only to cattle and carcasses in a building or place kept or used for the sale of butcher's meat or for slaughtering cattle.

Municipal
Corporations
Act.

A bye-law, made under the Municipal Corporations Act, 1835,¹⁷ for the suppression of nuisances not otherwise punishable, summarily imposed a penalty on any butcher, fishmonger, poulterer "or other person" who should have in his possession, with intent to sell, the flesh of any diseased animal or any unsound meat, fish, poultry, "or other victuals or provisions." It was held to be authorised by the statute and to be applicable to unsound cheese exposed for sale by a grocer: the exposure of the cheese for sale for human food being a nuisance at common law,¹⁸ and an objection that cheese was not *ejusdem generis* with the other things mentioned in the bye-law being overruled.¹⁹

Bread.

Reference should also be made to the Bread Act, 1836,²⁰ regulating the making and sale of bread out of the City of London, and beyond the Bills of Mortality and ten miles from the Royal Exchange, and for preventing the adulteration of meal, flour, and bread: the Act requires bakers beyond those limits to sell all bread (except French and fancy bread and rolls) by weight, and imposes penalties

(9) 26 & 27 Vict. c. 117, s. 2.

(10) *Young v. Grattridge* (1868), L. R. 4 Q. B. 166; 38 L. J. M. C. 67; 33 J. P. 260. As to the meaning of "place" in the Betting Act, 1853, 16 & 17 Vict. c. 119, ss. 1, 3, see *Powell v. Kempton Park Racecourse Co.* (L. R. 1899 A. C. 143; 63 J. P. 260, 275, 292), *Brown v. Patch* (L. R. 1899, 1 Q. B. 892; 63 J. P. 421), *Belton v. Busby* (L. R. 1899, 2 Q. B. 380; 81 L. T. 196; 63 J. P. 709), *Tromans v. Hodgkinson* (L. R. 1903, 1 K. B. 380); *Wright v. Smith and Davies v. Jeans* (1903, 1904, Sc. J.; 6 F. 18, 37), *Rex v. Russell* (1905, 69 J. P. 247).

(11) *Williams v. Allen*, L. R. 1916, 1 K. B. 425; 85 L. J. K. B. 822; 114 L. T. 1205; 80 J. P. 55; 14 L. G. R. 366; *Daly v. Webb*

(1869), 4 Ir. C. L. 309, approved. See also *Neilson v. Parkhill* (1892), S. C. (4th Series) J. 24, as to wheelbarrows.

(12) *Reg. v. Stephenson* (1862), 3 F. & F. 106.

(13) *Reg. v. Kempson* (Oxford Assizes), *Times*, June 27th, 1893, p. 12, col. iv.

(14) *Reg. v. Crawley* (1862), 3 F. & F. 109.

(15) See s. 15, *post*, Vol. II., p. 1430.

(16) *Post*, Vol. II., p. 1634.

(17) 5 & 6 Wm. IV., c. 76, s. 90. See, now, Act of 1882, s. 23, *post*, Vol. II., p. 1808.

(18) *Reg. v. Stephenson*, *supra*.

(19) *Shillito v. Thompson* (1875), L. R. 1 Q. B. D. 12; 45 L. J. M. C. 18; 33 L. T. 506; 40 J. P. 535.

(20) 6 & 7 Wm. IV. c. 37.

for adulterating bread, corn, meal, or flour : it also prohibits the baking of bread on Sunday, and limits the time during which it may be sold on that day.

Sect. 116, n.
Bread— cont.

By sect. 1 of the Bread Acts Amendment Act, 1922,²¹ “ Nothing in the Acts relating to the manufacture or sale of bread within or without the City of London and the liberties thereof shall be deemed to prohibit the addition to any flour of any ingredient or mixture for the purpose of making such flour self-raising or the addition to such self-raising flour of ingredients suitable for the making of cakes or puddings, or the sale or offer or exposure for sale of any flour to which any such ingredient or mixture has been added.”

A baker sold from a cart only half-quartern loaves, and carried in the cart one two-pound weight only. When a customer asked for a loaf to be weighed, the carter put in one scale the loaf, and, if necessary, a fragment of another loaf to make the total weight up to two pounds, and in the other scale the two-pound weight. It was held that this was not a sufficient compliance with sect. 7 of the Act of 1836.²²

Under the same section, persons who “ convey or carry out bread for sale in and from any cart or other carriage ” must carry therein proper scales. The conviction of a baker who sent out a boy with bread in a basket strapped to a bicycle without scales, was upheld. *Per* Lord Alverstone, C.J. : “ It is not suggested that the machine was not capable of carrying the requisite scales and weights for weighing the bread.”²³

A conviction under the London Bread Act, 1822,²⁴ for selling bread otherwise than by weight was upheld in these circumstances. A roundsman was asked for a loaf of bread by a customer who expected to get a 2 lb. loaf. A loaf, weighing more than 1½ lbs. but less than 2 lbs. was put into a bag on which there was a printed notice that loaves were sold as weighing 1½ lbs. The loaf had been weighed before it left the bakery but was not weighed by the roundsman.²⁵

It was held to be no offence²⁶ to sell as a 2 lb. loaf a loaf weighing more than 2 lbs.²⁷

Under the Bread (Ireland) Act, 1838,²⁸ a police officer was held entitled to prosecute as a “ common informer.”²⁹

As to the sale of butter, margarine, and margarine cheese, see the Margarine Act, 1887, sect. 5 of the Sale of Food and Drugs Act, 1899, and the Butter and Margarine Act, 1907.³⁰

Butter and
Margarine.

The sale of milk which is likely to disseminate infectious disease may be stopped under the Infectious Disease (Prevention) Act, 1890,³¹ where that Act has been adopted. See also as to the sale of watered or adulterated milk, or milk from which the cream has been abstracted, the Sale of Food and Drugs Acts, and, as to the inspection, etc., of dairies, cowsheds, and milkshops, the Milk and Dairies Acts, 1914 and 1922.³⁰

Milk.

As to the sale of tea, see the Act of 1922, set out in the Note to sect. 25 of the Sale of Food and Drugs Act, 1875.³⁰

Tea.

The sale of any article of food or any drug which is not of the nature, substance and quality of the article demanded by the purchaser, may be dealt with under the Sale of Food and Drugs Acts.³⁰

Sale of Food
and Drugs
Acts.

As to “ tuberculous ” meat, and other precautions against disease from milk, etc., see the Milk and Dairies Acts.³⁰

Milk and
Dairies Acts.

(21) 12 & 13 Geo. V. c. 28, s. 1. By s. 3 of this Act, nothing in it “ shall prejudice or affect the operation of the Sale of Food and Drugs Acts, 1875 to 1907 ” (set out *post*, Part II., Div. II.). By s. 4 the Act is to “ apply to Scotland with the substitution for ‘ the Minister of Health ’ of ‘ the Scottish Board of Health,’ ” but the Act does not apply to Ireland (*ibid.*, s. 5). The above short title is given by s. 6.

(22) 6 & 7 Wm. IV. c. 37, s. 7. *Turner v. Holder*, L. R. 1911, 2 K. B. 562; 80 L. J. K. B. 895; 105 L. T. 34; 75 J. P. 445; 9 L. G. R. 979.

(23) *Pollard v. Turner*, L. R. 1912, 3 K. B. 625; 82 L. J. K. B. 30; 107 L. T. 792; 77 J. P. 53; 11 L. G. R. 42.

(24) 3 Geo. IV. c. cvi., s. 4.

(25) *Lyons & Co. v. Houghton*, L. R. 1915, 1 K. B. 489; 84 L. J. K. B. 979; 112 L. T. 771; 79 J. P. 233; 13 L. G. R. 605.

(26) Against the Bread Order, 1917, Art. VII. As to the validity of the Bread Order, 1918, Art. 8, see *Gurney v. Houghton* (1920, K. B. D.), 123 L. T. 706; 84 J. P. 239; 18 L. G. R. 642.

(27) *Hildreth v. Louis* (1917, K. B. D.), 87 L. J. K. B. 351; 82 J. P. 59; 16 L. G. R. 102.

(28) 1 & 2 Vict. c. 78, s. 4.

(29) *Rigney v. Peters*, 1915 Ir. K. B. 342; 49 Ir. L. T. 146. *Kennedy v. O’Keefe*, *post*, Vol. II., p. 2080, followed.

(30) *Post*, Part II., Div. II.

(31) *Post*, Part II., Div. I.

Sect. 116, n.

Sale of Horseflesh for Human Food.

Horseflesh.

The Sale of Horseflesh, Etc., Regulation Act, 1889,³² which came into operation on the 29th September, 1889,³³ provides as follows:—"1. No person shall sell, offer, expose, or keep for sale any horseflesh for human food, elsewhere than in a shop, stall, or place over or upon which there shall be at all times painted, posted, or placed in legible characters of not less than four inches in length, and in a conspicuous position, and so as to be visible throughout the whole time, whether by night or day, during which such horseflesh is being offered or exposed for sale, words indicating that horseflesh is sold there.

2. No person shall supply horseflesh for human food to any purchaser who has asked to be supplied with some meat other than horseflesh, or with some compound article of food which is not ordinarily made of horseflesh.

3. Any medical officer of health or inspector of nuisances or other officer of a local authority acting on the instructions of such authority or appointed by such authority for the purposes of this Act may at all reasonable times inspect and examine any meat which he has reason to believe to be horseflesh, exposed for sale or deposited for the purpose of sale, or of preparation for sale, and intended for human food, in any place other than such shop, stall, or place as aforesaid, and if such meat appears to him to be horseflesh he may seize and carry away or cause to be seized and carried away the same, in order to have the same dealt with by a justice as hereinafter provided.

4. On complaint made on oath by a medical officer of health or inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building, or part of a building other than such shop, stall, or place as aforesaid, in which such officer has reason for believing that there is kept or concealed any horseflesh which is intended for sale, or for preparation for sale for human food, contrary to the provisions of this Act; and to search for, seize, and carry away or cause to be seized and carried away any meat that appears to such officer to be such horseflesh, in order to have the same dealt with by a justice as hereinafter provided.

Any person who shall obstruct any such officer in the performance of his duty under this Act shall be deemed to have committed an offence under this Act.

5. If it appears to any justice that any meat seized under the foregoing provisions of this Act is such horseflesh as aforesaid, he may make such order with regard to the disposal thereof as he may think desirable; and the person in whose possession or on whose premises the meat was found shall be deemed to have committed an offence under this Act, unless he proves that such meat was not intended for human food contrary to the provisions of this Act.

6. Any person offending against any of the provisions of this Act, for every such offence shall be liable to a penalty not exceeding twenty pounds, to be recovered in a summary manner; and if any horseflesh is proved to have been exposed for sale to the public in any shop, stall, or eating-house other than such shop, stall, or place as in the first section mentioned, without anything to show that it was not intended for sale for human food, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.

7. For the purposes of this Act 'horseflesh' shall include the flesh of asses and mules, and shall mean horseflesh, cooked or uncooked, alone or accompanied by or mixed with any other substance.

8. For the purposes of this Act the local authorities shall be in the City of London and the liberties thereof, the [Common Council], and in the other parts of the county of London the [metropolitan borough councils] acting in the execution of the Metropolis Local Management Acts, and in other parts of England the urban and rural sanitary authorities."

The procedure under this Act is similar to that prescribed by sects. 116-119 of the present Act with respect to unsound meat and other food, and reference may be made to the cases cited in those sections. Under the Act of 1889, however, the justice who deals with the meat seized has a discretion as to the mode of disposing of it, while under sect. 117 of the present Act he is required to order the food to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man at all.

(32) 52 & 53 Vict. c. 11, ss. 1-8. The above short title is given by s. 10, and s. 9 applies to Scotland only.

(33) *Ibid.* s. 11.

Sect. 117. If it appears to the justice that any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk so seized is diseased or unsound or unwholesome or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal carcase or fish or piece of meat flesh or fish, or any poultry or game, or for the parcel of fruit vegetables corn bread or flour or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months.

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed, or any other justice having jurisdiction in the place.

Sect. 117.
Power of justice to order destruction of unsound meat, etc.
N.R., 1863, s. 2.
T.I., s. 131.
P.H., s. 63.

P.H., 1874, s. 54.

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Seizure of Meat, etc.

Where Part III. of the Public Health Acts Amendment Act, 1890,¹ has been adopted, a justice may condemn any of the articles above mentioned or any other article intended for the food of man which is diseased, unsound, unwholesome, or unfit for the food of man, and has been sold, exposed, or deposited for sale, or deposited for preparation for sale, although it has not been seized in pursuance of sect. 116.

Seizure of articles.

Where that Part of the Act of 1890 has not been adopted, the justice can only deal with articles which have been so seized. Thus, a butcher exposed for sale part of a cow which had died of disease, and sold the meat to a customer who took it home for food, and some days after, at the request of the inspector, handed it over to him, and it was condemned by a justice as unfit for the food of man. In these circumstances it was held that the meat was not "so seized" and condemned as is prescribed by sects. 116 and 117, and therefore the butcher was not liable to a penalty, although he was the person to whom the meat belonged at the time of the exposure for sale.²

In a case under the Public Health (London) Act, 1891,³ in which a person delivered unsound meat to a butcher in pursuance of a contract, and the meat was seized at the butcher's shop, it was held that, although the magistrate had found that the meat was not exposed for sale, and would not have been so exposed by the butcher until the inspector had passed it, there was nevertheless a *prima facie* case against the person who sold it to the butcher, which he ought to have been called upon to answer, by reason of the enactment⁴ that "where it is shown that any article liable to be seized under this section and found in the possession of any person, was purchased by him from another person for the food of man, and when so purchased was in such a condition as to be liable to be seized and condemned under this section, the person who so sold the same shall be liable to the fine . . . unless he proves that at the time he sold the said article, he did not know and had no reason to believe that it was in such a condition." And Channell, J., expressed the opinion that the words "any article liable to be seized" mean an article *prima facie* liable to be seized by reason of its condition.⁵

Condemnation of Meat, etc.

There is nothing to require the meat to be condemned by a justice on the same day as that on which the seizure is made, if no unreasonable delay takes place.⁶

Delay in condemnation.

(1) See s. 28 (2), *post*, Part I., Div. II.
(2) *Vinter v. Hind* (1882), L. R. 10 Q. B. D. 63; 52 L. J. M. C. 93; 48 L. T. 359. This case was followed under the P. H. (London) Act, 1891 (54 & 55 Vict. c. 76, s. 47), in *Billing v. Prebble* (1896), 66 L. J. Q. B. 189; 45 W. R. 187; 61 J. P. 86; and distinguished under the P. H. Acts Am. Act, 1890, s. 28, in *Salt v. Tomlinson*, cited in Note to that section,
post, Part I., Div. II.
(3) 54 & 55 Vict. c. 76, s. 47.
(4) *Ibid.*, s. 47 (3).
(5) *Grivell v. Malpas*, L. R. 1906, 2 K. B. 32; 75 L. J. K. B. 647; 95 L. T. 123; 70 J. P. 334; 4 L. G. R. 668; distinguished in *Rex v. Ascanio Puck & Co.*, *post*, p. 230.
(6) *Burton v. Bradley* (1887), 51 J. P. 118.

Sect. 117, n.	But where a purchaser of meat in hot weather (July) had it condemned the next day, the vendor's conviction was quashed. ⁷
Destruction of meat without order.	Where an assistant inspector of nuisances, acting under the direction of a medical officer of health (who was appointed under an unincorporated provision in the Towns Improvement Clauses Act, 1847, ⁸ and was not subject to the Order of the Local Government Board ⁹), destroyed certain meat, which appeared to the medical officer unfit for food, without having obtained a justice's order for its destruction, the local authority were held liable in damages to the owner of the meat, for the wrongful act of their servant. ¹⁰
Owner's right to show cause.	It was held that when liquors kept for unlawful sale had been seized under the Wine and Beerhouse Act Amendment Act, 1870, ¹¹ the justices could not order them to be sold without giving the person upon whose premises they were seized an opportunity of being heard. ¹² But under the present section, it is not necessary that the offender should be summoned to appear before the justices before they condemn the meat. ¹³ This was followed in a case arising under the Public Health (London) Act, 1891, ¹⁴ in which it was held that on an application for condemnation of certain strawberries, the magistrate had no jurisdiction to inquire whether the fruit brought before him was intended for the food of man, or was sold or exposed for sale, or was deposited for the purpose of sale, but only whether it was unsound or unwholesome, or unfit for the food of man, no summons having been taken out for exposing the fruit for sale. ¹⁵
Condemnation	
London.	It was held by Lord Alverstone, C.J., and Avory, J. (Pickford, J., dissenting), that condemnation is not a condition precedent to a prosecution under sect. 47 (2) of the Public Health (London) Act, 1891. ¹⁶
	<i>Ownership of Meat, etc.</i>
Under-bailiff.	An under-bailiff of an estate who had been directed by the head-bailiff to take a carcase to a railway station and consign it to a butcher, was not the person to whom the carcase "belonged" within the meaning of the section. ¹⁷ And where
Consignee.	a person sent meat which he knew to be unsound to a salesman, on whose premises it was seized without having been sold or exposed for sale, the person who sent it was held not to have committed an offence under the present section as amended by sect. 28 of the Public Health Acts Amendment Act, 1890. ¹⁸
	<i>Possession of Meat, etc.</i>
Contractor.	Certain unsound meat, intended for the food of man, was held to have been found in the possession of a person who had contracted for the supply of meat for a regiment at their barracks in the following circumstances. The meat had been delivered at the barracks and rejected as unsound, and was subsequently found by the inspector of nuisances in a wagon on the premises of a slaughterer and seized and condemned by a justice. The contractor had after its seizure admitted ownership of the meat to the inspector, and had declared that it was fit for food, and had also requested the inspector to keep it for further examination on his behalf and had said that if it had not been seized he was prepared to sell it. ¹⁹
	But where a provision merchant sent unsound rabbits to the guardians of a union, who rejected them on arrival and told the merchant to send for them or they would be destroyed, and the merchant did nothing, and the rabbits were seized at the workhouse and condemned, a conviction of the merchant under the present section was quashed on the ground that when the rabbits were seized they were not in his "possession." ²⁰
	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>(7) <i>Williams v. Narberth U.S.A.</i>, <i>Times</i>, Dec. 7th, 1882, p. 3, col. iv.</p> <p>(8) 10 & 11 Vict. c. 34, s. 11.</p> <p>(9) Replaced by Order set out <i>post</i>, Vol. II., Part V., namely, Sanitary Officers Order, 1922, under P. H. (Officers) Act, 1921, <i>post</i>, s. 189, n.</p> <p>(10) <i>Ormerod v. Rochdale Cpn.</i> (1898), 62 J. P. 153.</p> <p>(11) 33 & 34 Vict. c. 29, s. 15.</p> <p>(12) <i>Gill v. Bright</i> (1871), 41 L. J. M. C. 22; 25 L. T. 591; 36 J. P. 198.</p> <p>(13) <i>White v. Redfern</i> (1879), L. R. 5 Q. B. D. 15; 41 L. T. 524; 44 J. P. 87; <i>s.c. nom. Reg. v. White</i>, 49 L. J. M. C. 19.</p> <p>(14) 54 & 55 Vict. c. 76, s. 47.</p> <p>(15) <i>Thomas v. Van Os</i>, L. R. 1900, 2 Q. B. 448; 69 L. J. Q. B. 665; 82 L. T. 845; 64 J. P. 582.</p> </div> <div style="width: 48%;"> <p>(16) 54 & 55 Vict. c. 76, s. 47 (2). <i>Hewitt v. Hattersley</i>, L. R. 1912, 3 K. B. 35; 81 L. J. K. B. 878; 107 L. T. 228; 76 J. P. 369; 10 L. G. R. 620.</p> <p>(17) <i>Newton v. Monkcom</i> (1888), 58 L. T. 231; 52 J. P. 692. See also <i>Bothamley v. Jolly</i>, <i>post</i>, p. 229.</p> <p>(18) <i>Firth v. McPhail</i>, L. R. 1905, 2 K. B. 300; 74 L. J. K. B. 458; 92 L. T. 567; 69 J. P. 203; 3 L. G. R. 478; following <i>Barlow v. Terrett</i>, L. R. 1891, 2 Q. B. 107; 60 L. J. M. C. 104; 65 L. T. 148; 55 J. P. 632, decided under 26 & 27 Vict. c. 117, s. 2.</p> <p>(19) <i>Bull v. Lord</i> (1908, K. B. D.), 9 L. G. R. 829.</p> <p>(20) <i>Webb v. Baker</i>, L. R. 1916, 2 K. B. 753; 86 L. J. K. B. 36; 115 L. T. 630; 80 J. P. 449; 14 L. G. R. 1158.</p> </div> </div>

A fish merchant at Hull sent pickled herrings by rail to Eastbourne. When delivered to the railway company they were, but on arrival at Eastbourne they were not, fit for food. The purchaser did not accept them, but had them seized, condemned, and destroyed. It was held that the sale was subject to an implied condition that the herrings would, on their arrival at Eastbourne, within a reasonable time after their despatch from Hull, be fit for human food. There having been no acceptance by the purchaser they still belonged to the respondent. There had been an exposure for sale by the respondent of the herrings at Eastbourne. Exposure for sale was not to be limited to mere public exposure, such as that of goods by a shopkeeper on his premises. The intending purchaser was entitled to a reasonable opportunity of examination and rejection, and consequently the property in the fish had not passed on delivery at the hospital from the respondent to the intending purchaser. The unsound food having, therefore, been "exposed for sale" by the respondent at a time when it "belonged" to him, it was immaterial that it was not in his "possession" at that time, and the case was sent back for a conviction.²¹

Further as to the responsibility of vendors for defects in food sent by rail, see the cases cited in the Note to sect. 6 of the Sale of Food and Drugs Act, 1875.²²

Unsound food seized at a market is not in the "possession" of the farmer who sent it to the market consignee.²³

It is not necessary to prove that the defendant knew that the food was unsound or even that it was on his premises.²⁴

Exposure for Sale.

The purchaser of a diseased carcase deposited the carcase on the premises of a meat salesman for sale for human food. The purchaser's conviction under the present section was quashed as he had not "exposed" the carcase for sale.²⁵

A butcher killed a bullock. The carcase was seized while on his premises, and condemned. He was convicted under the present section. The person who sold him the live bullock was then also convicted under the present section. The latter conviction was quashed on the ground that this person had not "exposed" the bullock for sale, and also because the condemned carcase, *qua* carcase, had never belonged to him. *Per* Avory, J., he ought to have been charged with "aiding and abetting" the butcher.²⁶ Further as to what amounts to "exposure for sale," see the Note to sect. 17 of the Sale of Food and Drugs Act, 1875.²⁷

Preparation for Sale.

A butcher purchased a cow that had previously been ordered by a veterinary surgeon to be killed and dressed, the vendor stipulating that it should not be offered for human food. He subsequently told the vendor that it was good beef and he should pickle the carcase and cut it up, and it was found by the inspector in a shed of which he had the key. It was held that he ought to have been convicted for having had in his possession unsound meat for the purpose of preparation for sale and intended for the food of man, although it was not exposed for sale.²⁸ But where justices on the authority of this case convicted a person who had unsound meat on his premises for consumption by himself and his servants and workmen, the conviction was quashed.²⁹

As to "deposit for sale," see the Note to sect. 116.

The Court quashed the conviction, under the Public Health (London) Act, 1891,³⁰ of a fruit broker, who sold unsound walnuts while a notice was posted in his shop that they were sold on condition that the buyer should sort them and destroy any that were unsound.³¹

Sect. 117, n.

Contractor—
continued.

Market.

Knowledge.

Necessity for
exposure.Sale under
conditions.

(21) *Ollett v. Jordan*, L. R. 1918, 2 K. B. 41; 87 L. J. K. B. 934; 119 L. T. 50; 82 J. P. 221; 16 L. G. R. 487.

(22) *Andrews v. Luckner*, and other cases cited *post*, Part II., Div. II.

(23) *Cairns v. Linton* (1889), 16 S. C. (4th Series) J. 81.

(24) *Dickson v. Linton* (1888), 15 S. C. (4th Series) J. 76. See also *Blaker's Case*, *post*, p. 231, and *Hobbs' Case*, *post*, p. 233.

(25) *Firth v. McPhail*, *ante*, p. 228.

(26) *Bothamley v. Jolly*, L. R. 1915, 3 K. B. 425; 84 L. J. K. B. 2223; 113 L. T. 999; 79

J. P. 548; 14 L. G. R. 109; but see *Mallinson v. Carr*, *infra*.

(27) *Post*, Part II., Div. II.

(28) *Mallinson v. Carr*, L. R. 1891, 1 Q. B. 48; 60 L. J. M. C. 34; 63 L. T. 459; 55 J. P. 102. Followed in *Cork R.D.C. v. Walsh*, 1908 Ir. K. B. 234.

(29) *Rendall v. Hemmingway* (1898), 14 T. L. R. 456.

(30) 54 & 55 Vict. c. 76, s. 47.

(31) *Reg. v. Dennis*, L. R. 1894, 2 Q. B. 458; 63 L. J. M. C. 153; 71 L. T. 436; 58 J. P. 622.

Sect. 117, n.
Sale under
conditions—
continued.

Costs.

Authority to
prosecute.

This decision was followed in a case under the same Act,³² where a company were indicted for exposing for sale and selling tomatoes which were unfit for human food, and their assistant was indicted for aiding and abetting. The company sold fruit and vegetables as brokers on commission, and exhibited a notice in their warehouse warning purchasers that packages were sold on condition that buyers were to sort out the contents and destroy any unsound articles, and were not to receive any allowance in respect of articles that had to be destroyed. The company's assistant sold 80 boxes of tomatoes for £3, after opening some which contained sound tomatoes. The purchaser afterwards found that the contents of the unopened boxes were unsound, and returned them to the company the next morning with a request that they should be taken back. He offered to lose 10s. on the transaction. His request and offer were declined. He then took 67 boxes to the sanitary inspector, who testified that there were only from 16 to 18 sound tomatoes in the whole of those boxes. They were then taken to a police court and condemned by a magistrate. It was held (1) that the indictment was not bad, the company being indictable though (a) they had no *mens rea*,³³ (b) they could not be imprisoned,³⁴ and (c) they could not exercise their option to be tried by a jury³⁵; but (2) that the prosecution failed because the person in whose possession the food is when seized must have committed some act rendering it liable to seizure, and in this case the purchaser had committed no such act. An application by the defendants for costs on the ground that the prosecution had been instituted by a private prosecutor, namely, the sanitary inspector, was refused.³⁶

Prosecution.

In a case under the present section,³⁷ the local authority accepted the defendant's explanation and declined to prosecute him for having unsound food in his possession. The superintendent of police, not being satisfied, then took proceedings himself and secured a conviction. The conviction was quashed, however, because he had not obtained the sanction of the Attorney General under sect. 253 of the present Act. In giving judgment, Lord Alverstone, C.J., said ³⁸: " ' Section 253 may be read thus: proceedings may be taken by a party aggrieved, they may be taken by a local authority, they may be taken by a person who has the consent of the Attorney General, and lastly they may be taken by any person who, not being one of the preceding, is expressly authorised to do so.' Section 117 contains no such express provision authorising 'any person' to take proceedings, and therefore these proceedings were instituted by a person who was not expressly authorised to do so." It is the practice in some districts for inspectors to institute summary proceedings under the present section on their own initiative, but this practice is illegal. The inspector is no more a "party aggrieved"³⁹ than a police superintendent, and is not "the local authority," and must therefore be "expressly authorised" to take proceedings. For this purpose sect. 259 of the present Act provides that local authorities may appear in any legal proceedings by "any officer authorised generally or in respect of any special proceeding by resolution of such authority," and that "any officer so authorised shall be at liberty to institute and carry on any proceedings which" the present Act authorises. Unless, therefore, the inspector is generally or specially authorised by his council to take the proceedings, any conviction he obtains under the present section is liable to be quashed.⁴⁰

In a case under sect. 47 of the Public Health (London) Act, 1891, it was held that a private person could prosecute for exposing unsound meat for sale, and a conviction for that offence, on the prosecution of the inspector of a sanitary authority, who was described in the complaint and summons as acting on their

(32) *Rex (Poplar B.C.) v. Ascanio Puck & Co. and Paice* (1912, K. B. D.), 76 J. P. 487; 11 L. G. R. 136; 29 T. L. R. 11. *Grivell v. Malpas*, ante, p. 227, distinguished.

(33) Following *Chuter v. Freeth & Pocock, Ltd.*, cited in Note to S. F. D. Act, 1875, s. 20, post, Part II., Div. II.

(34) Distinguishing *Hawke v. Hulton & Co.*, ante, p. 14. See also Interpretation Act, 1889, ss. 2 (1), 19, and Notes, post, Vol. II., pp. 1963, 1968.

(35) Applying *Pearks, Ltd. v. Ward*, cited in Note to S. F. D. Act, 1875, s. 6, post, Part II., Div. II.

(36) 3 Glen's Loc. Gov. Case Law 61.

(37) *Dodd v. Pearson*, L. R. 1911, 2 K. B. 383; 80 L. J. K. B. 927; 105 L. T. 108; 75 J. P. 343; 9 L. G. R. 646. Cf. *Rex v. Bates*, a similar decision by the Court of Criminal Appeal under ss. 2 and 7 of the Explosive Substances Act, 1883 (46 Vict. c. 3), L. R. 1911, 1 K. B. 964; 80 L. J. K. B. 507; 104 L. T. 688; 75 J. P. 271.

(38) L. R. 1911, 2 K. B. at p. 390; quoting, for the paraphrase of s. 253, Bramwell, L.J., in *Fletcher v. Hudson* (1886), L. R. 5 Ex. D. at p. 290.

(39) As to this expression, see Note to s. 253, post.

(40) As in *Mather's Case*, post, p. 231 (46).

behalf, but was not in fact authorised by them to prosecute, was accordingly upheld.⁴¹ But, as was pointed out in *Dodd's Case, supra*, the London Act contains no provision corresponding to sect. 253 of the present Act. In a case under sect. 6 of the Sale of Food and Drugs Act, 1875,⁴² justices dismissed the summons on the ground that the food and drugs inspector had not proved his appointment as such, but it was held that proof of appointment was unnecessary. In a case under the present section,⁴³ the same point was taken, but the justices convicted. In the special case which they stated, this was the only point mentioned as having been taken by the defendant. In the High Court the defendant abandoned the point taken before the justices, because of the decision in *Ross' Case, supra*, and sought to take the further point that the inspector had not proved any resolution of his council authorising him to take proceedings, but it was held, that as this point had not been raised before the justices, and was not a "point arising solely upon a question of law, which no evidence could alter," it could not be raised on the appeal. In giving judgment, Darling, J.,⁴⁴ said that the question whether the inspector "was duly authorised to take proceedings against the applicant was a pure question of fact, and if the point of law had been taken that, without evidence of that fact, the prosecution would not lie, the justices might and probably would have adjourned the hearing in order to enable the authority of the sanitary inspector to be produced. In my judgment, therefore, the point is not now open to the appellant."⁴⁵

Local authorities must, therefore, pass a resolution at least giving their inspectors general authority to take proceedings under the present section on their behalf in all cases that arise in their district, if they will not take the safer course and pass one giving them special authority to take proceedings in each particular case as it arises. Subsequent ratification of the inspector's action will be of no use.⁴⁶

A company and their assistant were charged before a court of summary jurisdiction with selling bad tomatoes. Both elected to be tried by jury. The company, not being able to plead by attorney or otherwise in the Central Criminal Court, a rule was granted directing the removal of the indictment into the High Court, where the company could plead by attorney.⁴⁷

A butcher, who had a certificate of his acquittal on a previous charge of exposing unsound meat for sale on the ground that he was absent and not aware of the meat being there, could not, it was held, be convicted on a charge of having the same meat on his premises.⁴⁸

Where a person is charged with having had unsound meat in his possession and deposited upon his premises for the purpose of preparation for sale and intended for the food of man, it is not necessary for the prosecution to show that he had personal knowledge of the condition of the meat.⁴⁹

On the summons for penalties the defendant is entitled to call evidence to prove the soundness of the meat, etc., although the justice who condemned it has had to determine the same question.⁵⁰

As to the liability of masters for unauthorised sales by servants, see the Note to sect. 6 of the Sale of Food and Drugs Act, 1875.⁵¹

The negligence of a veterinary surgeon in causing the exposure for sale of unsound meat by giving a certificate of its soundness, will not of itself justify a conviction against him for aiding and abetting such exposure.⁵²

Avory, J., suggested, in a case already cited,⁵³ that a person who sold an unsound bullock to a butcher should have been charged with aiding and abetting the butcher.

Sect. 117, n.
Authority to
prosecute -
continued.

Removal to
High Court.

Previous
acquittal.

Knowledge of
unsoundness
of food.

Evidence of
soundness of
food.

Sales by
servants.

Aiding and
abetting.

(41) *Giebler v. Manning*, L. R. 1906, 1 K. B. 709; 75 L. J. K. B. 463; 70 J. P. 181; 4 L. G. R. 561. See also *Rigney v. Peters*, ante, p. 225.

(42) *Ross v. Helm*, L. R. 1913, 3 K. B. 462; 82 L. J. K. B. 1322; 107 L. T. 829; 77 J. P. 13; 11 L. G. R. 36.

(43) *Kates v. Jeffery*, L. R. 1914, 3 K. B. 160; 83 L. J. K. B. 1760; 111 L. T. 459; 78 J. P. 310; 12 L. G. R. 974.

(44) L. R. 1914, 3 K. B. at p. 164.

(45) See also *Jones v. Wilson*, post, Vol. II., p. 1911.

(46) *Bowyer Philpott & Payne, Ltd. v. Mather*, L. R. 1919, 1 K. B. 419; 88 L. J. K. B. 377; 120 L. T. 346; 83 J. P. 50; 17 L. G. R. 222. *Shoreditch Vestry v. Holmes*, cited in Note to s. 200, post, followed, and

Firth v. Staines, cited *ibid.*, distinguished.

(47) S. J. Act, 1879 (42 & 43 Vict. c. 49), s. 17. Crown Office Rules, r. 13. *Ex parte Poplar B.C.* (1911, Hamilton and Bankes, L.J.J.), 28 T. L. R. 197; 2 Glen's Loc. Gov. Case Law 184. For sequel, see *Rex v. Puck & Co.*, ante, p. 230.

(48) *Reg. v. Blount* (1879), 43 J. P. 383.

(49) *Blaker v. Tillstone*, L. R. 1894, 1 Q. B. 345; 63 L. J. M. C. 72; 70 L. T. 31; 58 J. P. 184. See also *Dickson's Case*, ante, p. 229.

(50) *Waye v. Thompson* (1885), L. R. 15 Q. B. D. 342; 54 L. J. M. C. 140; 53 L. T. 358; 49 J. P. 693.

(51) Post, Part II., Div. II.

(52) *Callow v. Tillstone* (1900), 83 L. T. 411; 64 J. P. 823; 19 Cox C. C. 576.

(53) *Bothamley v. Jolly*, ante, p. 229.

**Sect. 117, n.
Penalty.**

The penalty is incurred in respect of *each* piece of meat seized and destroyed, etc.; therefore where three defendants were convicted by four separate convictions, for exposing for sale four pieces of butcher's meat being unfit for the food of man, and a penalty, with certain costs, was inflicted in each case upon each defendant, the court held that as the convictions were good upon their face they could not inquire into the evidence adduced before the convicting justices.⁵⁴

With regard to the recovery of penalties, see sects. 251-253, *post*.

**Revocation
of slaughter-
house licence.**

If the person convicted under the present section is the occupier of a licensed slaughter-house, and Part III. of the Public Health Acts Amendment Act, 1890, is in force in the district, the court may revoke the licence.⁵⁵

Cruelty.

As to causing unnecessary suffering to animals when killing them for human food, see sect. 1 (3) (a) of the Protection of Animals Act, 1911.⁵⁶

Compensation.

Costs.

In a case in which a carcase was seized under sect. 116 and the magistrates declined to condemn it, the owners were held by the Court of Appeal to be entitled to full compensation under sect. 308, including the costs incurred by them in opposing the condemnation of the carcase, but not including the value of the carcase, since they were not entitled to refuse to take it back.¹ The Divisional Court held that the costs of successfully defending a prosecution under sects. 116 and 117, for exposing unsound meat for sale, did not form part of the damage in respect of which the defendant was entitled to compensation under sect. 308, but only the value of the meat.² But in another case a summons under the present section, against the owner of a carcase condemned as unsound, having been dismissed for a defect in form, and no order as to costs having been made, the owner claimed compensation under sect. 308, and the claim was referred to the arbitrator appointed by him, the local authority failing to appoint an arbitrator on their part. The award found that the carcase was not unsound when the order for its destruction was made, and that the owner had sustained damage by loss of the carcase, by incurring expenses of and incident to defending the summons, and by loss on his business which immediately and necessarily followed from the seizure and condemnation of the carcase and the magisterial proceedings, and it awarded damages accordingly. In an action on the award the finding as to the soundness of the meat was held by the Court of Appeal to be conclusive, and the local authority were held liable to pay the full compensation awarded.³

**Claimant's
own default.**

In a subsequent case, however, in which the Court of Appeal had dealt only with the question whether the owner of the meat was in default although he had no reason to suppose that the meat was unsound, Cozens Hardy, M.R., said: "It must not be taken that, as at present advised, I am able to follow the reasoning of the Court of Appeal in" the *Brighouse Case* (apparently that the arbitrator could determine the soundness or otherwise of the meat). The subsequent case was one in which meat delivered by a contractor at military barracks had been seized and condemned, but summary proceedings against the contractor had been dismissed on the ground that the case against him had not been proved. The contractor then claimed compensation, and, on an arbitration under sects. 179 and 180 of the present Act, the umpire found that part of the meat was unsound, but that the contractor and his servants were not aware of the fact, and that they could not have discovered the unsoundness by any examination which they could reasonably have been expected to make, and he awarded compensation in respect of the costs of defending the summary proceedings and for general damage to the contractor's trade and reputation by such proceedings. In an action on the award, Channell, J., gave judgment for the plaintiff for the amount awarded, on the authority of the *Brighouse Case*; but the Court of Appeal reversed the judgment on the ground that the plaintiff was "himself in default" and was therefore not entitled to any compensation under sect. 308. *Per* Cozens Hardy, M.R.: "In my opinion the offence was complete when the unsound meat was exposed for sale and sold . . . I do not think that we can give effect to the argument that *mens rea*, or guilty knowledge, is necessary in every offence under the section." *Per*

(54) *In re Hartley* (1862), 31 L. J. M. C. 232; s.c. *nom. Reg. v. Hartley*, 26 J. P. 438.

(55) See s. 31, *post*, Part I., Div. II.

(56) *Post*, Vol. II., p. 2224.

(1) *In re Bater and Williamson and Birkenhead Cpn.*, L. R. 1893, 2 Q. B. 77; 62 L. J.

M. C. 107; 69 L. T. 220; 57 J. P. 487.

(2) *In re Davies and Rhondda Valley U.D.C.* (1899), 80 L. T. 696.

(3) *Walshaw v. Brighouse Cpn.*, L. R. 1899, 2 Q. B. 286; 68 L. J. Q. B. 828; 81 L. T. 2.

Farwell, L.J. : "In my opinion the legislature intended that the butcher should take the risk [of the meat being unsound] and that the public should be protected, irrespective of the guilt or innocence of the butcher." And, *per* Kennedy, L.J. : "If a man chooses for profit to engage in a business which involves the offering for sale of that which may be deadly or injurious to health, he must take the risk."⁴

Sect. 117, n.

In Ireland, on a motion to set aside the arbitrators' award of compensation in respect of the condemnation of a pig's carcase, it was held (1) that trade loss could not be recovered, (2) that the arbitrators ought to have stated separately the amount awarded for such loss and other losses, (3) that the owner's claim for compensation was admissible, (4) that, as the total sum awarded exceeded the owner's claim for loss other than trade loss, the court would infer that the arbitrators had exceeded their jurisdiction, and (5) that the award must be remitted for statements (a) as to how much was awarded for trade loss, and (b) whether the carcase was sound or not when seized.⁵

Trade loss.

A local authority in Scotland caused meat which was not unsound to be seized, and more than six months after the seizure the owner presented to the Scottish Local Government Board an application for the assessment of compensation. An action to restrain further proceedings upon such application on the ground that it was out of time under the Public Authorities Protection Act, 1893, was dismissed.⁶

Limitation of time.

Preserved meat was sold for poultry food only. The vendor notified the sale to the sanitary inspector at Glasgow, who passed the information on to the medical officer of health at Stepney, and the latter informed the sanitary inspector at Stepney. Neither of the Stepney officers communicated with the purchaser. The purchaser then sold the food at Stepney for human consumption, and was sent to prison for doing so. He claimed damages from the two Stepney officers for failing to notify him that the food was not saleable for human food. It was held that there was no duty to warn the plaintiff and therefore no cause of action.⁷

Duty to warn vendor.

Damages.

In an action for damages for illness contracted through eating unsound sardines, the jury found (1) that the sardines supplied to the plaintiff by the defendants were not reasonably fit for human consumption, and (2) that the plaintiff's illness was caused by such unfitness, but (3) that the defendant was not negligent in supplying such sardines. They awarded £26 10s. as damages, and judgment was entered for the plaintiff for this amount, but a certificate of the fitness of the case for trial in the High Court was refused. *Per* Horridge, J. : "I do not see why a county court judge could not have tried it."⁸

Illness from unsound food.

Warranty.

A salesman who sells in a public market meat which has no defect discoverable by an ordinary inspection, but which is afterwards found to be unfit for human food, to a purchaser who selects it himself, does not impliedly warrant that the meat is good, and is not liable to refund the price to the purchaser.⁹

Implied warranty.

If a person buys unsound food, not knowing its condition, and with a warranty of its soundness, and it is afterwards condemned, and he incurs a fine and costs and expenses in defending the proceedings, he can recover from the vendor the full value of the food, the costs, and the expenses of his defence; but in the absence of anything to show what was in the magistrate's mind, he cannot recover the amount of the fine; for that may have been imposed on the ground of carelessness, guilty knowledge not being a necessary ingredient of the offence for which the fine was imposed, and the vendor could not be responsible for that.¹⁰

Express warranty.

(4) *Hobbs v. Winchester Cpn.*, L. R. 1910, 2 K. B. 471; 79 L. J. K. B. 1123; 102 L. T. 841; 74 J. P. 413; 8 L. G. R. 1072. See also *Cointat v. Myham & Son*, *post*, p. 234.

(5) *In re Smith and Belfast Cpn.*, 1910 Ir. K. B. 285.

(6) *Glasgow Cpn. v. Smithfield Meat Co.*, *post*, Vol. II., p. 1981.

(7) *Weir v. Thomas and Abson* (1914, Darling, J.), 79 J. P. 54. See also *post*, Vol. II., p. 1980.

(8) *Cheverton v. Pasquier*, *Times*, Jan. 24th, 1913, p. 3; 4 Glen's Loc. Gov. Case Law 53. Cf. *Leathley v. Moore Bros.* (1911, Darling, J.), 2 Glen's Loc. Gov. Case Law 100; *Skeate v. Slaters, Ltd.*, *Times*, Feb. 7th, 8th, 1913, p. 3; and *Frost v. Aylesbury Dairy Co.*, and other cases cited in Note to S. F. D. Act, 1875, s. 25, *post*, Part II., Div. II.

(9) *Smith v. Baker*, (1878), 40 L. T. 261.

(10) *Crage v. Fry & Co.* (1903), 67 J. P. 240; 1 L. G. R. 253.

Sect. 117, n.
Custom not
overriding
statutory
provision as
to warranty.

A retail butcher bought a tuberculous pig's carcase from a wholesale dealer in Smithfield Market, exposed it for sale, was fined £20, and brought an action against the wholesaler, claiming as damages £200 for loss of business and £39 16s. 2d. for the fine and costs. The defendant gave evidence of a custom that no warranties were to be implied in relation to sales in this market. The judge directed the jury that no custom could override the express provision in sect. 14 of the Sale of Goods Act, 1893,¹¹ that "where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose." The jury found that the retailer impliedly made known to the wholesaler the purpose for which the meat was required in such a way as to show that he relied on the wholesaler's skill and judgment, and the judge entered judgment for the amount claimed. His attention was not called to sect. 55 of that Act,¹² which provides that "where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract." It was held by the Court of Appeal that there must be a new trial, for, though the usage proved only related to warranties, it could not be said to have no bearing on the question whether the statutory condition was or was not to be implied.¹³

False Trade Description.

Merchandise
Marks Act.

A magistrate found that the defendants had sold as "British Tarragona Wine" a liquid which was "not Tarragona wine or anything like it," but a mixture of 85 per cent. of British wine made from raisins and 15 per cent. of Mistilla, the latter being a wine of Tarragona which was not drunk by itself but was only used for blending Tarragona wines; but he dismissed the summons on the ground that, having regard to the contents of the mixture, and to the presence of the word "British," the description was substantially accurate. It was held that, as "Tarragona wine" was made wholly from Catalonian grapes, there could be no such thing as "British" Tarragona wine, and that therefore the description was in law "false." The case was accordingly remitted for a conviction under sect. 2 (2) of the Merchandise Marks Act, 1887.¹⁴

Meaning of
"innocence."

A vendor sold in bottles embossed with A.'s name, beer made by B. A.'s consent had not been obtained. B.'s paper labels were affixed to the bottles. It was held that the vendor had committed an offence under the same enactment. *Per* Lord Coleridge, J.: "The only defence open to him would be if he could show that he acted innocently. He appears not to have known the statute, and to have thought that he could act as he did; but that is not the innocence contemplated by the statute. The innocence contemplated is innocence of any intention to infringe the Act. Innocence means that the acts done were committed by inadvertence or mistake."¹⁵

Under sect. 18 of the Act of 1887,¹⁶ a trade description is not false if in 1887 it was "lawfully and generally applied to goods of a particular class." Selling as "Norwegian sardines" the Norwegian sprats known as "brisling" was held not to come within this exemption.¹⁷

Penalty for
hindering officer
from inspecting
meat, etc.
N.R. 1863, s. 3.

Sect. 118. Any person who in any manner prevents any medical officer of health or inspector of nuisances from entering any premises and inspecting any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk

(11) 56 & 57 Vict. c. 71, s. 14.

(12) *Ibid.*, s. 55.

(13) *Cointat v. Myham & Son* (1914), 84 L. J. K. B. 2253; 110 L. T. 749; 78 J. P. 193; 12 L. G. R. 274. See also *Bebb v. Salisbury Dairies* (1912, Horridge, J.), 3 Glen's Loc. Gov. Case Law 58.

(14) 50 & 51 Vict. c. 28, s. 2 (2). *Holmes v. Piper's, Ltd.*, L. R. 1914, 1 K. B. 57; 83 L. J. K. B. 285; 109 L. T. 930; 78 J. P. 37; 12 L. G. R. 25. See also *Anderson v.*

Britcher, cited in Note to S. F. D. Act, 1875, s. 6, *post*, Part II., Div. II., and *McGill v. Newell* (1912, K. B. D.), 3 Glen's Loc. Gov. Case Law 64.

(15) *Stone v. Burn*, L. R. 1911, 1 K. B. 927; 80 L. J. K. B. 560; 103 L. T. 540; 74 J. P. 456.

(16) 50 & 51 Vict. c. 28, s. 18.

(17) *Lemy v. Watson*, L. R. 1915, 3 K. B. 731; 84 L. J. K. B. 1999; 80 J. P. 17; 13 L. G. R. 1323.

exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds. **Sect. 118.**

Note.

A butcher, at his residence half a mile from his shop, was requested on a Sunday afternoon to go himself, or send some one, with the key to admit the inspector of nuisances to his shop, in order that some meat there might be examined. This the butcher refused to do, and was convicted under the Nuisances Removal Act, 1863,¹⁸ of preventing, obstructing, or impeding the inspector when duly engaged in carrying the provisions of the Act into execution. But it was held, on a case stated, that although Sunday afternoon might under some circumstances be a reasonable time for the examination of meat, the butcher had committed no offence under the section.¹⁹ **Obstructing execution of the Act.**

The refusal of a man in charge of a van containing coal in sacks to assist the inspector in the weighing of the coal was held not to amount to "obstruction" within sect. 27 (2) of the Weights and Measures Act, 1889.²⁰

Penalties are also imposed by sect. 306, for obstructing the execution of the Act, and see the last clause of sect. 119, *infra*. With regard to the recovery of penalties, see sects. 251-253. **Penalties.**

A conviction under these provisions, or under the similar provisions of the Towns Improvement Clauses Act, 1847,²¹ can be removed by *certiorari* only where there is excess or refusal of jurisdiction on the part of the justices.²² **Certiorari.**

Sect. 119. On complaint made on oath by a medical officer of health, or by an inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk which is intended for sale for the food of man, and is diseased unsound or unwholesome, or unfit for the food of man; and to search for seize and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act. **Search warrant may be granted by a justice. P.H. 1874, s. 55.**

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds.

Note.

The complaint is to be made *on oath*. The term "oath" includes the affirmation or declaration of a person allowed by law to affirm or declare instead of swearing.²³ **Oath.**
With regard to the recovery of penalties, see sects. 251-253. **Penalties.**

(18) 26 & 27 Vict. c. 117, s. 3. 14 L. G. R. 301.
(19) *Small v. Bickley* (1875), 32 L. T. 726; (21) See s. 131, *post*, Vol. II., p. 1634.
40 J. P. 119. (22) *Reg. v. Staffordshire JJ.* (1867), 16 L. T. 430; and see s. 262, *post*.
(20) 52 & 53 Vict. c. 21, s. 27 (2). *Swallow v. London C.C.*, L. R. 1916, 1 K. B. 224; 85 L. J. K. B. 234; 114 L. T. 368; 80 J. P. 164; (23) See Interpretation Act, 1889, s. 3, and Note, *post*, Vol. II., p. 1963.

Sect. 120.

Duty of local authority to cause premises to be cleansed and disinfected. San. 1866, s. 22.

Infectious Diseases Prevention Act.

INFECTIOUS DISEASES AND HOSPITALS.

Provisions against Infection.

Sect. 120. Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the owner or occupier of such house or part thereof requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice.

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings for every day during which he continues to make default; and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

Note.

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Cleansing Premises.

A similar power of requiring filthy or unwholesome premises to be purified, on the certificate of the medical officer, or *two* medical practitioners, is given by sect. 46. A "legally qualified medical practitioner" is one who is registered under the Medical Acts : see the Note to sect. 189.

With regard to the recovery of penalties, see sects. 251-253.

Where the Infectious Disease (Prevention) Act, 1890,¹ has been adopted, sect. 5 of that Act, which is substituted for the present section, provides for the notice to the owner or occupier being given by the clerk without reference to the local authority. The owner or occupier is then to declare within twenty-four hours from the receipt of the notice whether he intends to comply with it; and the work may be done at the cost of the local authority if either the authority or the medical officer considers the owner or occupier unable to cleanse and disinfect the premises effectually. Power of entry on the premises is given by sect. 17 of that Act for the purpose of carrying out these provisions.

Sect. 6 of the same Act relates to the disinfection of bedding, etc.; sect. 7 requires persons who cease to occupy a house or part of a house in which infectious disease has occurred to disinfect the premises and give notice to the owner; sects. 8 to 10 relate to bodies of persons who have died of infectious diseases; sect. 11 requires the disinfection of public conveyances used for carrying such bodies; sect. 12 relates to the detention in hospitals of infected persons without proper lodging; sect. 13 to infectious rubbish in ashpits, etc.; sect. 15 to the provision of temporary accommodation for persons compelled to leave their dwellings in order to allow them to be disinfected; sects. 16 and 18 to penalties; sect. 19 to local Acts; sect. 20 to expenses; and sects. 3 and 21 to the adoption and rescission of adoption of the Act. Sects. 2, 4, and 24 relate to dairies, as to which see also the Milk and Dairies Acts, 1914 to 1922.²

(1) *Post*, Part II., Div. I.

(2) *Post*, Part II., Div. II.

Premises in such a state as to be a nuisance or injurious to health may be dealt with under sects. 91-111 of the present Act. Sect. 120, n.

Common lodging-houses are to be whitewashed twice a year under sect. 82, and notice of the occurrence of infectious diseases in them must be given by the keepers under sect. 84. Nuisances.

With regard to infectious diseases in tents, vans, sheds, and similar structures used for human habitation, see sect. 9 of the Housing of the Working Classes Act, 1885; ³ and sect. 61 (3) of the Public Health Acts Amendment Act, 1907.⁴ Common lodging-houses.

Ships and vessels may be cleansed and disinfected under the present section: see sect. 110, and the Note to that section. Caravans, &c.

The present section and sects. 121 to 125 are applied to canal boats.⁵ Ships.

Where a workshop requires limewashing, cleansing, or purifying, for the sake of the health of the persons employed in it, the sanitary authority may order the work to be carried out by the owner or occupier, under the Factory and Workshop Act, 1901.⁶ Canal boats.

Workshops.

Cleansing Persons.

Sect. 1 of the Cleansing of Persons Act, 1897,⁷ provides as follows:—

“On and after the passing of this Act any local authority shall have the power, when in their discretion they shall see fit, to permit any person who shall apply to the said authority, on the ground that he is infested with vermin, to have the use, free of charge, of the apparatus (if any) which the authority possess for cleansing the person and his clothing from vermin. The use of such apparatus shall not be considered to be parochial relief or charitable allowance to the person using the same, or to the parent of such person, and no such person or parent shall by reason thereof be deprived of any right or privilege or be subject to any disqualification or disability. Local authorities may expend any reasonable sum on buildings, appliances, and attendants that may be required for the carrying out of this Act, and any expenses for these purposes may be defrayed out of any rate or fund applicable by the authority for general sanitary purposes or for the relief of the poor.” Verminous persons.

By sect. 2,⁸ “in this Act ‘local authority’ means in England the council of any county borough, the district council of any district, any board of guardians, and in the county of London any sanitary authority as defined in the Public Health (London) Act, 1891.”

As to the cleansing of persons in common lodging-houses in London, see the London County Council (General Powers) Act, 1907.⁹

Sect. 87 of the Education Act, 1921, which repealed and replaced sect. 122 of the Children Act, 1908,¹⁰ provides as follows:—“(1) A local education authority for elementary education may direct their medical officer, or any person provided with and, if required, exhibiting the authority in writing of their medical officer, to examine in any public elementary school provided or maintained by the authority the person and clothing of any child attending the school, and, if on examination the medical officer, or any such authorised person as aforesaid, is of opinion that the person or clothing of any such child is infested with vermin or is in a foul or filthy condition, the local education authority may give notice in writing to the parent of the child, requiring him to cleanse properly the person and clothing of the child within twenty-four hours after the receipt of the notice. (2) If the person to whom any such notice as aforesaid is given fails to comply therewith within such twenty-four hours, the medical officer, or some person provided with and, if required, exhibiting the authority in writing of the medical officer, may remove the child referred to in the notice from any such school, and may cause the person and clothing of the child to be properly cleansed in suitable premises and with suitable appliances, and may, if necessary for that purpose, without any warrant other than this section, convey to such premises and there detain the child until the cleansing is effected. (3) Where any sanitary authority within the district of a local education authority have provided, or are entitled to the use of, any premises or appliances for cleansing the person or clothing of persons infested with vermin, the sanitary authority shall, if so required by the local Verminous children.

(3) *Ante*, p. 174.

(4) *Post*, Part I., Div. III.

(5) By s. 4 of Act of 1877, *post*, Vol. II., p. 1765.

(6) See s. 2 (3), *post*, Vol. II., p. 2141.

(7) 60 & 61 Vict. c. 31, s. 1.

(8) *Ibid.*, s. 2.

(9) 7 Edw. VII. c. clxxv., ss. 37-40, set out in 5 L. G. R. (Statutes) 133-135.

(10) 8 Edw. VII. c. 67, s. 122; 11 & 12 Geo. V. c. 51, ss. 87, 172, Sched. VII.

Sect. 120, n.
Verminous
children—
continued.

education authority, allow the local education authority to use such premises and appliances for the purpose of this section upon such payment (if any) as may be agreed between them or, in default of agreement, settled by the Minister of Health. (4) Where, after the person or clothing of a child has been cleansed by a local education authority under this section, the parent of the child allows him to get into such a condition that it is again necessary to proceed under this section, the parent shall be liable to a fine not exceeding ten shillings. (5) Where a local education authority give notice under this section to the parent of a child, requiring him to cleanse the person and clothing of the child, the authority shall also furnish him with written instructions describing the manner in which the cleansing may best be effected. (6) The examination and cleansing of girls under this section shall only be effected by a duly qualified medical practitioner or by a woman duly authorised as herein-before provided. (7) For the purposes of this section 'medical officer' means any officer appointed under this Act for the purpose of the medical inspection of children attending a public elementary school."

By sect. 170 (12) of the Act of 1921,¹¹ "the expression 'parent' in relation to a child or young person includes guardian and every person who is liable to maintain or has the actual custody of the child or young person."

Under the repealed enactment it was held that, where a parent was aware of and countenanced the refusal of a child to submit to medical examination thereunder, and the local education authority refused to allow the child to attend their school in consequence, the parent did not thereby acquire a reasonable excuse for the non-attendance of the child.¹²

Provision for the cleansing of the persons and clothing of children attending schools provided or maintained by the London County Council is made by the London County Council (General Powers) Act, 1907.¹³

Disinfection.

Infected
articles.

Where sect. 66 of the Public Health Acts Amendment Act, 1907,¹⁴ is in force, infected articles may be cleaned, disinfected, or destroyed, subject to certain provisions as to expenses and compensation.

Disinfectants.

The Memorandum of the Barrack and Hospital Commission of 1865 contains the following passages:—"A great variety of disinfectants have at different times been manufactured, some of them gaseous, some fluid, some solid; and the effect, more or less, of all of them, when properly used, is to destroy odour, either by bringing about a chemical change in the odorous particles, or by arresting the putrefaction of substances giving rise to odours: certain of them appear to act in both ways.

"The first question which arises out of this fact—the destruction of smell—is, to what extent (if any) would disinfectants be useful in protecting the public health, when applied to the destruction of odours proceeding from decomposing substances? In replying to this question, it is necessary to state that smell proceeding from decomposing matters is intended by nature as a warning against danger: that the true use of the warning is not merely to destroy the smell and leave the substance, but either to remove the offending matter to a distance from human dwellings, or to get away from it. It has never been shown that organic matter, after being deodorised, has ceased to be dangerous; while on the other hand, it is known that the generation of diseases has been promoted by effluvia from organic matter in a state of decomposition, while the effluvia were little, if at all, appreciable to the sense of smell.

"Disinfectants, as a means of preserving health, are of doubtful efficacy, and their use for such purpose should not be sanctioned.

"This being our opinion, it remains for us to consider whether disinfectants can be used with safety for merely temporary purposes.

"No disinfectant can compensate for the necessity of frequent removal of the matter; hence, if it were proposed to use any disinfectant merely to render frequent cleansing and removal less necessary than it would be if the offensive smell were allowed to remain, we recommend that no disinfectants be used, but that cleansing at short intervals be imperative."

(11) 11 & 12 Geo. V. c. 51, s. 170 (12).

(12) *Fox v. Burgess*, L. R. 1922, 1 K. B. 623;
91 L. J. K. B. 465; 126 L. T. 525; 86 J. P.
66; 20 L. G. R. 277.

(13) 7 Edw. VII. c. clxxv., ss. 36, 38-40, set
out in 5 L. G. R. (Statutes) 133-135.

(14) *Post*, Part I., Div. III.

In a memorandum issued by the Local Government Board on the 19th September, 1900, on the proceedings which are advisable in places attacked or threatened by epidemic disease, a system of domestic disinfection is described and recommended to local authorities who have already provided adequate public means for the disinfection and disposal of infected matters and things. See also the list of Departmental Orders, etc., *post*, Part V., under the heading "Diseases."

Sect. 120, n.

The schedule to the Poisons and Pharmacy Act, 1908,¹⁵ contains a long list of substances to be deemed poisons, sect. 1 of that Act¹⁶ repealing Sched. A. of the Pharmacy Act, 1868,¹⁷ and providing that the list may be amended in the same way as, under sect. 2 of the Act of 1868,¹⁸ the old schedule could be added to, namely, by resolution of the Pharmaceutical Society, approval by the Privy Council, and advertisement in the *London Gazette*.

Poisons.

Opium, cocaine, morphine, etc., are specially dealt with by the Dangerous Drugs Act, 1920.¹⁹

The Local Government Board in a circular letter of the 10th January, 1901, addressed to district councils, called attention to an order made by the Privy Council under the Pharmacy Act, 1868,²⁰ on the 26th July, 1900, declaring that liquid preparations of carbolic acid and its homologues containing more than 3 per cent. of those substances shall, except in certain cases connected with agriculture and horticulture, be deemed poisons within that Act, and they further pointed out that whenever the disinfectant employed by the council in disinfecting or procuring the disinfection of premises and things is carbolic acid or any other poison within the same Act, only bottles similar to those prescribed by the regulations approved by the Privy Council on the 31st January, 1899, should be used to contain it.

The regulations referred to require that in the keeping of poisons each bottle, vessel, box, or package containing a poison, be labelled with the name of the article, and also with some distinctive mark indicating that it contains poison; and that in the keeping of poisons each poison be kept on one or other of the following systems, viz. (a) in a bottle or vessel tied over, capped, locked, or otherwise secured in a manner different from that in which bottles or vessels containing ordinary articles are secured in the same warehouse, etc.; (b) in a bottle or vessel rendered distinguishable by touch from the bottles or vessels in which ordinary articles are kept in the same warehouse, etc.; or (c) in a bottle, vessel, box, or package kept in a room or cupboard set apart for dangerous articles.

The Local Government Board, in a circular dated 14th April, 1913,²¹ drew attention to the Order in Council quoted below, and stated as follows:—"The Board have recently had under consideration the danger to life attending the distribution of poisonous liquid disinfectants, e.g., preparations of carbolic acid, in receptacles, such as beer bottles, ordinarily used for liquid intended for consumption. Instances have been brought to their notice of omission on the part of local authorities to observe, in the distribution of such disinfectants, the provisions in regard to the shape and marking of bottles made applicable to the retail sale of liquid poisons by the Pharmacy Act, 1868, the Poisons and Pharmacy Act, 1908, and the Regulations made by the Orders in Council of 5th June, 1902, and 22nd March, 1911. . . . It seems to the Board desirable that the precautions which are enforceable when carbolic acid or a liquid preparation thereof is sold should be observed generally in the gratuitous distribution of disinfectants by a local authority, or in the use of such disinfectants by their officers, whether they contain carbolic acid or any other poisonous disinfectant."

The circular contains the following extracts from the Orders referred to:—"That in the dispensing and selling of poisons, all liniments, embrocations, lotions and liquid disinfectants, containing poison be sent out in bottles rendered distinguishable by touch from ordinary medicine bottles, and that there also be affixed to each such bottle (in addition to the name of the article, and to any particular instructions for its use) a label giving notice that the contents of the bottle are not to be taken internally."²² (1) In the sale by retail of any substance to which section 5 of the Poisons and Pharmacy Act, 1908, applies, the label required by the said section to be affixed to the box, bottle, vessel, wrapper, or cover, in which the substance is contained shall bear, distinctly printed thereon, the additional words 'Not to be taken.' (2) In the sale by retail of any liquid substance to

(15) 8 Edw. VII. c. 55, Sched.

(16) *Ibid.*, s. 1.

(17) 31 & 32 Vict. c. 121, Sched. A.

(18) *Ibid.*, s. 2.

(19) 10 & 11 Geo. V. c. 46.

(20) 31 & 32 Vict. c. 121, s. 2.

(21) 11 L. G. R. (Orders) 134.

(22) P. C. Order, June 5th, 1902, s. 3.

Sect. 120, n.
Poisons—
continued.

which section 5 applies, such substance shall not be delivered or sent out except in bottles or other containers rendered distinguishable by touch from ordinary bottles or containers.”²³

The Order in Council to which the circular first refers²⁴ is as follows:—
“Whereas by section 5 of the Poisons and Pharmacy Act, 1908,²⁵ it is enacted that ‘(1) It shall not be lawful to sell any substance to which this section applies by retail, unless the box, bottle, vessel, wrapper, or cover in which the substance is contained is distinctly labelled with the name of the substance and the word ‘Poisonous,’ and with the name and address of the seller of the substance, and unless such other regulations as may be prescribed under this section by Order in Council are complied with; and, if any person sells any such substance otherwise than in accordance with the provisions of this section or of any Order in Council made thereunder, he shall, on conviction under the Summary Jurisdiction Acts, be liable for each offence to a fine not exceeding five pounds. (2) The substances to which this section applies are sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, and such other substances as may for the time being be prescribed by Order in Council under this section.’ And whereas it is expedient that all liquid preparations sold as carbolic, or carbolic acid, or carbolic substitutes, or carbolic disinfectant, containing not more than three per cent. of phenols, should be prescribed as substances to which the said section applies. Now, therefore, His Majesty is pleased, by and with the advice of his Privy Council, to prescribe, and it is hereby prescribed, that as from the 1st day of May, 1913, all liquid preparations sold as carbolic, or carbolic acid, or carbolic substitutes, or carbolic disinfectant, containing not more than three per cent. of phenols, shall be substances to which section 5 of the said recited enactment applies.”

Agricultural
poisons.

As to agricultural poisons, see the Note at the commencement of the Sale of Food and Drugs Act, 1875.²⁶

Infectious Diseases.

Other
enactments.

Part II., Division I, of this work, *post*, contains, in addition to the Acts relating generally to infectious and other diseases, those dealing specially with anthrax, tuberculosis, and venereal diseases.

Smallpox.

With regard to the duties of district councils in connection with outbreaks of smallpox, see the Memorandum of the medical officer of the Local Government Board of the 14th August, 1914.²⁷ As to expenses incurred by such councils in securing the isolation of persons who have contracted this disease, see the Note to sect. 121. See also the Vaccination Acts, 1867, 1871, 1874, 1898, and 1907.²⁸ The duty of the guardians of the poor to carry out these Acts cannot be enforced by *mandamus*, at any rate at the instance of sanitary authorities.²⁹

Coal mines.

As to the notification of industrial diseases in coal mines, see sect. 79 of the Act of 1911.³⁰

Destruction of
infected
bedding, &c.
P.H. 1872, s. 51.

Sect. 121. Any local authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

Note.

Compensa-
tion.

Generally with regard to compensation, see sect. 308, and the Note thereto. Under that section, compensation is only to be allowed where the person sustaining damage “is not himself in default”; but where he is not in default, he has a right to demand *full* compensation for the damage which he sustains by reason of the exercise by the local authority of any of the powers of the Act. Under the present section the compensation is given for the articles destroyed; and, although the council may not have an absolute discretion to give or refuse compensation as they may think fit, but must exercise a judicial discretion in the matter, and not withhold compensation capriciously,³¹ they may not be obliged to give any

Discretion
of district
council.

(23) P. C. Order, March 22nd, 1911.

(24) P. C. Order, Oct. 11th, 1912.

(25) 8 Edw. VII. c. 55, s. 5.

(26) *Post*, Part II., Div. II.

(27) 12 L. G. R. (Orders) 450-465.

(28) 30 & 31 Vict. c. 84; 34 & 35 Vict. c. 98; 37 & 38 Vict. 75; 61 & 62 Vict. c. 49 (made permanent by Expiring Laws Act, 1922, 12 &

13 Geo. V. c. 50, s. 1, Sched. I., Part I.); 7 Edw. VII. c. 31. As to registers of smallpox patients, see *post*, p. 253.

(29) *Rex v. Lewisham Guardians*, *post*, Vol. II., p. 1699.

(30) 1 & 2 Geo. V. c. 50, s. 79.

(31) *Foster v. East Westmoreland R.D.C.* (1903, Penrith C. Ct.), 68 J. P. 103.

if they have reasonable grounds for coming to the conclusion that the circumstances do not entitle the claimant to any. See also the Note to sect. 122.

The owner can only claim compensation under the present section when the articles have been destroyed by direction of the local authority themselves, or when they have ratified the proceeding. Accordingly, where infected articles were destroyed by an inspector of nuisances by direction only of the medical officer of health of a district council, the owner was held not to be entitled to compensation either under the present section or under sect. 308.³²

As to the funds from which expenses incurred under these clauses are to be defrayed, see sects. 207 and 229.

An urban district council applied for sanction to the payment of compensation to certain persons for abstaining from their employments upon the occurrence of smallpox on the premises at which they resided, and the Local Government Board sanctioned the payment under sect. 3 of the Local Authorities Expenses Act, 1887,³³ but in doing so made the following observations :—It must not be expected that the Board will sanction similar expenditure in the future, as they are advised that under ordinary circumstances the quarantining at their homes of inmates of smallpox-invaded dwellings is not necessary in districts properly administered as regards sanitary matters, and as regards vaccination. If, on a dwelling becoming invaded by smallpox, the actual patients are at once removed to hospital, the dwelling and all articles in it that have been exposed to infection are properly disinfected, and the other inmates of the house are immediately re-vaccinated or vaccinated (as the case may be), there is nothing to be gained in keeping those inmates at home commensurate with the expenditure that would be incurred. Not any of these other inmates are at all likely to infect other people unless and until they themselves develop smallpox, and all that is required is to keep such persons under medical observation for a fortnight, and particularly to examine them carefully day by day towards the end of the second week from first exposure to infection, in order to ascertain whether any of them are developing smallpox. If none of them develop smallpox by the beginning of the third week from first exposure, the re-vaccination (or vaccination) to which they were at once submitted on the occurrence of the first case in the invaded house should thenceforward secure them from attack by the disease. The Board are of opinion that in ordinary circumstances the course of action indicated above is the correct one. Occasions, however, may arise in which additional precautions may be necessary, as, for example, when laundries are in question, or where the business or habits of the inmates of an invaded house are such as to make it difficult for proper medical observation of them to be maintained. In exceptional cases of this kind in which a district council are advised by their medical officer of health that in the special circumstances it is essential to retain the inmates in their own homes, the Board would be prepared to sanction a reasonable expenditure in securing such a result.

The Local Government Board considered that an urban district council are not authorised to pay to the guardians of the union the amount of poor relief granted by reason of the family of a person attacked with smallpox having isolated itself at the request of the medical officer of health.

Sect. 122. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.

Note.

Where the Infectious Disease (Prevention) Act, 1890,³⁴ has been adopted, sect. 6 of that Act confers further powers with regard to the disinfection of infected articles. See also sect. 55 of the Public Health Acts Amendment Act, 1907,³⁵ as to the disinfection of bedding, etc., and sect. 56 of the same Act as to the “cleansing, purification, or destruction” of “filthy” articles in dwelling-houses.

With regard to the cleansing of persons, see the Note to sect. 120, *ante*.

Sect. 123. Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

(32) *Garlick v. Knottingley U.D.C.* (1904), 68 J. P. 494; 2 L. G. R. 1345. See also *Farrell v. Longford U.D.C.* (1909), 43 Ir. L. T. 183.

(33) Set out in Note to s. 247, *post*.
(34) *Post*, Part II., Div. I.
(35) *Post*, Part I., Div. III.

Sect. 121, n.

Unauthorised destruction of articles.

Isolation of inmates.

Provision of means of disinfection.
San. 1866, s. 23.

Disinfection.

Provision of conveyance for infected persons.
San. 1866, s. 24.
N.R. 1860, s. 12.

Sect. 123, n.
Ambulances.

Note.

A memorandum " on Ambulances " was issued by the Local Government Board in December, 1876.

As to ambulances for conveying patients to hospital, see sect. 13 of the Isolation Hospitals Act, 1893;³⁵ and as to ambulances for accidents, etc., see sect. 50 of the Public Health Acts Amendment Act, 1907,³⁶ and, as regards London, sect. 79 of the Public Health (London) Act, 1891,³⁷ and the Metropolitan Ambulances Act, 1909.³⁸

In the Finance Act of 1910,³⁹ there was an exemption from the duty on licences for motor cars in favour of motor ambulances.

With regard to the provision of hearses, see the Note to sect. 142.

Hearses.

Removal of infected persons without proper lodging to hospital by order of justice.
San. 1866, s. 26.
P.H. 1874, s. 51.
Cf. C.L. 1853, s. 7.

Sect 124. Where any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed, by order of any justice, to such hospital or place at the cost of the local authority; and any person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the local authority.

An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

Note.

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Removal of Infected Persons.

Compulsory removal.

" Under the Sanitary Act, 1866, and the Sanitary Law Amendment Act, 1874, persons suffering from infectious disorders could, in certain cases, be compulsorily removed to any hospital provided by the local authority within the district; and for this purpose any hospital was to be deemed to be within the district, if it was declared by the Local Government Board to be within a convenient distance of the district. By " the present section " every hospital, to which persons may be compulsorily removed under the above provisions, is required to be a suitable one, and within a convenient distance of the district, and it will be for the justice now to determine whether or not the hospital fulfils these conditions, the Board [now the Minister of Health] having no longer any power to make orders for the purpose referred to." ¹

On an application for an order under the present section, the justice must consider whether the infected person is a source of infection and danger to others.² In the case in which it was so held notice of the intended application was given to the father of the sick child, and he appeared before the justices when the application was made; but it appears that such applications may be made *ex parte*.³

Where sect. 65 of the Public Health Acts Amendment Act, 1907,⁴ is in force, the present section is extended to all cases of persons suffering from any dangerous infectious disease, and living in or upon any house or premises where they cannot be effectually isolated.

A medical practitioner to be " legally qualified " must be registered under the Medical Acts : see the Note to sect. 189.

If injury follows negligent removal to a hospital, the local authority may be liable in damages.⁵

Negligent removal.

(35) *Post*, Part II., Div. I.
(36) *Post*, Part I., Div. III.
(37) 54 & 55 Vict. c. 76, s. 79, as to Metropolitan Asylums Board Ambulances, etc.
(38) Cited in Note to Act of 1907, s. 50.
(39) 10 Edw. VII., c. 8, s. 86 (6), repealed and replaced by Act of 1920 (10 & 11 Geo. V. c. 18), ss. 13 (4), 32, Sched. III.
(1) L.G.B. Circular, Sep. 30, 1875.

(2) *Warwick v. Graham*, L. R. 1899, 2 Q. B. 191; 68 L. J. Q. B. 1001; 80 L. T. 773; 63 J. P. 599.
(3) See *Reg. v. Davey*, *post*, p. 244.
(4) *Post*, Part I., Div. III.
(5) *Mitchell v. Aberdeen Magistrates* (1893), 20 S. C. (4th Series) 253; *Sutherland v. Aberdeen Magistrates* (1894), 22 S. C. (4th Series) 95.

Sect. 131 empowers local authorities to provide, for the use of the inhabitants of their district, hospitals or temporary places for the reception of the sick.

With regard to detention in hospital of a person who would not, on leaving the hospital, be provided with lodging or accommodation in which proper precautions against the spread of disease could be taken, see sect. 12 of the adoptive Act, the Infectious Disease (Prevention) Act, 1890.⁶ Under sect. 15 of that Act the local authority are required to provide temporary accommodation for persons who have been compelled to leave their dwellings to allow them to be disinfected. With regard to the removal of the bodies of persons who have died of infectious disease, see sects. 9 and 10 of the same Act, and sect. 142 of the present Act.

Under the present Act a district council have no authority to provide nurses for nursing scarlet fever patients in their own homes, except possibly under sect. 136, which is only applicable when the Local Government Board (now the Minister of Health) have issued regulations in case of formidable, as distinguished from ordinary, outbreaks of infectious disease. And the Board upheld the disallowance by a district auditor of a payment made for such nursing.

But where sect. 67 of the Public Health Acts Amendment Act, 1907,⁷ is in force, the district council may provide and charge for the services of nurses in certain cases.

With regard to the payment of compensation to persons who have isolated themselves in consequence of an outbreak of infectious disease in the house in which they reside, see the Note to sect. 121.⁸

Notification of Disease.

With regard to the duty of medical practitioners, heads of families, and other persons, to give notice to the medical officer of health of the district of any case of infectious disease occurring in any dwelling, ship, boat, tent, van, shed, etc., see the Infectious Disease (Notification) Act, 1889.⁹ And with regard to the notice to be given on the occurrence of fever or infectious disease in a common lodging-house, see sect. 84 of the present Act.

The above-mentioned Infectious Disease (Notification) Act, 1889, supersedes (except with regard to Huddersfield—see sect. 2 of Act of 1899) any existing local Act requiring notice of cases of infectious disease to be given to the sanitary authority. See also sect. 7 of the Infectious Disease (Prevention) Act, 1890,¹⁰ with regard to the notification of infectious diseases by tenants to their landlords.

The Factory and Workshop Act, 1901, requires medical practitioners to give notice to the Chief Inspector of Factories at the Home Office of cases of lead, phosphorous, arsenical, or mercurial poisoning, or of anthrax, contracted in any factory or workshop which they may attend.¹¹ As to injuries from “exposure to gas, fumes or other noxious substances,” see sect. 8 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916.¹²

By the Births and Deaths Registration Act, 1874,¹³ “Every registrar, when and as required by [an urban or rural district council], shall transmit by post or otherwise a return, certified under the hand of such registrar to be a true return, of such of the particulars registered by him concerning any death as may be specified in the requisition of the sanitary authority. The sanitary authority may supply a form of the prescribed character, for the purpose of the return, and in that case the return shall be made in the form so supplied. The registrar making such return shall be entitled to a fee of twopence, and to a further fee of twopence for every death entered in such return, which fee shall be paid by the authority requiring the return.”

By a general poor law order the Local Government Board ordered as follows: “Every medical officer appointed by the guardians after the 28th day of February, 1879, whether for a district or a workhouse, shall immediately upon the occurrence of any case of contagious, infectious, or epidemic disease of a dangerous character amongst the pauper patients under his care, give notice thereof to the clerk of the sanitary authority of the urban or rural sanitary district, as the case may be, within which he acts as medical officer, or to the medical officer of health

Sect. 124, n.

Temporary hospitals.

Nurses.

Isolation of infected persons.

Dwellings.

Factories.

Registrars.

Poor law guardians.

(6) *Post*, Part II., Div. I.

(7) *Post*, Part I., Div. III.

(8) *Ante*, p. 241.

(9) *Post*, Part II., Div. I.

(10) *Post*, Part II., Div. I.

(11) 1 Edw. VII. c. 22, s. 73.

(12) 6 & 7 Geo. V. c. 31, s. 8.

(13) 37 & 38 Vict. c. 88, s. 28.

Sect. 124, n.

of such authority. He shall also furnish from time to time to the medical officer of health of such sanitary authority, such information with respect to the cases of sickness and the deaths amongst the pauper patients under his care as the [Minister of Health] may direct, and whenever the [Minister of Health] shall make regulations for all or any of the purposes specified in sect. 134 of the Public Health Act, 1875, he shall observe such regulations as far as the same relate to or concern his office."¹⁴

Examination of persons notified.

The Local Government Board did not consider it any part of the duty of a medical officer of health, as such, to make a personal examination of persons notified to him as suffering from an infectious disease, with a view to certifying that the case is a proper one for removal to an isolation hospital.

Obstructing Execution of Order.

Jurisdiction of justices.

In a case which arose at Coventry, there were a certificate and an order for the removal to a hospital of a child having an infectious disorder. The mother of the child obstructed the removal, and was summoned for the offence. At the hearing the magistrates entered into the validity of the order and declined to convict. On the question whether they were justified in taking that course or ought to have convicted, the court were of opinion that the magistrates had no right to go behind the order and enter into its validity, but were bound upon the evidence to convict if there had been an obstruction, and they sent the case back to the magistrates with that direction.¹⁵ This was followed in a subsequent case, in which it was held that the order for the removal of a sick child to a hospital might be obtained on an *ex parte* application; and that when the mother obstructed the execution of the order, the impropriety of making such an order under the particular circumstances of the case did not prevent her from being convicted, but might have been taken into consideration with a view of imposing only a nominal penalty, and it was suggested that it might afford ground for an application for a writ of *certiorari* or *habeas corpus*.¹⁶

With regard to the recovery of penalties, see sects. 251-253.

Infectious Diseases on Vessels.

Jurisdiction of council.

In case of the existence on board ship of a nuisance within the definition in sect. 91, proceedings may be taken under the nuisances clauses, sects. 91-111: see sect. 110. District councils have, by sect. 137, powers of entry on vessels for the purposes of the regulations which the Minister of Health may issue under sect. 134, and also by the Canal Boats Acts, 1877 and 1884,¹⁷ powers for preventing the spread of infectious diseases in canal boats. See also the Note to sect. 130, as to regulations for preventing danger to the public health from ships in ports, etc. The jurisdiction of district councils with respect to ships, for the purposes of sect. 124, is extended by the Public Health (Ships, etc.) Act, 1885: see sect. 110, and the Note to that section. With regard to quarantine, see the Note to sect. 134; and with regard to the powers of port sanitary authorities, see sects. 287-292, and the Notes to those sections. Sect. 125 deals with the removal to hospital of infected persons brought by ships.

Removal to hospital of infected persons brought by ships.

San. 1866, s. 29.

Sect. 125. Any local authority may make regulations (to be approved of by the [Minister of Health]) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence.

Note.

Regulations.

The provisions of sect. 182, *et seq.*, with respect to the making, confirmation, etc., of bye-laws, do not apply to these regulations, but the local authority may cause them to be published in such manner as they think fit: see sect. 188. Model regulations were issued by the Local Government Board under the present section.

(14) General Order, amending consolidated and other Orders, 12th February, 1879, Art. 3.

(15) *Booker v. Taylor*, *Times*, Nov. 21, 1882.

(16) *Reg. v. Davey*, L. R. 1899, 2 Q. B. 301; 68 L. J. Q. B. 675; 80 L. T. 798; 63 J. P. 515.

See also, as to "obstruction," *Swallow v. London C.C.*, *ante*, p. 235 (20), and cases cited in Note to s. 306, *post*.

(17) See ss. 4 and 5 of Act of 1877 and Notes, *post*, Vol. II., p. 1765.

See also sects. 130 and 134 with regard to regulations which may be made for preventing the spread of cholera, and epidemic and other diseases. **Sect. 125, n.**

With regard to the removal to hospitals of persons suffering from cholera, see Art. 13 of the General Order of the Local Government Board with regard to cholera of the 28th August, 1890.

As to infectious diseases on vessels, see the Note to sect. 124.

As to the recovery of penalties, see sects. 251-253.

Vessels.

Penalties.

Sect. 126. Any person who—

(1.) While suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street public place shop inn or public conveyance, or enters any public conveyance without previously notifying to the owner conductor or driver thereof that he is so suffering; or

Penalty on exposure of infected persons and things. San. 1866, ss. 25, 38.

(2.) Being in charge of any person so suffering, so exposes such sufferer; or

(3.) Gives lends sells transmits or exposes, without previous disinfection, any bedding clothing rags or other things which have been exposed to infection from any such disorder,

shall be liable to a penalty not exceeding five pounds; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance.

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding clothing rags or other things for the purpose of having the same disinfected.

Note.

Where sect. 62 of the Public Health Acts Amendment Act, 1907,¹ is in force, the words "or causes or permits such sufferer to be so exposed" are added to paragraph (2) of the present section, and Part IV. of that Act (sects. 52-68) contains further provisions designed to prevent the spread of infection.

Exposure of infected persons.

As to the meaning of "inn," see the Note to sect. 128; and as to the meaning of "infectious disorder," see the Note to sect. 134.

With regard to legal proceedings for offences, see sects. 251-253.

If an infected person has been conveyed in a public conveyance, the conveyance must be forthwith disinfected: see sect. 127. As to the disinfection of bedding, etc., at the place provided for the purpose by the local authority, see sect. 122.

Disinfection.

The present section does not apply to the removal of infected corpses in public conveyances.² Further, as to such corpses, see the provisions of the Infectious Disease (Prevention) Act, 1890, referred to in the Note to sect. 120, *ante*.

Infected corpses.

In point of law, if a person unlawfully, injuriously, and with full knowledge of the fact, exposes in a public highway a person infected with a contagious disease or disorder, it is a common nuisance, and indictable as such; as where a person was indicted for "unlawfully and injuriously carrying a child infected with the smallpox along a public highway in which persons were passing, and near to the habitations of the King's subjects."³ So also if a person cause others infected with a contagious disease to be carried along a public street; as where the defendant caused patients inoculated with the smallpox to be brought to his surgery whilst infected with the disease.⁴ These were convictions for exposing on the King's highway persons infected with smallpox; but it is equally an offence indictable at common law to expose in public persons labouring under any other infectious disease, whereby the health of the public may be endangered. A person was indicted for bringing a horse diseased with glanders into a public place, to the danger of the Queen's subjects.⁵

Exposure in streets.

In the following case a medical man was consulted by one F., whom he found to be suffering from scarlet-fever. He accordingly sent F., with a certificate for removal to a temporary hospital, to the police-station, with instructions that the ambulance should be sent for to take him to the hospital. He also gave F. instruc-

(1) *Post*, Part I., Div. III.

(2) Answer by President of Loc. Gov. Bd. to question in Parliament, Feb. 23rd, 1886.

(3) *Rex v. Burnett* (1815), 4 M. & S. 272.

(4) *Rex v. Vantandillo* (1815), 4 M. & S. 73.

(5) *Reg. v. Henson* (1852), Dearsly's C. C. 24.

Sect. 126, n.

tions to walk in the middle of the street, and to avoid speaking to anyone while on his way to the police-station. There was some delay at the police-station, and after some time both the ambulance and admission to the hospital were refused. F. was obliged to return to his lodgings, where there were other lodgers, and remained there that night. On the following day he went to his sister's, partly by rail and partly by road, but she was unable to take him in, and he was obliged to return on foot. Subsequently the medical man himself accompanied F. to the chairman of the local board, and after waiting for some time obtained a certificate for admission to the hospital. He was then summoned for having, while in charge of the sufferer, exposed him in the public street. The summons was dismissed, and on appeal the court upheld the dismissal. Grove, J., remarked that he did not see what the respondent could have done more than he did, or what further precautions he could have taken.⁶

Exposure in hackney carriage.

The onus is on the prosecutor to show that precautions are necessary and that these have not been taken, and where a doctor was summoned, under the corresponding Scottish enactment,⁷ for sending to a hospital in a cab a person suffering from enteric fever, and no evidence as to such precautions was given, the conviction was quashed.⁸

Introduction into lodging-houses.

An action was brought by a lodging-house keeper at Eastbourne, into whose house the defendants had introduced their children while infected with scarlet-fever, whereby the plaintiff lost four of his own children, and incurred expense caused to him by the illness and burial of the children. The jury found that the defendants knew that their children were in an infectious state when they introduced them into the plaintiff's house, and gave the plaintiff a verdict for £120. This in effect decided the action in favour of the plaintiff; for it was not doubted that if the act was fraudulent the action lay, and certain demurrers, which raised the question whether apart from the fraud bringing infectious children in contact with others in any place, even a public place like a railway station, was actionable were subsequently settled, Hannen, J., remarking that this question raised great difficulties, for the party sued might, for instance, have been taking the children to a hospital, and could not have avoided bringing them into contact with others.⁹

On the authority of the two last-cited cases, His Honour Judge Johnston, K.C., laid it down that "a person who, knowing that he is suffering from an infectious disease, succeeds in gaining admission as a lodger to the house of another person, either falsely representing that he is not suffering from any infectious disease, or by warranting that he is not suffering from some particular infectious disease, renders himself liable in damages, the amount depending upon the actual loss which reasonably followed from the false representation or the breach of warranty." A person died of pulmonary consumption shortly after taking rooms in a boarding house. At the time of the letting, the plaintiff asked whether the deceased was suffering from consumption and his friend in his presence said that it was congestion of the lungs. Damages were awarded for loss through disinfection, destruction of articles, and loss of business.¹⁰

Where, however, there is no concealment or misrepresentation, there is no implied warranty that an intending tenant of furnished lodgings is not suffering from an infectious disease, in this case leprosy.¹¹

In giving judgment in the Hampstead Hospital case¹² Lord Blackburn said: "Where those who have the custody of the person sick of an infectious disorder have not the means of isolating him from the other inmates, which is very commonly the case with the poor, and consequently those other inmates and the neighbours are exposed to the risk of infection, I think that the inability to isolate him would form a sufficient excuse to be a defence to any indictment; and I think also, though I am not aware of any authority on the subject, that the neighbours could not maintain any action for the damage which they would in such a case sustain from the proximity of the infected person, it being a necessary incident to the use of property for habitations in town, that contagious sickness may befall their

(6) *Tunbridge Wells Loc. Bd. v. Bisshopp* (1877), L. R. 2 C. P. D. 187.

(7) P. H. (Sc.) Act, 1867 (30 & 31 Vict. c. 101), s. 149.

(8) *Malloch v. Hunter* (1894), 21 S. C. (4th Series) J. 22.

(9) *Best v. Stapp*, *Times*, Nov. 9th, 1872. The above note is referred to by the reporter of the *Tunbridge Wells Case*, *supra* (L. R. 2 C. P. D. at p. 191 n.).

(10) *Gwynne v. Clarke* (1913), 77 J. P. Jo.

172. See also, as to such "warranties," *Heilbut Symons & Co. v. Buckleton*, L. R. 1913 A. C. 30; 82 L. J. K. B. 245; 107 L. T. 769.

(11) *Humphreys v. Miller* (C. A.), L. R. 1917, 2 K. B. 122; 86 L. J. K. B. 1111; 116 L. T. 668.

(12) *Metropolitan Asylum District Managers v. Hill* (1881), L. R. 6 A. C. at p. 205; further as to this case, see *post*, p. 254.

neighbours. If those who have the charge of the infected person have the means of isolating him on the spot, they certainly do well to use them, and if it cannot be done on the spot, and they can, either by their own means, or by the aid of charitable persons who have erected a hospital, find a place where he can be isolated so as to avoid the risk of infection, they will do well to use these means. I do not mean to express any opinion as to whether, at common law, they would or would not be responsible for not doing so; but there is no authority and I think no principle for saying that they are justified in removing him to a place where the neighbours would be exposed to contagion, though it may be that those neighbours would be fewer in number than the neighbours of the spot where the infection broke out; nor for saying that if that was done, and the contagion was such as to amount to a real nuisance, those neighbours might not maintain an action, and obtain an injunction to protect themselves against the importation of foreign infection."

Sect. 126, n.

On the subject of quarantine, see the Note to sect. 134, and, as to infectious diseases on vessels, see the Note to sect. 124.

Quarantine.

The Public Health (Ships, etc.) Act, 1885, renders the provisions of sect. 110, relating to the jurisdiction of local authorities over vessels in rivers, harbours, etc., available for the purposes of the present section, see the Note to sect. 110, *ante*.

Sect. 127. Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance after it has to his knowledge conveyed any person suffering from a dangerous infectious disorder; and if he fails to do so he shall be liable to a penalty not exceeding five pounds; but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section.

Penalty on failing to provide for disinfection of public conveyance.
San. 1866, ss. 25, 38.

Note.

Sect. 126 imposes a penalty on persons who enter a public conveyance while suffering from a dangerous infectious disorder. As to the meaning of "infectious disorder," see the Note to sect. 134, and as to disinfectants and their use, see the Note to sect. 120.

Penalties.

With regard to the recovery of penalties, see sects. 251-253.

With regard to the carriage in public conveyances of the bodies of persons who have died of infectious disease, see sect. 11 of the Infectious Disease (Prevention) Act, 1890.¹

Conveyance of infected corpse.

Sect. 128. Any person who knowingly lets for hire any house room or part of a house in which any person has been suffering from any dangerous infectious disorder, without having such house room or part of a house and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds.

Penalty on letting houses in which infected persons have been lodging.
San. 1866, s. 39.

For the purposes of this section, the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn.

Note.

Sect. 129 imposes a penalty for making false statements on letting a house in which there has recently been an infectious disease. With regard to the meaning of "infectious disorder," see the Note to sect. 134; and with regard to the recovery of penalties, sects. 251-253. See also sect. 110, and the Note to that section, with regard to the jurisdiction of the district council over ships and vessels. As to the notification of diseases, see the Note to sect. 124. As to disinfection, etc., by tenants of dwelling-houses, see sect. 7 of the Infectious Disease (Prevention) Act, 1890.¹

Other enactments.

The Local Government Board confirmed the disallowance by an auditor of the payment by a district council of compensation to the keeper of a common lodging-house on his agreeing to refuse to admit tramps during an outbreak of smallpox; but as the action taken by the council was calculated to prevent a further spread of the epidemic they remitted the disallowance and surcharge.

Compensation to keeper of lodging-house.

(1) *Post*, Part II., Div. I.

Sect. 128, n.
Letting for him.

Implied warranty.

Verbal warranty.

Meaning of Inn.

Alehouse.

Guest.

Penalty on persons letting houses making false statements as to infectious disease.
P.H. 1874, s. 56.

Letting infected house.

Power of [Minister of Health] to make regulations.
San. 1866, s. 52.

Allowing persons to sleep on a bench in a Salvation Army shelter for a penny a night is not a "letting for hire of part of a house" within sect. 63 of the Public Health (London) Act, 1891.²

In a case in which a house was infested and overrun with bugs, Lord Abinger, C.B., said: "A man who lets a furnished house does so on an implied condition or obligation that it is in a fit state for occupation. Suppose the defendant had discovered the fact that previous tenants had quitted the house in consequence of a person having recently died there of the plague, would not the law have justified him in leaving as soon as he discovered the fact? I entertain no doubt on the subject."³ The tenant was held to have been justified in leaving.

The decision in this case was followed in another in which a house in London was let for the season, furnished; but was found to be unfit for habitation by reason of defective drainage; the tenant being held to be entitled to repudiate the lease, and not being confined to the remedy by action for breach of covenant.⁴ These decisions were confined to the case of furnished houses, but, under the Housing Acts,⁵ there is a similar implied condition on the letting of a house, below a certain rent, whether furnished or not. In the case of an unfurnished house the Court of Appeal held that a verbal warranty given to the tenant that the house was dry, when it was in fact damp, not being a fraudulent misrepresentation, did not give rise to any cause of action.⁶

According to Burn's 'Justice of the Peace' (*tit. Alehouse*), an "inn" is a house in which travellers, passengers, etc., are provided with victuals and lodging for themselves with their luggage, and for their horses. The common law liability of an innkeeper to receive persons into his inn is enforceable by indictment⁷; it applies only to guests who are travellers; and an innkeeper was therefore entitled to eject a person who had remained for ten months and refused to leave⁸; and when all the bedrooms in an inn were occupied, the innkeeper was not bound to allow a traveller to spend the night in the coffee-room.⁹

An "alehouse" is a house in which ale is sold by retail, to be drunk or consumed on the premises.

The term "guest," as used in the present section, seems to have reference to a person who has victuals and lodging at an inn. But a person who only went to the dining-room of a hotel for a meal, on his way to the railway station from which he travelled to his house, was held to be a guest of an innkeeper, so as to make the latter liable for the loss of the former's overcoat without proof of negligence.¹⁰

Sect. 129. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any dangerous infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

Note.

Sect. 128 imposes a penalty for letting an infected house without having previously disinfected it.

With regard to the notification of infectious diseases, see the Note to sect. 124.

Sect. 130. The [Minister of Health] may from time to time make alter and revoke such regulations as to the said [Minister] may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic endemic or infectious disease, and preventing the spread of cholera and such other diseases, as well on the seas rivers and waters of the United Kingdom, and on the high

(2) 54 & 55 Vict. c. 76, s. 63. *Colclough v. Edwards* (1893, Q. B. D.), 57 J. P. 772; 10 T. L. R. 113.

(3) *Smith v. Marrable* (1842), 12 L. J. Ex. 223; 11 M. & W. 5; 7 Jur. 70; 2 Dowl. (N.S.) 810; Car. & M. 479.

(4) *Wilson v. Finch-Hatton* (1877), L. R. 2 Ex. D. 336; 46 L. J. Ex. 489; 36 L. T. 473; and see *Campbell v. Lord Wenlock* (1866), 4 F. & F. 716.

(5) See s. 75 of Act of 1890, and ss. 14 and 15 of Act of 1909, *post*, Part II., Div. III.

(6) *Green v. Symons* (1897), 13 T. L. R. 301.

See also *Angel v. Jay*, L. R. 1911, 1 K. B. 666; 80 L. J. K. B. 458; 103 L. T. 809, where the innocent misrepresentation was as to drains.

(7) See, for instance, *Rex v. Smith* (1901, Hants Q. S.), 65 J. P. 521.

(8) *Lamond v. Richard*, L. R. 1897, 1 Q. B. 541; 66 L. J. Q. B. 315; 76 L. T. 141; 61 J. P. 260.

(9) *Browne v. Brandt*, L. R. 1902, 1 K. B. 696; 71 L. J. K. B. 367; 86 L. T. 625.

(10) *Orchard v. Bush & Co.*, L. R. 1898, 2 Q. B. 284; 67 L. J. Q. B. 650; 78 L. T. 557.

seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed. **Sect. 130.**

Regulations so made shall be published in the *London Gazette*, and such publication shall be for all purposes conclusive evidence of such regulations. . . .

Note.

The last clause of the present section, which imposed a penalty of £50 for breach of the regulations, was repealed by the Public Health Act, 1896.¹ **Public Health Act, 1896.**

By sect. 1 of that Act,² “ (1) Regulations of the [Minister of Health] made in pursuance of ” the present section and sect. 134 of the present Act, “ or in pursuance of either of those sections, as extended to London by the Public Health (London) Act, 1891,³ may provide for such regulations being enforced and executed by the officers of customs and the officers and men employed in the coastguard as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by those sections may provide for—(a) the signals to be hoisted by vessels having any case of epidemic, endemic, or infectious disease on board; and (b) the questions to be answered by masters, pilots, and other persons on board any vessel as to cases of such disease on board during the voyage or on the arrival of the vessel; and (c) the detention of vessels and of persons on board vessels; and (d) the duties to be performed in cases of such disease by masters, pilots, and other persons on board vessels. (2) Provided that the regulations shall be subject to the consent (a) so far as they apply to the officers of customs, of the Commissioners of [His] Majesty’s Customs; and (b) so far as they apply to officers or men employed in the coastguard, of the Admiralty; and (c) so far as they apply to signals, of the Board of Trade. (3) If any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under ” the present section or sect. 134 of the present Act, “ or in pursuance of either of those sections as extended to London by the Public Health (London) Act, 1891,³ and as amended by this Act, he shall be liable to a penalty not exceeding £100, and in the case of a continuing offence to a further penalty not exceeding £50 for every day during which the offence continues; any such penalty, if not recovered under the provisions of the Acts relating to public health, shall be recoverable by action on behalf of the Crown in the High Court.”

By section 5 of the same Act,⁴ “ in the making of the regulations referred to in this Act regard shall be had to the expediency of uniform regulations throughout the whole of the United Kingdom.”

By sect. 1 of the Public Health Act, 1904,⁵ “ (1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from vessels arriving at any port, and for the prevention of the conveyance of infection by means of any vessel sailing from any port, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any foreign country, and the regulations may in particular provide for the recovery of any expenses incurred in disinfection and of any charges authorised to be made by the regulations for the purpose of those regulations or any services performed thereunder, and also for any powers and duties under the regulations being executed and performed by local authorities: Provided that the regulations shall not be made except after consultation with the Board of Trade.” (2) . . . [Scotland]. “ (3) This Act shall extend to the Isle of Man with the substitution of section eight of the Local Government Amendment Act (Isle of Man), 1897, for the Public Health Act, 1896.” **Public Health Act, 1904.**

The power of making regulations under the Act of 1896 is further extended by the Public Health (Regulations as to Food) Act, 1907,⁶ to regulations for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food, other than drugs or water, intended for sale for human consumption. **Food regulations.**

(1) 59 & 60 Vict. c. 19, s. 6, Sched.

(2) *Ibid.*, s. 1.

(3) 54 & 55 Vict. c. 76. See ss. 82-87, 113.

(4) 59 & 60 Vict. c. 19, s. 5. As to the remainder of this Act, s. 2 is quoted in the Note to s. 134 of the present Act, *post*, p. 260; ss. 3 (Scotland), 4 (Ireland), 6 (repeals) and 7 (commencement of Act on

Nov. 7th, 1896), and the Schedule (repeals) are omitted. Under s. 8 the Act “ may be cited as the Public Health Act, 1896.”

(5) 4 Edw. VII. c. 16, s. 1. S. 2 merely enacts that “ this Act may be cited as the Public Health Act, 1904.”

(6) Set out *post*, Part II., Div. II.

Sect. 130, n.
Formidable outbreak of disease.

Sect. 134 of the present Act also gives powers to the Minister of Health to issue regulations on the outbreak of any "formidable epidemic, endemic, or infectious disease." See the Note to that section as to the meaning of such diseases, and as to the medical officer of the Minister of Health, quarantine, etc. See also the provisions of the Documentary Evidence Act, 1868,⁷ with respect to regulations of the Minister of Health.

With regard to the notification of infectious and other diseases, see the Note to sect. 124.

County councils.

As to the powers conferred upon county councils in connection with the present section, see sect. 2 of the Public Health (Prevention and Treatment of Disease) Act, 1913.⁸

Ships.

Regulations for the removal of infected persons brought into the district by ships may be made by the local authority under sect. 125.

Local Government Board Regulations.

Regulations as to cholera, yellow fever, and plague, were made by the Local Government Board in pursuance of the Public Health Act, 1896, in 1907,⁹ rescinding those dated the 9th November, 1896, and the 24th December, 1902. And memoranda were prepared by the medical officer of the Board with respect to the precautions which should be taken against the infection of cholera, and with respect to the proceedings which are advisable in places attacked or threatened by cholera, diphtheria, fever, or any other epidemic disease, with instructions for a system of domestic disinfection to be adopted where adequate public means are already provided for the disinfection and disposal of infected matters and things.

Various orders prohibiting the importation of rags from places infected with cholera were also issued by the Local Government Board.

By an order of the Local Government Board of the 19th September, 1900, directed to sanitary authorities (including port sanitary authorities as well as district councils) and their medical officers of health, the Infectious Disease (Notification) Act, 1889, was extended to plague, and medical officers of health are required to report to the Minister of Health every case of plague occurring in their districts which may be notified to them or may otherwise come to their knowledge. And in October, 1900, the Board issued to the sanitary authorities directions for obtaining and forwarding to the medical officer of the Board for bacterioscopic examination material from suspected plague cases; and they also issued a memorandum relating to the disease and its symptoms.

In April, 1901, the Board issued a memorandum with regard to the risk of importing plague into the country by means of plague-infected rats on board ships, and the steps which should be taken by sanitary authorities of seaports with the view of preventing the introduction of the disease in this way; and they requested the sanitary authorities to instruct their officers to use their best efforts to secure the carrying into effect of the suggestions which the memorandum contains.

Inspection of ships.

As to the regulations relating to tuberculosis, see Part V., title "Diseases."

An order of the 31st October, 1899, made by the Commissioners of Customs and directed to their boarding officers, with respect to the introduction of plague into the country, required those officers and collectors and other officers of customs to give information to the medical officers of health, and to assist them in getting on board ships that they may desire to visit in pursuance of Art. VIII. of the order of the Local Government Board of the 9th November, 1896, before anyone on board has had an opportunity of getting on shore.

Inspection of schools.

The Local Government Board stated that they were advised that an official of a local authority had no right, with or without an order from the authority, to insist on admittance to a school, without the permission of the managers, to make a personal examination of particular scholars during a period of epidemic infectious disease.

Bye-laws as to caravans, &c.

Bye-laws for preventing the spread of infectious diseases from tents, vans, sheds, and similar structures used for human habitation may be made by sanitary authorities under the Housing of the Working Classes Act, 1885.¹⁰

War-time billets.

As to compensation for loss caused by infection spread by persons engaged on work of national importance during the recent war and billeted in private premises, see sect. 4 (5) of the Billeting of Civilians Act, 1917.¹¹

(7) See s. 2, *post*, p. 261.

(8) *Post*, Part II., Div. I.

(9) See Note to I. D. (Notification) Act, 1889, s. 3, *post*, Part II., Div. I., and *post*,

Vol. II., Part V., under heading "Diseases."

(10) See s. 9 (2), *ante*, p. 174.

(11) 7 & 8 Geo. V. c. 20, s. 4 (5).

The Public Health (London) Act, 1891,¹² which repeals and supersedes, as regards the metropolis, the Diseases Prevention (Metropolis) Act, 1883,¹³ confers powers on the managers of the metropolitan asylum district and the metropolitan borough councils for the provision of hospital accommodation and ambulances, and the isolation and treatment in suitable hospitals of persons suffering from cholera and other infectious diseases, and authorises the assignment by the Minister of Health, to the port sanitary authority of the port of London, of any powers, rights, duties, capacities, liabilities, and obligations of a sanitary authority under the first-mentioned Act, or under the present Act. With regard to port sanitary authorities, see sects. 287-292.

The Diseases Prevention (Metropolis) Act, 1883, above mentioned, which is not to be deemed to be repealed so far as it applies beyond London,¹⁴ applies the Diseases Prevention Act, 1855,¹⁵ to the hamlet of Mottingham, in the county of Kent.¹⁶

Sect. 130, n.
Metropolitan
Acts.

Hospitals.

Sect. 131. Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception; or

Contract for the use of any such hospital or part of a hospital or place of reception; or

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

Two or more local authorities may combine in providing a common hospital.

Power of local
authority to
provide
hospitals.
San. 1866, s. 37.

Note.

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Provision of Hospitals.

Memoranda were issued by the Local Government Board, dated December, 1876, "on Hospital Accommodation to be given by local authorities."

With regard to the use of corrugated iron buildings as hospitals, the Local Government Board stated that not only have such buildings been in their experience unsatisfactory, because it has been found impossible to keep the wards at a sufficiently equable temperature throughout the year even when the buildings are lined with wood, but they fail to meet the permanent needs of a district. And they refuse to sanction loans for such buildings for hospital purposes, except in extensions of existing permanent accommodation on approved sites, and then it is their practice to allow only a short period for repayment.

They also require that hospitals for smallpox shall not receive patients suffering from any other disease.¹

The Local Government Board were advised that district councils are legally empowered under the present section to provide, for the use of the inhabitants of their district, a hospital for the treatment of cases of accident causing sickness; and they consider that the expression, "accident causing sickness," may be taken to include accidental injury sufficiently serious to make detention of the patient in a hospital desirable. In expressing this opinion that Board called attention to the remark of Chitty, J.,² that "the hospital to be provided is for the sick, without any distinction as to the nature of the sickness, whether it be infectious or not."

By sect. 14 of the Poor Law Act, 1879,³ "If it appear to the guardians of any union desirable that any hospital or building vested in them as guardians under the Acts relating to the relief of the poor should be vested in them as the rural sanitary authority of such union, for the reception of persons suffering from any dangerous infectious disorder, the guardians may, by resolution, to be confirmed by an order of the [Minister of Health], transfer such hospital or building accord-

Corrugated
iron
buildings.

Smallpox
hospitals.

Hospital for
sickness
arising from
accident.

Transfer of
hospital for
the poor to
district
council.

(12) 54 & 55 Vict. c. 76, ss. 75-87, 111-113.
(13) 46 & 47 Vict. c. 35.
(14) 54 & 55 Vict. c. 76, s. 142 (2, a).
(15) 18 & 19 Vict. c. 116.
(16) 46 & 47 Vict. c. 35, s. 11.

(1) Memorandum of May, 1902.
(2) In *Withington Loc. Bd. v. Manchester Cpn.* (1893), 62 L. J. Ch. 393; 68 L. T. 330; 57 J. P. 340.
(3) 42 & 43 Vict. c. 54, s. 14.

Sect. 131, n.

ingly; and from and after the date named in the order such hospital or building shall be deemed to be vested in the guardians as the rural sanitary authority of the union, for the use of the inhabitants of the union or part thereof named in the resolution and order. If the same is to be for the use of the inhabitants of any part of the union comprised in an urban sanitary district the order may determine the contribution to be made by the urban sanitary authority of such district towards the maintenance of the hospital or building. Where an urban sanitary district comprises part of the union, and the said hospital or building is not to be for the use of the inhabitants of that part, the order may determine the value of the interest of that part of the union in such hospital or building, and the manner in which such value is to be paid to that part by the residue of the union for whose use the hospital or building is to be kept and the application of the sum so paid."

Class of patients.

That Act makes no distinction between pauper and non-pauper cases, and it is therefore incumbent upon a district council, on whom the statute has imposed the duty of taking precautions against the spread of infectious diseases, to provide hospital accommodation for the isolation of persons of all classes so infected.⁴ The Local Government Board expressed the following views with regard to the treatment of sick paupers: Where a person suffering from illness, including infectious disease, is destitute, it is the duty of the guardians, or, in the interval between their meetings, of the relieving officer, to give such relief as the case may require, and if necessary to give an order for the admission of the patient to a hospital in which he can be properly treated. Where, however, the removal of the patient is only required for purposes of isolation, and the person to be removed is not destitute, the guardians have no duty in the case, and the necessary provision should be made by the sanitary authority (district council). The test of the guardians' duty in the matter is the destitution of the patient, and this will not necessarily depend upon his being in the actual receipt of poor relief, but may consist in his being unable to obtain at his own cost the requisite medical attendance nursing and accommodation. Where it devolves upon the guardians to deal with cases of infectious disease which require hospital accommodation, they are not restricted to providing for the treatment of such cases in the workhouse. On the contrary, the Board considered it very desirable that when the sanitary authority possess a suitable isolation hospital, the guardians should arrange with them for the reception into such hospital, when necessary, of any destitute persons, including vagrants, suffering from infectious diseases, upon such terms as may be mutually agreed upon, and that this arrangement should include cases occurring amongst the inmates of the workhouse. No sanction on the part of the Minister of Health is necessary to the agreement, and the sanitary authority should not refuse to enter into such an agreement if the guardians are willing to meet them upon reasonable terms.

Funds, &c.

The Local Government Board stated that they were advised that it is within the power of a district council under the present Act to provide hospital accommodation for persons suffering from phthisis; though they did not sanction the inclusion of that disease among those which are to be notified under the Infectious Disease (Notification) Act, 1889.⁵

Borrowing.

With regard to the funds from which expenses under the present section are to be defrayed, see sects. 207 and 229: but notice also sect. 132.

The Epidemic and Other Diseases Prevention Act, 1883,⁶ extends the borrowing powers of district councils for the purpose of preventing disease.

As to the exercise of these borrowing powers, see sects. 233—244.

Accounts.

The Local Government Board held that the accounts of a committee of local authorities, who had combined to provide a common hospital under the present section, were not subject to audit by a district auditor; and that a disallowance made in such accounts by a district auditor had no legal effect, and they declared his certificate to be a nullity accordingly.

Contracts.

With regard to contracts, see sects. 173 and 174.⁷ Land may be purchased for the purposes of the section under sects. 175 and 176. A reservation to the landlord in an agreement for a lease of a right to sell portions of the land "for building sites" was held not to extend to the sale to a local authority of a site for a smallpox hospital.⁸

(4) See *Reg. v. Rawtenstall Cpn.* (1894), 10 T. L. R. 643.

(5) *Post*, Part II., Div. I.

(6) Quoted in full, *post*, p. 259.

(7) Particularly the *Wolstanton Hospital Case*, cited in Note to s. 173, *post*.

(8) *English v. Tynemouth Cpn.* (1903), 67 J. P. 239; 1 L. G. R. 177.

Infected persons, who are without proper lodging or accommodation, or who are on board ship, may be removed to a hospital under sects. 124 and 125.

Mortuaries and places for post-mortem examinations may be provided under sects. 141 and 143.

District councils have a general power of combining for the execution of works under sect. 285; and joint boards for the management of works or for other purposes of the Act may be formed under sect. 279, and the following sections.

The Local Government Board considered that it is competent to a district council to make a contribution to the funds of an established hospital in pursuance of an agreement with a view to obtaining the benefits indicated in the present section.

A local authority may establish a hospital in a neighbouring district without the consent, under sect. 285, of the authority of that district.⁹

The Public Health (Ships, etc.) Act, 1885,¹⁰ renders sect. 110, relating to the jurisdiction of local authorities over ships and vessels, available for the purposes of the present section.

As to isolation hospitals, see the Isolation Hospitals Act, 1893.¹¹

As to the provision of temporary shelter or house accommodation, with any necessary attendants, for the members of any family in which infectious disease has appeared, see sect. 15 of the Infectious Disease (Prevention) Act, 1890.¹²

As to the provision of hospitals by metropolitan borough councils, see sects. 75 and 76 of the Public Health (London) Act, 1891.¹² As to the powers of the Metropolitan Asylum Managers, see sects. 79 to 81 of the same Act.¹³

Regulation of Hospitals.

The Local Government Board considered that rules may with advantage be drawn up by a district council for the purpose of maintaining proper discipline in a hospital provided by them, of preventing any extension of disease by hospital agencies, and for giving notice to the relatives of patients of the restrictions placed on visitors. They also state that in framing such rules, it is desirable that the council should be guided by the medical practitioner administering the affairs of the hospital, but that the Board would generally be willing to assist in the matter if a draft of the rules were submitted to them.

With reference to the question of charging for admission to an infectious diseases hospital provided by a district council, the Local Government Board pointed out that while the means of isolation afforded by such a hospital is of considerable benefit to the individuals, such means should be regarded as directed to the attainment of the larger benefit of the protection of the general public health, and therefore it was, in the Board's opinion, undesirable that admission should be subject to any charges and conditions which, by operating restrictively, might tend to prevent the use of the hospital by the poorer portion of the community—that is to say, by those who have the least facilities for isolation and treatment at their own homes.

The sanction of the Minister of Health is not required to the appointment by a district council of a medical practitioner to take charge of a smallpox hospital, nor to the remuneration assigned to him. The Local Government Board did not object to the medical officer of health acting in that capacity, but they considered, in view of the duties which he has to perform as medical officer of health, that it would be undesirable that he should reside in the hospital. They did, however, refuse to sanction the appointment of a medical officer of health as superintendent of the hospital of a district council at a merely nominal salary.

By sect. 8 of the Vaccination Act, 1898,¹⁴ "the clerk of any sanitary authority which shall maintain a hospital for the treatment of smallpox patients shall keep a list of the names, addresses, ages, and condition as to vaccination of all smallpox patients treated in the hospital, such entries to be made on admission, and shall at all reasonable times allow searches to be made therein, and upon demand give a copy under his hand or under that of his deputy of every entry in the same on payment of a fee of sixpence for each search, and threepence for each copy."

Sect. 131, n.

Removal of infected persons.

Joint hospitals.

Contribution to existing hospital.

Hospitals outside district.

Ships.

Isolation hospitals.

Temporary shelter.

London.

Hospital rules.

Charges for admission to hospital.

Medical super-intendent.

Register of smallpox patients.

(9) *Withington Loc. Bd. v. Manchester Cpn.*, ante, p. 217. In *Edinburgh Magistrates v. Leith Magistrates* (1896), 23 S. C. (4th Series), 383, it was held that the words "or within a convenient distance of such district" (P.H. (Sc.) Act, 1890 (53 & 54 Vict. c. 20), s. 1) authorised the establishment of a hospital in a neighbouring district.

(10) *Ante*, p. 214.

(11) Set out *post*, Part II., Div. I.

(12) 54 & 55 Vict. c. 76, ss. 75 and 76.

(13) *Ibid.*, ss. 79-81.

(14) 61 & 62 Vict. c. 49, s. 8.

Sect. 131, n.

Nuisance created by Hospitals.

Fears of
mankind.

In an old case, an injunction to restrain persons from erecting a hospital for the reception of persons suffering from smallpox, and of persons who might come there to be inoculated for smallpox, for which application was made by an owner of building land, on the ground that the fear of infection from the proposed hospital deteriorated the letting value of the land, was refused, Lord Hardwicke saying that loss arising from the fears of mankind, though in themselves reasonable, would not create a nuisance at law, and that before he could grant an injunction, he must be satisfied that what was proposed to be done would be a legal nuisance affecting the plaintiff's private right.¹⁵ But it was held that an indictment for maintaining a house for inoculating for smallpox was not so plainly bad as to be quashed on motion.¹⁶

The above statement of Lord Hardwicke¹⁷ that "the fears of mankind, though they may be reasonable ones, will not create a nuisance," was differed from by Lord Halsbury, L.C., in a case relating to compensation for the establishment of a sewage farm.¹⁸

Nuisance
not justified
by statutory
powers.

Under the Metropolitan Poor Act, 1867,¹⁹ the Poor Law Board were (and their successor, the Minister of Health, is) authorised to form districts for asylums for the reception or relief of the sick, insane, or infirm, or other classes of the poor in the metropolis, and to direct the managers to be appointed for such districts to purchase, hire, or build and fit up buildings, and the managers are required to carry out such directions. In pursuance of these provisions the managers of the metropolitan asylum district erected a hospital for the reception of persons suffering from smallpox and other infectious and contagious disorders; and in an action alleging that the hospital created a nuisance, the jury found that it was a nuisance occasioning damage to each of the plaintiffs "*per se*," and also by reason of the patients coming to or going from it; that, assuming that the defendants were by law entitled to erect and carry on a hospital, they did not do so with all proper and reasonable care and skill; and that the ambulances ought to have been disinfected before leaving the hospital. An injunction was granted to restrain the defendants from continuing to use the hospital as before, and on an order of the Queen's Bench Division for a new trial coming before the House of Lords, it was held that the defendants could not set up the statute or the Orders of the Poor Law Board under it, as an answer to the action.²⁰ Lord Selborne, L.C., stated the result of the legislation to be that the Act did not necessarily require anything to be done under it, which might not be done without causing a nuisance; that as to those things which might or might not be done under it, there was no evidence on the face of the Act that the legislature supposed it to be impossible for any of them to be done (if they were done at all) somewhere and under some circumstances, without creating a nuisance; and that the legislature had manifested no intention that any of these optional powers, as to asylums, should be exercised at the expense of, or so as to interfere with, any man's private rights; and he said that "the only sense in which the legislature can be properly said to have authorised these things to be done, is, that it has enabled the Poor Law Board to order, and the managers to do them, if and when and where, they can obtain by free bargain and contract the means of doing so;" but he added, "if the legislature had authorised some compulsory interference with private rights of property, within local limits which it might have thought fit to define for the purpose of establishing this asylum, to be used for the reception of patients suffering from smallpox or other infectious disorders, and had provided for compensation to those who might be thereby injuriously affected (in such cases and under such conditions as it might have prescribed) the present case might have been like *Rex v. Pease*,²¹ and *The Hammersmith Railway Company v. Brand*."²²

(15) *Baines v. Baker* (1752), 1 Ambler, 158; s.c. *Anon.* 3 Atkyns, 750. To the same effect *Fleet v. Metropolitan Asylums Board* (1884), 1 T. L. R. 80, and *Saunders v. New Windsor Cpn.* (1886), 81 L. T. Jo. 353.

(16) *Rex v. Sutton* (1767), 4 Burr. 2117.

(17) 3 Atk., at p. 751; omitted in the report in Amb. 158.

(18) *Cowper Essex v. Acton Loc. Bd.* (1889), L. R. 14 A. C. 161; 58 L. J. Q. B. 591; 61 L. T. 1; 53 J. P. 756. See also A.G.

v. Manchester Cpn., post, p. 255.

(19) 30 Vict. c. 6.

(20) *Metropolitan Asylum District Managers v. Hill* (1881), L. R. 6 A. C. 193; 50 L. J. Q. B. 353; 44 L. T. 653; 45 J. P. 664. Considered in *East London Ry. Co. v. Thames Conservators* (1904, Ch. D.), 68 J. P. 302; 20 T. L. R. 378.

(21) Ante, p. 70.

(22) Cited in Note to s. 308 (under heading "Recovery of Compensation"), post.

An injunction was granted to restrain a rural authority from using as a smallpox hospital a dwelling-house which they had purchased, on the ground that there would be "an appreciable injury" to the rights of the plaintiffs as owners and occupiers of property about 140 feet from the hospital.²³ And an interim injunction was granted by Cave and Kay, JJ., restraining the reception of smallpox patients from beyond a radius of one mile from the defendants' hospital.²⁴

Sect. 131, n.
Appreciable
nuisance.

It was laid down by Chitty, J., that on an application for a *quia timet* injunction to restrain what it is alleged will in the future be a nuisance, public or private, from a proposed smallpox hospital, the plaintiff must show a strong case of probability that the apprehended mischief will in fact arise; and an injunction was refused where this was not shown. A doubt was also expressed whether weight should be given to evidence that the hospital would on the whole be more beneficial to the public than leaving the patients scattered at their own homes.²⁵

Probability of
nuisance.

In a case relating to a landslide, Scrutton, L.J., said (approving the observation of Chitty, J.): "Absolute certainty of future damage is not necessary, 'real danger,' 'extreme probability of a nuisance,' if that which was being done was to be allowed to continue, will suffice."²⁶

In an action to restrain a joint hospital board from using a certain plot of land and a cottage as a smallpox hospital, and from erecting buildings on the land for the like purpose, the defendants disclaimed any intention to use the existing cottage until a proper hospital should be built, it having been proved that it was not, as matters then stood, a proper place for the reception of patients, and that there would be serious danger of infection if patients were received there. On this Kekewich, J., who had refused to take suggested alternative sites into consideration, in the absence of bad faith on the part of the defendants, declined to make any order as to costs or otherwise.²⁷

Damages were awarded against a local authority for negligently treating smallpox cases in a stable near the plaintiff's house, whereby his daughter caught the disease.²⁸ But where a child crawled through the fence of a diphtheria hospital and subsequently developed this disease, it was held that no action lay, as the disease might not have been caught in that manner.²⁹

Damages for
causing
infection.

A covenant in a lease of a house not to carry on "any trade, business or dealing whatsoever or anything in the nature thereof," was broken by carrying on a hospital for out-patients suffering from diseases of the throat and chest.³⁰

Breach of
covenant.

The establishment of a hospital for diseases of the throat, etc., was held to be a breach of a covenant against carrying on certain trades or doing any act which might be or grow to the annoyance, nuisance, grievance, or damage of the lessor, his heirs, etc., or the inhabitants of neighbouring houses.³¹

Where, one month before the issue of the writ, the defendant had opened a hospital for the surgical treatment of tuberculosis, Eve, J., held that the fears of infection were "wholly groundless," and that the hospital was "no source of danger to the neighbourhood," though he granted an injunction restraining this user of the building as being a breach of a covenant in the conveyance that it was to be used as a "private dwelling-house only." It was also held that such user did not amount to a "noisy [from the cries of patients] noisome or offensive [from the sight of suffering victims and the smell of disinfectants and

(23) *Bendelow v. Wartley Union* (1887), 57 L. J. Ch. 762; 57 L. T. 849; 36 W. R. 168.

(24) *Chambers v. Metropolitan Asylums Bd.* (1881), 25 Sol. J. 834.

(25) *A.G. v. Manchester Cpn.*, L. R. 1893, 2 Ch. 87; 62 L. J. Ch. 459; 68 L. T. 608; 57 J. P. 343. See also *Fleet v. Metropolitan Asylums Bd.* (1886, C. A.), 2 T. L. R. 361; *Saunders v. New Windsor Cpn.* (1886, Stirling, J.), 81 L. T. Jo. 353; *Matthews v. Sheffield Cpn.* (1887, Charles, J.), 83 L. T. Jo. 395; *Harrop v. Ossett Cpn.*, 1898 Loc. Gov. Chron. 399 (reported on another point in other reports; see *post*, Vol. II., p. 1976); *A.G. v. Nottingham Cpn.*, L. R. 1904, 1 Ch. 673; 73 L. J. Ch. 512; 90 L. T. 308; 68 J. P. 125; 2 L. G. R. 698; and *A.G. (Boswell) v. Rathmines and Pembroke Hospital Bd.* (1904), Ir. Ch. 161, in all of which injunctions were refused.

(26) *A.G. v. Cory Bros. & Co.*, 83 J. P., at p. 228, col. i. For decision in H. L., see *post*, p. 305.

(27) *A.G. v. Guildford, Godalming, and Woking Joint Hospital Bd.* (1895), 12 T. L. R. 54; Loc. Gov. Chron. 1238.

(28) *Chapman v. Gillingham U.D.C.* (Grantham, J.), *Times*, March 28th, 1903, p. 5, col. iv.

(29) *Sherwell v. Alton U.D.C.* (1909, Ridley, J.), 25 T. L. R. 417.

(30) *Bramwell v. Lacy* (1879), L. R. 10 Ch. D. 691; 48 L. J. Ch. 339; 40 L. T. 361; 43 J. P. 446. See also *Frost's Case*, *post*, p. 256; and as to nursing homes, *Portman v. Home Hospital Assoc.* (1879), L. R. 27 Ch. D. 81n.; and *Earl of Pembroke v. Warren*, 1896 Ir. Ch. 76.

(31) *Tod Heatly v. Benham* (1888), L. R. 40 Ch. D. 80; 58 L. J. Ch. 83; 60 L. T. 241.

Sect. 131, n. burning swabs, dressings, etc.] business," though these things "might now and again be distressing and even annoying." The complaint as to the smells from the burning was not mentioned until the trial, and his Lordship refused to allow an amendment of the pleadings so as to add this to the previous complaints.³²

Negligence of officer. A corporation were held not to be liable for the negligence of their medical officer in prematurely discharging a patient whereby another person contracted an infectious disease.³³

It was held that the duty of directors of public hospitals was confined to furnishing the services of competent medical and surgical practitioners, that this had been done, and that therefore an action for the negligent treatment of a paying patient failed.³⁴

Libel. A ratepayer reported to the clerk of a hospital authority certain conduct of the matron (putting severe cases of scarlet fever close to mild cases) which he said would, if true, point to "criminal conduct." The authority held an inquiry and absolved the matron. The ratepayer induced the Local Government Board for Scotland to hold a further inquiry, and the Board also absolved the matron. The ratepayer then wrote to the Board bringing fresh charges against the matron, such as wilfully destroying charts and fabricating registers before the holding of the inquiry. The Board held a fresh inquiry, and the matron was again absolved. The matron then sued the ratepayer for £2,000 damages for libel, being her expenses in appearing at these inquiries and defending herself against the above charges. It was held (reversing Lord Dewar) that the reports were privileged, and that malice was not shown by the facts (1) that violent language was used in the reports, (2) that statements were made without previous inquiries, (3) that they were reiterated in spite of the results of the early investigations by the hospital authority and the Board, and (4) that, even after the third investigation, the ratepayer adhered to them and refused to apologise.³⁵ *Per Lord Dundas* ³⁶ :—"I think that he had the right and duty of any citizen who *bonâ fide* believes that wrong has been done to lay the alleged facts before the proper authority for investigation, and that in doing so he was entitled to formulate his own view of what ought to follow if the facts reported in hearsay should be established as true . . . I know of no authority for holding that the mere obstinate retention of a personal belief or view is by itself a ground upon which malice may be inferred." The plaintiff then commenced a fresh action, making different allegations of malice, and Lord MacDonald, L.J.C., said: "Very grave charges are now made. . . . They include accusations of deliberate and wilful falsehood—statements that the [defendant] had received information regarding the conduct of the hospital officials, when in point of fact he had received no such information—that neither by hearsay nor otherwise had he been informed of things as to which he asserted that he had been so informed—that he made statements knowing them to be false—and it is even said that he 'invented' accusations which he knew to be untrue, and that he endeavoured to induce a public authority to give a decision contrary to what he knew to be the fact. . . . If they can be substantiated by evidence, then beyond doubt a case of malice would be made out."³⁷

Recovery of cost of maintenance of patient in hospital.

Sect. 132. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

(32) *Frost v. King Edward VII. Welsh National Memorial Assoc.*, L. R. 1918, 2 Ch. 180; 87 L. J. Ch. 561; 119 L. T. 220; 82 J. P. 249. Appeal to C. A. settled on terms, 35 T. L. R. 138. See also *Mutter v. Fyfe* (1848), 11 S. C. (2nd series) 303, as to a cholera hospital.

(33) *Evans v. Liverpool Cpn.*, L. R. 1906, 1 K. B. 160; 74 L. J. K. B. 742; 69 J. P. 263; 3 L. G. R. 868.

(34) *Foote v. Greenock Hospital Directors*, 1912 S. C. (S.) 69; 49 Sc. L. R. 39; 2 Glen's Loc. Gov. Case Law 211. *Hillyer v. St. Bartholomew's Hospital Governors* (C. A.),

L. R. 1909, 2 K. B. 320; 78 L. J. K. B. 958; 101 L. T. 368; 73 J. P. 501, followed. See, also, as to operations on school children, *Davis v. London C.C.* (1914, Lush, J.), 30 T. L. R. 275.

(35) *Couper v. Lord Balfour of Burleigh* (No. 1), 1913 S. C. (S.) 492; 50 Sc. L. R. 320; 4 Glen's Loc. Gov. Case Law 93.

(36) 1913 S. C. (S.), at pp. 501, 503; 4 Glen's Loc. Gov. Case Law, at p. 93.

(37) *Couper v. Lord Balfour of Burleigh* (No. 2), 1914 S. C. (S.) 139; 51 Sc. L. R. 126; 5 Glen's Loc. Gov. Case Law 108.

Note.

Sect. 132, n.

Where the Infectious Disease (Prevention) Act, 1890,³⁸ has been adopted, a justice may, in certain cases, direct the detention in hospital, at the cost of the local authority, of persons suffering from infectious disease.

The expenses of maintaining a patient are only made recoverable from the patient himself; they cannot, therefore, in the case of a patient under age, be recovered, under the present section, from the patient's parent,³⁹ nor can charitable guardians of children who have been sent to a hospital maintained by a joint hospital board under the present Act be sued under the present section for the maintenance of the children.⁴⁰

In one case the court expressed the opinion that the guardians of the union to which pauper patients are chargeable are bound to defray the expenses of their maintenance in a hospital provided by the local authority, but the guardians' liability to defray such expenses was apparently not contested.⁴¹

In a subsequent case pauper children had been sent under the Poor Law (Certified Schools) Act, 1862,⁴² to a school in an urban district. On an outbreak of fever in the school some of these children were taken to the hospital of a joint board, whose district comprised the urban district, but not the union to which the children were chargeable. In an action by the joint board against the guardians of that union to recover the cost of maintaining the children in the hospital, Bray, J., held that the board could not recover the cost under any statutory provisions; that there was in fact no promise by the superintendent of the school to repay such cost, and that even if there had been, the superintendent had no authority to pledge the credit of the guardians to any expense outside the school; and that there was no such urgency as to create an implied request by the guardians to maintain the children in the hospital, and that even if there had been urgency, the board would not have been entitled to recover the cost.⁴³

The Local Government Board were of opinion that if a patient is, on his discharge from the hospital, in a destitute condition, whether or not he was a pauper at the time of his admission, it devolves upon the guardians to give such relief as is necessary, and if the patient has no clothing and no means of obtaining any, they or the relieving officer may, on application being made for relief, supply such clothing as may be necessary; but the Board declined to say that in the absence of an agreement on the subject the council could recover from the guardians the cost of clothing supplied to patients on leaving the hospital.

It is arguable that, as the present section declares that the expenses " shall be deemed to be a debt due " from non-pauper patients, and enables the local authority to recover them from such patients, it is the duty of the authority to recover them; but, where sect. 60 of the Public Health Acts (Amendment) Act, 1907,⁴⁴ is in force, it is expressly declared that the district council need not recover the cost of maintenance from a patient who is not a pauper if they have satisfied themselves that the circumstances of the case justify the remission of the debt.

It would appear that, in the event of a person dying in the hospital in such a state of indigence as to leave no funds applicable to the payment of the cost of interment, the primary obligation to bury the body falls upon the hospital authorities.⁴⁵ It would, however, be open to the guardians of the union, in which the hospital was situate, to exercise their powers of burial under the Poor Law Amendment Act, 1844.⁴⁶

As to the jurisdiction of the district council over ships and vessels for the purposes of the present section, see sect. 110 and Note.

Cost of maintenance.

Burial of deceased pauper.

Ships.

Sect. 133. Any local authority may, with the sanction of the [Minister of Health], themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

Power to provide temporary supply of medicine.
San. 1868, s. 10.

(38) See s. 12, *post*, Part II., Div. I.
(39) *Hull Cpn. v. Maclaren*, 1898 Loc. Gov. Chron. 585.
(40) *Farquhar v. Isle of Thanet Hospital Bd.* (1904), 68 J. P. 319; 2 L. G. R. 1310.
(41) *Reg. v. Rawtenstall Cpn.* (1894), 10 T. L. R. 643.
(42) 25 & 26 Vict. c. 43.
(43) *Bury and District Joint Hospital Bd. v. Chorlton Guardians* (1905), 70 J. P. 31; 4 L. G. R. 489.
(44) *Post*, Part I., Div. III.
(45) See *Reg. v. Stewart*, cited in Note to I.D. (P.) Act, 1890, s. 8, *post*, Part II., Div. I.
(46) 7 & 8 Vict. c. 101, s. 31.

Sect. 133, n.	Note.
Ships.	This section is applied to ships and vessels by the Public Health (Ships, etc.) Act, 1885 : see sect. 110 and Note. ⁴⁷
Temporary shelter.	With regard to the provision of temporary shelter for the sick, see sect. 15 of the Infectious Disease (Prevention) Act, 1890. ⁴⁸
Nurses.	With regard to the provision of nurses to attend on the sick at their own homes, see the Note to sect. 124. ⁴⁹
Tuberculosis.	As to the supply of medical assistance for the treatment of tuberculosis, see Art. XIII. of the Public Health (Tuberculosis) Regulations, 1912. ⁵⁰

PREVENTION OF EPIDEMIC DISEASES.

Power of [Minister of Health] to make regulations for prevention of diseases. D., ss. 5, 6, 7, 11.	<p>Sect. 134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic endemic or infectious disease, the [Minister of Health] may make and from time to time alter and revoke regulations for all or any of the following purposes; (namely),</p> <p>(1.) For the speedy interment of the dead; and</p> <p>(2.) For house to house visitation; and</p> <p>(3.) For the provision of medical aid and accommodation, for the promotion of cleansing ventilation and disinfection, and for guarding against the spread of disease;</p> <p>and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.</p>
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Note.

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Regulations for Prevention of Disease.

Penalties.	As to the notification of cases of diseases, see the Note to sect. 124. The Public Health Act, 1896, ¹ without prejudice to the generality of the powers conferred by the present section, specifies certain matters which may be dealt with by the regulations. It also imposes a penalty of £100 for breach of the regulations, or for obstructing their execution, and a further penalty of £50 a day in the case of a continuing offence, and thereby supersedes the penalties for violating or obstructing the execution of these regulations imposed by sect. 140.
Regulations of Minister of Health.	Under sect. 130 of the present Act, the Minister of Health may issue regulations respecting the treatment of infected persons, and for preventing the spread of diseases. With regard to the regulations, etc., which have been issued by the Local Government Board in relation to epidemic diseases, see the Note to that section. The present section only applies to a "formidable" epidemic, etc., and the word implies an extensive outbreak. Reference should also be made to the Sanitary Officers Order, 1922, as to the duties of these officers with respect to diseases. ²
London.	As to the "prevention of epidemic diseases" in London, see sects. 82 to 87 of the Public Health (London) Act, 1891. ³

Meaning of "Epidemic, Endemic, Infectious, and Contagious Diseases."

Definitions.	The first three of these classes of disease are those to which the present Act applies. The former Act, the Diseases Prevention Act, 1855, ⁴ used the expression <i>contagious disease</i> , instead of <i>infectious disease</i> as above. These diseases are thus defined in Hoblyn's Medical Dictionary: Epidemic, that is, diseases which are not <i>native</i> diseases, but which arise from a general cause, as excessive heat, and are generally prevalent; Endemic, that is, diseases peculiar to the inhabitants of
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(47) *Ante*, p. 214.

(48) *Post*, Part II., Div. I.

(49) *Ante*, p. 243.

(50) 11 L. G. R. (Orders) 23.

(1) See s. 1, *ante*, p. 249.

(2) *Post*, Vol. II., Part V.

(3) 54 & 55 Vict. c. 76, ss. 82-87.

(4) 18 & 19 Vict. c. 116, s. 5.

the country, or which prevail locally, as from marsh miasma, when they are called *native* diseases; Infectious, that is, diseases which are propagated by the diffusion of a poisonous principle through the atmosphere; and Contagious, that is, diseases which are propagated from one individual to another, generally by contact, as distinguished from infection, which is the propagation of disease by effluvia from patients crowded together.

The infectious diseases, to which the Infectious Disease (Notification) Act, 1889,⁵ applies, are smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlatina or scarlet-fever, and typhus, typhoid, enteric, relapsing, continued and puerperal fevers; but other infectious diseases may be added to the list by the local authority.

Plague was, by virtue of the present section, added by the Local Government Board Regulations, dated the 19th September, 1900.⁶

Borrowing Money.

By sect. 2 of the Epidemic and Other Diseases Prevention Act, 1883,⁷ “ Whenever any part of England . . .⁸ appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease, and the [Minister of Health], England, under the provisions of the Public Health Act, England, 1875, . . .⁸ [makes] regulations for all or any of the following purposes, namely : (1.) For the speedy interment of the dead : (2.) For house to house visitation : (3.) For the provision of medical aid and hospital accommodation : and (4.) For the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease : The purposes named in the said regulations shall be deemed to be purposes for which sanitary authorities may borrow money, and the local authorities in England, . . .⁸ charged with the carrying out of such regulations, may borrow, and the Public Works Loan Commissioners in England . . .⁸ may lend money to such authorities, as if such purposes were ‘ works ’ for which loans may be granted under ” the present Act. “ Such loans may be made forthwith and without any preliminary public notice or inquiry, if it appear to the [Minister of Health] desirable in order to the prompt and effective execution of such regulations.”

With regard to the power of local authorities to borrow money, and the securities which may be given for the loans, see sects. 233 to 243 of the present Act and the Notes to those sections.

Medical Inspection.

The Privy Council were authorised by the Public Health Act, 1858,⁹ to appoint a medical officer, with a salary, and from time to time employ such other persons as they might deem necessary for the purposes of the Act. The powers of the Privy Council were transferred to the Local Government Board by sect. 4 of the repealed Local Government Board Act, 1871. With regard to the medical officer’s salary, see the re-enactment of sect. 38 of the Public Health Act, 1872, in Schedule V., Part III., of the present Act, *post*.

Medical inspectors of ships and medical inspectors of seamen may be appointed by the local marine board (elected under the Merchant Shipping Act, 1894¹⁰), or where there is no such board, by the Board of Trade.¹¹ The former inspectors inspect the medicines, medical stores, and anti-scorbutics with which ships are required by the Act to be provided, before the ships proceed to sea¹²; the latter examine and report upon seamen applying for employment on board ship, when the owner or master of the ship applies to them to do so.¹³

Shipowners are required to pay the cost of surgical or medical advice, attendance, and medicine, for the masters and seamen on their ships.¹⁴

Every foreign-going ship, carrying 100 persons or more on board, is required to carry a duly qualified medical practitioner as part of her complement.¹⁵ Emigrant ships are required to carry duly qualified medical practitioners on board when the steerage passengers exceed 50 or the total number of persons exceeds 300.¹⁶

Sect. 134, n.
Definitions—
continued.

Power to
borrow.

Medical
officer of
Ministry of
Health.

Merchant
Shipping Act,
1894.

(5) See ss. 6 and 7, *post*, Part II., Div. I.
(6) Quoted in Note to Act of 1889, s. 3, *post*, Part II., Div. I.
(7) 46 & 47 Vict. c. 59, s. 2. The above short title is given by s. 1, and s. 3 relates to Ireland only.
(8) Omitted words relate to Scotland or Ireland.
(9) See s. 4, *post*, Vol. II., p. 2308.
(10) 57 & 58 Vict. c. 60, s. 244, and

Sched. VII.
(11) *Ibid.*, s. 204.
(12) *Ibid.*, s. 202.
(13) *Ibid.*, s. 203.
(14) 6 Edw. VII. c. 48, s. 34, replacing s. 207 of Act of 1894, which is now repealed, *ibid.*, s. 85, Sched. II.
(15) 57 & 58 Vict. c. 60, s. 209.
(16) *Ibid.*, s. 303. Further as to emigrant ships, see *post*, Vol. II., p. 2118.

Sect. 134, n.

Customs Act,
1876.

Quarantine.

By sect. 234 of the Customs Consolidation Act, 1876,¹⁷ it is enacted that "It shall be lawful for [*Her Majesty in Council, or any two of the Lords of Her Majesty's Privy Council*] from time to time, by [*Her or their*] order, to require that no person on board any ship coming to any part of the United Kingdom, the Channel Islands, or the Isle of Man, from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper officer of Customs, at such place or places as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer . . . and any person so quitting any such vessel shall forfeit a sum not exceeding £100; and if the master, pilot, or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order, until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties or either of them if incurred . . . shall be subject to reduction to any sum not exceeding £100, and may be recovered by information and summons before a stipendiary magistrate, or any two justices of the peace, who are hereby authorised to reduce the same accordingly, and to commit the offender to prison in default of payment of any penalty so imposed for any period not exceeding six months." The words omitted from the section as above set out were repealed by the Public Health Act, 1896,¹⁸ which also wholly repealed the Quarantine Act, 1825.¹⁹

By sect. 2 of the Public Health Act, 1896,²⁰ "the powers exerciseable by Her Majesty in Council or any two of the Lords of Her Majesty's Privy Council under sect. 234 of the Customs Consolidation Act, 1876, shall be exerciseable by the [*Minister of Health* ^{20a}] and accordingly in that section the words '[*Minister of Health* ^{20a}]' shall be substituted for the words 'Her Majesty in Council or any two * Lords of Her Majesty's Privy Council.'"

* Sic.

Regulations.

For the rules and regulations with reference to cholera, yellow fever, and plague, see the Orders referred to elsewhere.²¹

Publication of
regulations
and orders.
D., s. 7.

Sect. 135. All regulations and orders so made by the [*Minister of Health*] shall be published in the *London Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

Note.

Rules
Publication
Act, 1893.

Sect. 1 of the Rules Publication Act, 1893,²² provides as follows: "(1) At least forty days before making any statutory rules to which this section applies, notice of the proposal to make the rules, and of the place where copies of the draft rules may be obtained, shall be published in the *London Gazette*. (2) During those forty days any public body may obtain copies of such draft rules on payment of not exceeding threepence per folio, and any representations or suggestions made in writing by a public body interested to the authority proposing to make the rules shall be taken into consideration by that authority before finally settling the rules; and on the expiration of those forty days the rules may be made by the rule-making authority, either as originally drawn or as amended by such authority, and shall come into operation forthwith or at such time as may be prescribed in the rules. (3) Any enactment which provides that any statutory rules to which this section applies shall not come into operation for a specified period after they are made is hereby repealed, but this repeal shall not affect sect. 37 of the Interpretation Act, 1889.²³ (4) The statutory rules to which this section applies are those made in pursuance of any Act of Parliament which directs the statutory rules to be laid before Parliament, but do not include any statutory rules if the same or a draft thereof are required to be laid before Parliament for any period before the rules come into operation, nor do they include rules made by the [*Minister of Health*],

(17) 39 & 40 Vict. c. 36, s. 234.

(18) 59 & 60 Vict. c. 19, s. 6, Sched.

(19) 6 Geo. IV. c. 78.

(20) 59 & 60 Vict. c. 19, s. 2.

(20a) Substituted for "Local Government Board" by Act of 1919, *post*, Vol. II., p. 2305.(21) *Post*, Vol. II., Part V., tit.

"Diseases."

(22) 56 & 57 Vict. c. 66, s. 1. Sub-sects. (5) and (6) of this section relate to Scotland and Ireland. Certain rules are excepted from, and other rules are expressly included in, this provision. See the current "Chronological Table of all the Statutes."

(23) *Post*, Vol. II., p. 1970.

the Board of Trade, or the Revenue Departments, or by or for the purposes of the Post Office; nor rules made by the [Minister] of Agriculture [and Fisheries] under the Contagious Diseases (Animals) Act, 1878, and the Acts amending the same."

By sect. 2 of the same Act²⁴: "Where a rule-making authority certifies that on account of urgency or any special reason any rule should come into immediate operation, it shall be lawful for such authority to make any such rules to come into operation forthwith as provisional rules, but such provisional rules shall only continue in force until rules have been made in accordance with the foregoing provisions of this Act."

By sect. 3 of the same Act,²⁵ "(1) All statutory rules [*made after the 31st day of December next after the passing of this Act*²⁶] shall forthwith after they are made be sent to the [King's] printer of Acts of Parliament, and shall, in accordance with regulations made by the Treasury, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, be numbered, and (save as provided by the regulations) printed, and sold by him. (2) Any statutory rules may, without prejudice to any other mode of citation, be cited by the number so given as above mentioned and the calendar year. (3) Where any statutory rules are required by any Act to be published or notified in the *London . . .*²⁷ *Gazette*, a notice in the *Gazette* of the rules having been made, and of the place where copies of them can be purchased, shall be sufficient compliance with the said requirement. (4) Regulations under this section may provide for the different treatment of statutory rules which are of the nature of public Acts, and of those which are of the nature of local and personal or private Acts; and may determine the classes of cases in which the exercise of a statutory power by any rule-making authority constitutes or does not constitute the making of a statutory rule within the meaning of this section, and may provide for the exemption from this section of any such classes. (5) In the making of such regulations, each Government Department concerned shall be consulted, and due regard had to the views of that department."

By sect. 4 of the same Act,²⁸ "In this Act—'statutory rules' means rules, regulations, or byelaws made under any Act of Parliament which (a) relate to any court in the United Kingdom, or to the procedure, practice, costs, or fees therein, or to any fees or matters applying generally throughout England . . .²⁷ or (b) are made by [His] Majesty in Council, the Judicial Committee, the Treasury, the Lord Chancellor of Great Britain . . .²⁷ or a Secretary of State, the Admiralty, the Board of Trade, the [Minister of Health] . . .²⁷ or any other Government Department. 'Rule-making authority' includes every authority authorised to make any statutory rules."

By sect. 2 and the Schedule of the Documentary Evidence Act, 1868,²⁹ "*prima facie* evidence of any order, or regulation of the [Local Government Board or Minister of Health] may be given in all courts of justice, and in all legal proceedings whatsoever, . . . by the production of a copy of the *Gazette* purporting to contain such order or regulation . . . of a copy of such order or regulation purporting to be printed by the Government printer . . . or of a copy or extract purporting to be certified . . . as provided" (now) by sect. 11 of the New Ministries and Secretaries Act, 1916.³⁰ By sect. 2 of the Act of 1868, "any copy or extract . . . may be in print or in writing, or partly in print and partly in writing," and "no proof shall be required of the handwriting or official position of any person certifying" to its truth.³¹

The Documentary Evidence Act, 1882, further provides that a copy of any Act of Parliament, rule or regulation such as the foregoing, if it purports to be printed under the superintendence or authority of His Majesty's Stationery Office, shall be conclusive evidence.³²

These Acts were applied to the Board (now Minister) of Agriculture and Fisheries by the Documentary Evidence Act, 1895.³³

A conviction for an offence in bankruptcy was quashed because the notice of the petition was proved by a page cut out of the *London Gazette* and not by the whole *Gazette*.³⁴

Sect. 135, n.
Rules Publication Act,
1893—cont.

Proof of
official
documents.

Cutting
insufficient.

(24) 56 & 57 Vict. c. 66, s. 2.

(25) *Ibid.*, s. 3.

(26) Repealed by S.L.R. Act, 1908.

(27) Omitted words relate to Scotland or Ireland.

(28) 56 & 57 Vict. c. 66, s. 4. The above short title is given by s. 5.

(29) 31 & 32 Vict. c. 37, s. 2, Sched.

(30) Quoted in Note to s. 7 of M.H. Act, 1919, *post*, Vol. II., p. 2312.

(31) 31 & 32 Vict. c. 37, s. 2.

(32) 45 Vict. c. 9, s. 2.

(33) 58 Vict. c. 9, s. 1.

(34) *Reg. v. Lowe* (1883, Q. B. D.), 52 L. J. M. C. 122; 48 L. T. 768; 47 J. P. 535; 15 Cox C.C. 286.

**Sect. 135, n.
Forgery.**

By sect. 4 (1) of the Documentary Evidence Act, 1868,³⁵ if any person "prints any copy of any proclamation, order, or regulation which falsely purports to have been printed by the Government printer, . . . or tenders in evidence any copy of any proclamation, order, or regulation which falsely purports to have been printed as aforesaid, knowing that the same was not so printed," he is guilty of felony, and liable to penal servitude for [three³⁶] years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

**Local authority
to see to the
execution of
regulations.
D., ss. 8, 9.**

Sect. 136. The local authority of any district within which or part of which regulations so issued by the Local Government Board [or Minister of Health] are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts matters and things as may be necessary for mitigating any such disease, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation.

Note.**Execution of
regulations.**

Generally with regard to the appointment of officers by urban district councils, see sect. 189; by rural district councils, sect. 190. Penalties for breach of the regulations are imposed by sect. 140. The district council may themselves make certain regulations under sect. 125.

**Power of entry.
D., s. 4.**

Sect. 137. The local authority and their officers shall have power of entry on any premises or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board [or Minister of Health] as aforesaid.

Note.**Penalties.**

Penalties for violating and for obstructing the execution of the regulations are imposed by sect. 140.

**Poor law
medical officer
entitled to costs
of attendance on
board vessels.
D., s. 12.**

Sect. 138. Whenever in compliance with any regulation so issued by the Local Government Board [or Minister of Health] as aforesaid, any poor law medical officer performs any medical service on board any vessel he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

Where such services are rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect to such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a court of summary jurisdiction; and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

Note.**Medical
charges.**

It will in many cases be impracticable for the medical officer to regulate his charge for such attendance in accordance with the scale of payment which he receives from the union or parish. With very few exceptions, the medical officers are paid by annual salaries for their attendance on the sick poor and the supply of medicines, and it does not appear how they are to regulate their charge for the casual service to be rendered to sick persons on board vessels by their rate of allowance from the union or parish.

A distinction is made between a medical man who is a union or parish medical officer and one who is not. The medical officer is restricted in his charges; at any

(35) 31 & 32 Vict. c. 37, s. 4 (1). The Forgery Act, 1913 (3 & 4 Geo. V. c. 27), s. 20, Sched., repealed sub-sect. (2) of this section. For other provisions of this Act, see

Note to Sched. V. of the present Act, Part III., *post*.

(36) 27 & 28 Vict. c. 47, s. 5; 54 & 55 Vict. c. 69, s. 1.

rate, the intention evidently was to restrict him to charge no more than he would be paid by the guardians if the persons on whom he attends on board ship were paupers; on the other hand, the Act enables the medical practitioner who is not a union or parish medical officer to charge for any service rendered on board ship, with extra remuneration on account of distance, at the same rate as he is in the habit of receiving from private patients of the class of those attended and treated on ship-board, to be paid by the captain on account of the owners; he is to be paid at the same rate as he is "in the habit of receiving, etc."; therefore it will be for the medical attendant in case of dispute to prove what rate of payment he is in the habit of receiving from the class of persons referred to; at the same time, it will be observed from what follows that the justices are empowered to determine summarily the amount which is reasonable, according to the accustomed rate of charges for attendance on patients of the like class.

Sect. 138, n.

"Court of Summary Jurisdiction" is defined by sect. 4.

Sect. 139. The [Minister of Health] may, if [he thinks] fit, by order authorise or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to prevention of epidemic diseases, and may prescribe the mode of such joint action and of defraying the costs thereof.

[Minister of Health] may combine local authorities.
San. 1866, s. 40.

Note.

District councils may form a voluntary combination for the purpose of providing a common hospital under sect. 131, and for the execution of other works under sect. 285. They may appoint a joint medical officer of health under sect. 191; and under sect. 286 the Minister of Health may unite districts for the appointment of a medical officer of health. See also sects. 279 to 284, *post*.

Combination of district councils.

Sect. 140. Any person who—
(1.) Wilfully violates any regulation so issued by the [Minister of Health] as aforesaid; or,
(2.) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,
shall be liable to a penalty not exceeding five pounds.

Penalty for violating or obstructing the execution of regulations.
D., s. 41.

Note.

The present section, though not repealed, appears to be superseded by the Public Health Act, 1896,¹ which imposes a penalty of £100 for a breach of the regulations, or for obstructing their execution, and a further penalty of £50 a day in the case of a continuing offence.

Penalties.

As to obstructing the execution of the present Act generally, see sect. 306 and Note, *post*.

With regard to the recovery of penalties, see sects. 251-253.

(1) See s. 1 (3), *ante*, p. 249.

Sect. 141.

MORTUARIES, ETC.

Power of local authority to provide mortuaries.
P.H., s. 81.
San. 1866, s. 27.

Sect. 141. Any local authority may, and if required by the [Minister of Health] shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make byelaws with respect to the management and charges for use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such byelaws, of any dead body which may be received into a mortuary.

Note.

Provision of mortuaries.

The Public Health Act, 1848,¹ and the Sanitary Act, 1866,² only empowered the local authority to provide a mortuary, but the present section adds the obligation of making such provision, if the authority are required by the Minister of Health to make it.

Parish council.

Land may be acquired as a site for a mortuary under sects. 175 and 176, and the Local Government Board considered that any mortuary accommodation needed for the purposes of the present section should be provided by the district council themselves, and be under their exclusive control. It should not, for instance, be provided by making a contribution to the cost of a mortuary erected by the authorities of a local cottage hospital.

Overseers.

The Local Government Board stated that in a rural parish, where the Burial Acts are not in force, the parish council have no power to provide a mortuary, and that it is doubtful whether the parish council can adopt those Acts merely for the purpose of providing a mortuary; but that the overseers may provide one under the Burial Act, 1852,³ though they cannot borrow money for the purpose.

London.

For the corresponding provisions in London, see sects. 87 to 93 of the Public Health (London) Act, 1891.⁴

Infected corpses.

With regard to the removal to a mortuary of the body of a person who has died of infectious disease, see sect. 142, and sects. 9 and 10 of the adoptive Infectious Disease (Prevention) Act, 1890.⁵

Cleaner catching disease.

An applicant for compensation under the Workmen's Compensation Act, 1906, was employed as a porter at the local authority's scarlet-fever hospital. He had influenza in February, returned to work on March 22nd, cleaned out the mortuary on April 1st, and developed scarlet-fever on April 5th. He had also been in the fever wards on April 1st, and there was no evidence that, shortly before April 1st, there had been in the mortuary any bodies of persons who had died from scarlet-fever. The county court judge awarded in the applicant's favour, finding that he had contracted scarlet-fever in the mortuary on April 1st, and that that was an "accident." It was held that the award must be set aside, as there was no reasonable evidence that the disease had been contracted on that one occasion when the applicant cleaned the mortuary.⁶

Provision of cemeteries.

The Public Health (Interments) Act, 1879, will be found in the Note to sect. 1 of the Cemeteries Clauses Act, 1847,⁷ with which it is incorporated. Under it the provisions of the present Act as to a place for the reception of the dead before interment are extended to a place for the interment of the dead; and the purposes of the present Act are made to include the acquisition, construction, and maintenance of a cemetery; and a district council may acquire, construct, and maintain a cemetery either wholly or partly within or without their district subject to the provisions as to sewage works without the district,⁸ and may accept a donation of land for the purpose of a cemetery, or a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery. One effect of the incorporation of the Act of 1879 with the Act of 1847, and of the provision that the

(1) 11 & 12 Vict. c. 63, s. 81.
(2) 29 & 30 Vict. c. 90, s. 27.
(3) 15 & 16 Vict. c. 85, s. 42.
(4) 54 & 55 Vict. c. 76, ss. 87-93.
(5) *Post*, Part II., Div. I.
(6) *Martin v. Manchester Cpn.* (1912,

C. A.), 106 L. T. 741; 76 J. P. 251; 10 L. G. R. 996; 5 B. W. C. C. 259. See also *Eke v. Hart Dyke*, and other cases cited at end of s. 189, *post*.
(7) *Post*, Vol. II., p. 1635.
(8) Namely, ss. 32-34, *ante*, p. 106.

Act of 1879 is to be " construed as one " with the present Act, is that the district council are enabled to make bye-laws with respect to the management and charges for the use of a cemetery provided by them under the Act of 1879. Sects. 182-186 of the present Act prescribe the mode in which such bye-laws are to be made and confirmed. A series of model bye-laws (No. XIV.) for cemeteries was issued by the Local Government Board.

With regard to the redemption of the tithe on the land taken for the cemetery, see the Tithe Act, 1878.⁹

The Cremation Act, 1902,¹⁰ enables burial authorities to provide and maintain crematoria, the use of which is to be subject to regulations issued by the Secretary of State with respect to their maintenance, inspection, and otherwise. The burial authorities referred to are burial boards, including councils, committees, or other local authorities having the powers of such boards, and local authorities maintaining cemeteries under the Public Health (Interments) Act, 1879, or under local Acts; and a " crematorium " is defined as meaning any building fitted with appliances for the purpose of burning human remains, and as including everything incidental or ancillary thereto.

A burial authority may accept donations of land or money for the purposes of a crematorium.

Urban district councils may also acquire the powers given to burial boards by the Burial Acts,¹¹ one of which, namely, the Burial Act, 1852,¹² contains a provision for the establishment of mortuaries by burial boards.

Such powers are quite distinct from those which district councils may exercise by virtue of the Public Health (Interments) Act, 1879, above mentioned.

The Local Government Board pointed out that in the case of a cemetery provided under the Public Health (Interments) Act, 1879, the only charges which required the Board's approval were charges for the use of the cemetery fixed by bye-law under the present section, as extended to cemeteries by sect. 2 of the Act of 1879, and the Board considered that these charges should only extend to interments in common graves.

The Board considered that a district council cannot by such bye-laws impose a differential charge for the use of the cemetery in the case of any person who is not an inhabitant of their district.

A series of model bye-laws (No. XV.) was issued by the Local Government Board for the purposes of the present section. A plan of a mortuary and its appurtenances, suitable for a town of 100,000 inhabitants, is annexed to this series.

As to bye-laws generally, see sects. 182 to 186, *post*.

In a memorandum prefixed to the model series¹³ the Local Government Board said :—" With regard to the enactments above cited,¹⁴ it is to be observed that they are intended to meet the requirements of all cases in which a mortuary is used, whether voluntarily or compulsorily. It is, however, chiefly in relation to those cases where the mortuary is used otherwise than in pursuance of an order of a justice under sect. 142, that it is important to consider to what extent sanitary authorities should avail themselves of their power of making bye-laws, and also by what other means they may provide for the efficient management of the mortuary, and for the removal and reception of the dead with least danger to the living.

" It cannot be doubted that, apart from such cases as would come within the operation of sect. 142, there are many instances in which manifest benefit would result from the use of the mortuary for the reception of the dead during the period preceding burial. In the interests of the public health, it is clearly desirable that those who might otherwise seek permission to remove a corpse to the mortuary should not be deterred by regulations of undue stringency, or by any apparent disregard of care and decency in the internal arrangements or management of the building.

" It is quite possible that at some future time, when the voluntary use of mortuaries may have become more general than at present, sanitary authorities may find it expedient to exercise more fully their power of making bye-laws under

Sect. 141, n.

Redemption
of tithe
rentcharge.

Provision of
crematoria.

Powers under
Burial Acts.

Charges for
interments.

Model
bye-laws.

Memorandum
of Local
Government
Board.

Stringency of
bye-laws.

(9) 41 & 42 Vict. c. 42, s. 1, *ante*, pp. 95, 96.

(10) *Post*, Vol. II., p. 2173.

(11) See 21 & 22 Vict. c. 98, s. 49, and 29 & 30 Vict. c. 90, s. 44 (re-enacted in Sched. V., Part III., of the present Act), and the Notes to those re-enactments, *post*.

See also L. G. Act, 1894, s. 62 (1), *post*, Vol. II., p. 2096.

(12) 15 & 16 Vict. c. 85, s. 42.

(13) Dated 25th July, 1882.

(14) Namely, ss. 141 and 142 of the present Act.

Sect. 141, n.

sect. 141. Under existing circumstances, however, it appears to the Board that sanitary authorities may be advised to rely upon good administrative arrangements rather than upon bye-laws for the proper management of their mortuaries. For certain purposes bye-laws will doubtless be necessary in most districts for which mortuaries have been provided. To such purposes the clauses comprised in the accompanying model series of bye-laws have reference.

Removal of
bodies for
burial.

“The first and second of these clauses are designed to secure the removal of the corpse for burial within a specified period. The third and fourth clauses are intended for the prevention of misbehaviour. The fifth clause has been framed with a view of requiring undertakers to convey empty shells from the premises without delay.

“With regard to the first and second clauses, it may be well to point out that bye-laws in these terms will not be operative in any case where a corpse has been removed to the mortuary in pursuance of a justice’s order under sect. 142. In such a case, the limitation of the time within which the corpse is to be buried is a matter for which the justice is expressly authorised to give the necessary direction.

Bodies of
deceased
paupers.

“In other cases, however, it is important that the sanitary authority should have the power of enforcing the removal of corpses after a sufficient interval. Ordinarily, it may be assumed that there will be no difficulty in securing compliance with the requirements of this bye-law. The person who has obtained permission to use the mortuary for the reception of the corpse will, in the majority of instances, be in a position to provide for its removal within the prescribed time. But it may be well to draw attention to the fact that the provision in sect. 142, which requires the relieving officer, in default of the friends or relations of the deceased, to bury at the expense of the poor-rate, is confined to cases where the removal of the body to the mortuary has been ordered by a justice and he has directed the burial to take place within a limited time.

“With reference to other cases, it is to be observed that, although the Poor Law Amendment Act, 1844,¹⁵ empowers the board of guardians to bury, at the cost of the poor-rate, the body of any poor person which may be within their parish or union, there is no obligation upon them to incur this expense unless the body is lying in the workhouse or on premises belonging to the guardians. If, therefore, the body of a poor person has been received in the mortuary it by no means follows that the guardians or their duly authorised officer could be rendered responsible for the observance of the bye-law prescribing the period within which the body must be removed. It is possible that cases may occur where this responsibility may attach to the guardians or their officer in consequence of the directions which they may have given in pursuance of the enactment above mentioned, and in all such cases the guardians or their officer, on being informed of the requirements of the bye-laws, would no doubt take steps to ensure compliance with those requirements. Where, however, the cost of burial is only partially defrayed out of the poor-rates, the sanitary authority, in dealing with an application for permission to use the mortuary, may sometimes find it necessary to ascertain that the applicant is, either voluntarily or by obligation, in a position to control the arrangements with regard to the burial, and may therefore in the event of permission to use the mortuary being granted at his request, be held liable for neglect to comply with the bye-law limiting the time within which the body should be removed. But, upon the whole, it may be reasonably expected that the instances in which the sanitary authority may deem it incumbent upon them to enforce the bye-laws as to the removal of bodies will be extremely rare.

Site of
mortuary.

“The sanitary authority will probably find that the practical questions requiring consideration in connection with any mortuary which they may provide will chiefly relate to (1.) the selection of a suitable site and structure, and (2.) the adoption of such administrative arrangements as will best serve the purpose of inducing persons to avail themselves of the facilities afforded by the mortuary for the safe and decent keeping of the dead during the interval before interment.

“Upon these points, the Board have to offer the following suggestions :

“1. *As to site and structure.*—In the choice of a site, care should be taken to ensure that the buildings to be erected thereon shall, as far as practicable, be isolated and unobtrusive. It may, indeed, be desirable to place the buildings on

the site in such a position and manner as to admit of their being concealed from public view until the entrance gate to the premises has been passed. **Sect. 141, n.**

"The buildings should be substantial structures of brick or stone. In their external appearance attention should be paid to such architectural features as may serve to convey the impression of due respect for the dead. **Structure of mortuary.**

"Every chamber intended for the reception of corpses should be on the ground or basement floor.

"In addition to such chambers, the premises should, if possible, comprise (a) A waiting-room for visitors to the mortuary and for the use of mourners assembling there for funeral purposes; (b) A caretaker's dwelling-house; and (c) A shed or outhouse for the keeping of shells or other necessary appliances.

"For these and other structural arrangements provision may be made in the manner indicated in the plan appended to this memorandum.

"In the construction of each chamber intended for the reception of the dead, care should be taken to ensure convenience, decency, cleanliness, and coolness.

"The chamber should be lofty and the area of its floor sufficient to allow freedom of movement between the slabs or tables on which the dead are to be placed.

"There should be a ceiling to the chamber, or, if it be open to the roof, there should be a double roof with a space of eight inches at least between the outer and inner covering or with the addition of an intervening layer of felt.

"Louvres or air-gratings under the eaves will be the best means of ventilation.

"The chamber should, if practicable, be lighted by windows on the north side. If it is necessary to place windows on the south, east, or west sides, external louvre blinds should be provided for the windows.

"The floor should be paved evenly and closely. The materials used may be stone or slate; but a uniform cement floor is preferable.

"Water should be laid on so as to be drawn from a tap within the chamber.

"Shelves which may be conveniently placed around the interior of the chamber, and tables which may occupy any part of its area should preferably be made of slate slabs. If stone is used it should be smoothed on the upper surface and free edges.

"The shelves and table should be placed so that their upper surfaces may be at a height of $2\frac{1}{2}$ feet or of not more than 3 feet above the floor.

"The ceiling and the internal surface of the walls should be whitewashed. The outside of the roof should also be whitened.

"The entrance to the chamber should be direct, without the intervention of any passage.

"The number of chambers should be at least two, so that one may be appropriated exclusively for the bodies of persons who have died of infectious disease, and the other for the bodies of persons whose death has been due to other causes. It may be expedient to place these chambers as far apart as may be practicable, so that persons visiting the chamber used for the reception of the bodies of those who have died of non-infectious disease may have no reason to fear infection.

"2. *As to administrative arrangements.*—No obstacle or difficulty should be placed in the way of receiving a body at any hour of the day or night. To obviate unnecessary applications for reception at night, it will probably be found sufficient to affix to the entrance gate a notice requesting persons to abstain, except in cases of emergency, from applying for the admission of bodies during certain specified hours of the night. **Management of mortuary.**

"A caretaker should reside upon the premises, and his duties should comprise the general management of the mortuary, the maintenance of cleanliness, decency, and good order, and the keeping of such books or registers as the regulations of the sanitary authority may prescribe.

"It will probably be found expedient to require the caretaker, in the case of each corpse received upon the premises, to ascertain and record the following particulars, namely: (a) Christian name and surname of the deceased; (b) Sex; (c) Age; (d) Cause of death; (e) Number of house and name of street or other description of the place whence the body has been brought to the mortuary; (f) Name and address of the person by whose order the body has been brought to the mortuary; and (g) Date of the removal of the body for burial.

Sect. 141, n.

"It should, however, be clearly understood by the caretaker, that he would not be justified in refusing to admit a corpse on the ground that these particulars cannot be given at the time when the application for admission is made to him.

Provision of shells.

"A sufficient number of shells of different sizes should be kept at the mortuary in charge of the caretaker, and he should be empowered to lend them to undertakers or other responsible persons for the conveyance of bodies to the mortuary.

"The shells when not in use should be kept in a shed or other suitable place.

"Each shell should be constructed of strong wood, painted externally. The interior of the shell and the inner surface of its cover should be lined with tinned copper.

"Each shell after being used and before being deposited in the shed or other place for storage should be thoroughly cleansed by the caretaker.

"No dead body should be received upon the premises unless it is enclosed in a shell or coffin."

Justice may in certain cases order removal of dead body to mortuary.

San. 1866, s. 27.

Sect. 142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor-rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds.

Note.**Removal of bodies.**

Where the local authority have provided a mortuary, the present section applies; but where the Infectious Diseases (Prevention) Act, 1890,¹ has been adopted, the justice may order the body to be removed to any available mortuary. Under that Act it is rendered unlawful to retain for more than forty-eight hours the body of a person who has died of infectious disease, in a room used as a dwelling-place, sleeping-place, or workroom²; and provision is made with respect to the removal of such bodies from hospitals.³

A "legally qualified medical practitioner" means one who is registered under the Medical Acts: see the Note to sect. 189.

With respect to the recovery of expenses and penalties, see sect. 251.

With regard to the burial of bodies removed under a justice's order, see the memorandum of the Local Government Board set out in the Note to sect. 141.

Hearse.

The Local Government Board were advised that a rural district council have no authority under the Public Health Act, 1875, or the Public Health (Interments) Act, 1879, to provide a hearse. An urban district council, or a parish council, might, however, provide one if they are acting as the burial authority under the Burial Acts.⁴

Power of local authority to provide places for post-mortem examinations.

San. 1866, s. 28.

Sect. 143. Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place. . . .

(1) See s. 10, *post*, Part II., Div. I.

(2) *Ibid.*, s. 8.

(3) *Ibid.*, s. 9.

(4) See 15 & 16 Vict. c. 85, s. 41.

Note.

Sect. 143, n.

Since the place for *post-mortem* examinations is not to be *at* a mortuary, the Local Government Board considered that a place provided for that purpose in connection with a mortuary ought to be quite distinct from the mortuary and separated from it by a clear intervening space as wide as the site will allow.

Place for
post-mortem
examinations.

The regulations which may be made under the present section are not subject to the provisions of sects. 182-186, relating to the making, confirmation, etc., of bye-laws : and they may be published in such manner as the local authority may see fit. See sect. 188, *post*.

Regulations.

The latter part of the present section was repealed by the Coroners Act, 1887,⁵ and re-enacted in the following terms : " Where a place has been provided by a sanitary authority or nuisance authority for the reception of dead bodies during the time required to conduct a *post-mortem* examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest." ⁶

Coroners.

As to the power of coroners to summon medical witnesses and direct *post-mortem* examinations, see sects. 21 and 23 of the Act of 1887.⁷

The fees for *post-mortem* examinations by order of the coroner are payable out of the county rates or borough fund, as the case may be.⁸

A cottage hospital was held to be a " public hospital," and an honorary medical officer attached to the hospital was held not entitled to a fee for giving evidence at an inquest or making a *post-mortem* examination by order of the coroner.⁹

As to revision of the rate of remuneration of coroners, see the Coroners Act, 1921.¹⁰

As to coroners' juries, see the Acts cited below.¹¹

Reference may here be made to the Anatomy Act, 1832, " an Act for Regulating Schools of Anatomy." ¹² The master of a workhouse, who, after showing the corpses of certain paupers to the relations of the deceased, changed the coffins and sold the bodies to Guy's Hospital, was held to be protected by sect. 7 of that Act, from an indictment charging him, in different counts, with selling the bodies, with taking them away for gain for the purpose of delaying the burial with intent to have them dissected, and with taking them away with intent to sell and dispose of them ; for the relations, although prevented by fraud, had not in fact made any requirement that the bodies should not be dissected.¹³

Anatomical
examinations.

(5) 50 & 51 Vict. c. 71, s. 45, and Sched. III. 7 & 8 Geo. V. c. 19; 1918 (Juries), 8 & 9
(6) *Ibid.*, s. 24. Geo. V. c. 23, s. 7; 1922, 12 Geo. V. c. 2;
(7) *Ibid.*, ss. 21, 23. and Expiring Laws Act, 1922.
(8) *Ibid.*, ss. 22, 25-27. (12) 2 & 3 Wm. IV. c. 75, see " Glen's Poor
(9) *Horner v. Lewis* (1898, Q. B. D.), 67 Law Statutes," Vol. I.
L. J. Q. B. 524; 78 L. T. 792; 62 J. P. 345. (13) *Reg. v. Feist* (1858), 27 L. J. M. C.
(10) 11 & 12 Geo. V. c. 30. 164; 4 Jur. (N.s.) 541; 22 J. P. 322; Dears. &
(11) 1887, 50 & 51 Vict. c. 71, ss. 3, 4; 1917, B. C. C. 590.

Sect. 144.

PART IV.
LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

As to Highways.

Powers of surveyors of highways and of vestries under 5 & 6 Wm. 4, c. 50, vested in urban authority. P.H., s. 117, L.G. Am., s. 10. L.G., s. 37 (5).

Sect. 144. Every urban authority shall within their district exclusively of any other person execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint.

Note.

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The Law relating to Highways.

The common law relating to the dedication and maintenance of highways, and the statute law making further provision for their maintenance and regulating their use, cannot be dealt with at length here. That branch of law forms the subject of a separate work.¹

The following summary is taken mainly from Chapter V., § 7 (a) of Glen's "District Councillor's Guide" ² :—

A "highway" is a public way, or way over which all the King's subjects have the right to pass.

This right is in some cases confined to the right to pass on foot only (footway) : in others it includes also the right to pass on horseback (bridleway), or the right to pass with driven cattle or other beasts (driftway), or the right to pass with vehicles and all kinds of traffic (carriageway).³

The right may arise from the operation of an Act of Parliament; but it is generally attributable to the present or a previous owner of the land over which the right exists having dedicated, or being presumed to have dedicated, the way to the use of the public (that is, thrown it open to the public with the intention that the public should thereafter always have the right of passage over it), and to the public having used it for passage accordingly.⁴ As to this presumption, see the judgments delivered in the House of Lords in the Folkestone case.⁵

As to the use of maps as evidence in highway disputes, see the cases cited below.⁶

Both urban and rural district councils now have the powers and duties formerly exercisable by and imposed upon parish surveyors of highways ⁷; and they also represent the inhabitants in vestry assembled of the parishes in their districts for the purposes of the Highway Acts.

The chief duty thus imposed upon a district council is to perform, as regards their district, the obligation imposed by the common law upon the inhabitants of every "highway parish" as regards their own parish, namely, to repair and maintain every highway in the parish, and keep it in a fit and proper condition

(1) Glen's "Law relating to Highways" (2nd Edit.), published by Messrs. Knight & Co.
(2) Published by Messrs. Knight & Co.
(3) See Glen on Highways, 2nd edit., Bk. I., Chap. I.
(4) *Ibid.*, Chap. II. See also *Cubitt v. Maxse*, and other cases cited in Note to

s. 149, *post*.
(5) *Folkestone Cpn. v. Brockman*, *post*, p. 291. See also *post*, pp. 286, 287.
(6) *A.G. v. Antrobus*, L. R. 1905, 2 Ch. at pp. 193, 203; *Copestake v. W. Sussex C.C.*, L. R. 1911, 2 Ch. at pp. 338, 341; *A.G. v. Horner*, L. R. 1913, 2 Ch. at pp. 153, 154.
(7) See Glen's D. C. Guide, Chap. I., § 5.

Meaning of highway.

Creation of highway.

Maps as evidence.
Repair of highways.

for the traffic usually passing over it, except in the case of a highway repairable by some particular person or body of persons by statute, by reason of their tenure of certain lands, or otherwise, or a highway dedicated to the use of the public since the Highway Act, 1835, came into operation, and not rendered repairable by the inhabitants at large in the formal manner prescribed by that or some subsequent Act.⁸ As to enforcing the repair of highways, see the Note to sect. 149, *post*.

Sect. 144, n.

The width of the space over which the public right of way exists is to be determined in each case and at each point as a question of fact; but if and so far as there is sufficient room between the boundaries of the highway, the council are required to "make, support, and maintain" the way: if it is a public cartway leading to a market town, of the width of twenty feet; if it is a public horseway, of the width of eight feet; and if it is a public footway at the side of a carriageway, of the width of three feet.⁹

Width of highway.

The obligation to repair the highway includes the obligation to repair the substructure of any bridges carrying the highway, which are not, *e.g.*, county bridges repairable by the county council,¹⁰ or bridges repairable, *e.g.*, by railway companies.¹¹ And where a new county bridge has been built since the Highway Act, 1835, came into operation, the road over the bridge and its approaches is repairable by the district council, if before the erection of the bridge the roads leading to it were repairable by the inhabitants at large.¹²

Highways over bridges.

Further as to bridges, see the Notes referred to below.²¹

The powers of a surveyor of highways vested in an urban district council do not authorise the council to make new highways; but they may make new streets under the present Act.¹³ In a rural district, however, where there was formerly a highway board, the council have the power to make any new road and to build or enlarge a bridge, as well as to make other improvements in existing highways.¹⁴ And both urban and rural district councils may enter into agreements with the county council of their own or an adjoining county for the construction, reconstruction, alteration, or improvement, or freeing from tolls of a main or other highway, or of a bridge and its approaches, within or partly within the jurisdiction of any of the parties to the agreement, though it is not clear whether district councils can make such an agreement with each other without a county council being a party to the agreement.¹⁵

Construction of new highways.

The district council must undertake the maintenance of a highway if the person proposing to dedicate it gives them three months' notice, and makes up the way to the width above mentioned in a substantial manner to their satisfaction, and obtains the certificate of two justices that he has so made it up, unless the council consider the highway to be of insufficient utility to justify its being kept in repair at the expense of the rates, in which case the question of its utility is to be determined by a court of summary jurisdiction.¹⁶

Adoption of maintenance of highway.

In an urban district the maintenance of highways may be adopted by the council under the enactments relating to "streets."¹⁷ And in a rural district, in which there was formerly a highway board, the council may obtain an order of justices declaring a carriage-road repairable at the public expense.¹⁸

If a highway ceases to be of public utility, the council may apply to a court of summary jurisdiction for an order declaring it to be unnecessary, and not repairable at the public expense. Such an order is subject to appeal to quarter sessions, and if the circumstances afterwards alter, the quarter sessions may order that the liability to repair the highway shall revive.¹⁹

Discontinuance of maintenance of highway.

If the boundary of the district runs along a highway so that one side is in one parish, and repairable by one council, and the other side is in another parish, and repairable by a different council, or is repairable by some particular person or persons, application may be made to a court of summary jurisdiction by the council or the person or persons liable to repair either side of the highway, for an order dividing such highway by a transverse line, so the whole breadth of it on one side of that line may be repaired by one of the parties, and the whole breadth beyond the line by the other.²⁰

Highway on boundary of district.

(8) See Glen's D. C. Guide, Chap. I., § 5; and Glen on Highways, Bk. I., Chap. IV.

(9) 5 & 6 Wm. IV. c. 50, s. 80.

(10) See Glen's D. C. Guide, Chap. I., § 4.

(11) See Note to s. 147, *post*, p. 280.

(12) 5 & 6 Wm. IV. c. 50, s. 21.

(13) See s. 154, *post*.

(14) 27 & 28 Vict. c. 101, ss. 47-49.

(15) See H. & B. Act, 1891, s. 3, *post*,

Vol. II., p. 1898.

(16) 5 & 6 Wm. IV. c. 50, s. 23.

(17) Glen's D. C. Guide, Chap. V., § 7 (b).

(18) 25 & 26 Vict. c. 61, s. 36.

(19) See H. & L. Am. Act, 1878, s. 24, *post*, Vol. II., p. 1790.

(20) 5 & 6 Wm. IV. c. 50, s. 58.

(21) *Post*, Vol. II., pp. 1774, 1775, 1891, 1892, 1897, 1898.

Sect. 144, n.
Repairability
ratione
tenuræ.

Where a highway is repairable by any person or body of persons by reason of the tenure of certain lands or otherwise,²¹ the district council, or the person or persons liable (with the consent of the council), may apply to a court of summary jurisdiction to make the highway repairable by the council, and to fix an annual or lump sum to be paid by such person or persons in discharge of their liability to repair it.²² In a rural district, where there was formerly a highway board, the person or persons liable can make the application without the consent of the council.²³

Repairability
ratione
clausuræ.

A highway may in certain cases become, temporarily at any rate, repairable at the expense of a private person by reason of a rule of the common law that, if an adjoining owner fences off a highway from land over which the public had been in the habit of passing when the way was in a bad condition, he must repair it so long as the fences remain. This liability will not, however, arise if the fences are erected with the consent of the council.²⁴

Materials for
highway
repairs.

As to Inclosure Act allotments for stone and other materials for the maintenance of highways, and their sale when the supply of materials becomes exhausted, see the Note to sect. 149.²⁵

Other sources of supply are also available. Thus, the district council are empowered to search for, dig, get, and carry away gravel, sand, stone, or other materials from any waste land or common ground, river, or brook in any parish in their district, or, if they cannot find sufficient materials there, in any other parish, provided that they leave enough for the needs of that parish; but they must not in so doing divert or interrupt the course of any river or brook, prejudice or damage any building, highway, or ford, or take materials from a river or brook within 150 feet above or below a bridge, dam, or weir²⁶; nor may they get materials from the sea beach if the removal of such materials would cause damage by inundation, or increased danger of encroachment by the sea.²⁷ They may also gather stones from the surface of any lands in the parish with the consent of the owner, or (if he objects and does not show the justices that he has sufficient reason for refusing his consent) under a licence from the justices, without payment for the stones, but paying compensation for any damage done in getting them²⁸; and they may under a similar licence dig for materials in private lands in the parish, other than gardens, yards, avenues to houses, lawns, parks, paddocks, inclosed plantations, or inclosed woods not exceeding one hundred acres in extent: or, if they satisfy the justices that they cannot get sufficient materials in that parish, or in the waste lands, common grounds, rivers, or brooks of an adjoining parish, and that sufficient materials will be left for the use of that parish, then they may get the materials in such adjoining parish, paying in this case compensation for the value of the materials taken, as well as for any damage done in getting them.²⁹ They are required under a penalty to fence any pit or hole which they may make, fill it up or slope it down, and fence it off within three days if they find no materials, and in other cases within fourteen days after they have dug sufficient materials from it, if the landowner so requires³⁰; and they are liable to a penalty, in addition to any damages that may be recoverable from them in a civil action, if they injure or endanger any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, in getting the materials,³¹ and to another penalty if they leave a heap of stones or other matter on the highway at night to the personal damage or danger of any passenger without taking precautions to guard it.³²

The council are also authorised to enter into contracts for purchasing, getting, or carrying materials.³³ There is also a provision under which any ratepayers keeping teams may divide among themselves the conveyance of the materials, and may be paid at a rate fixed by the justices.³⁴ All materials, tools, etc., provided for the highways, and all the road scrapings are vested in the council.³⁵

Miscellaneous
duties in
relation to
highways.

Other duties imposed upon a district council as surveyors of highways are to erect direction-posts or stones where two or more roads meet, indicating the towns, villages, or other places to which the roads lead, except in parishes within three miles from the General Post Office in London, by direction of the justices at petty sessions (or, without such direction, at their own discretion); to place stones or

(21) See *post*, Vol. II., pp. 2040, 2041.

(22) 5 & 6 Wm. IV. c. 50, s. 62.

(23) 25 & 26 Vict. c. 61, s. 35; 27 & 28 Vict. c. 101, s. 24. As to similar applications in South Wales, see 23 & 24 Vict. c. 68, s. 37.

(24) 25 & 26 Vict. c. 61, s. 46.

(25) *Post*, p. 299.

(26) 5 & 6 Wm. IV. c. 50, s. 51.

(27) *Ibid.*, s. 52.

(28) *Ibid.*, ss. 51, 53.

(29) *Ibid.*, s. 54. As to form of this licence, see *Rex (Pope) v. Adams*, 1923 W. N. 23.

(30) *Ibid.*, s. 55.

(31) *Ibid.*, s. 57.

(32) *Ibid.*, s. 56.

(33) *Ibid.*, s. 46.

(34) *Ibid.*, s. 35.

(35) *Ibid.*, s. 41.

posts to mark the boundaries of the highway and to indicate the name of the parish; to erect graduated guiding posts along parts of the highways subject to deep or dangerous floods; to fix posts, blocks, or stones, or make banks of earth, or take other means to prevent vehicles from passing over foot or horse causeways³⁶ (or, at their own discretion, to expend money in setting up and maintaining milestones, and in fencing dangerous places on highways³⁷). Unfenced quarries near highways or places of public resort are to be dealt with as nuisances by the council in the manner provided by the Public Health Act, 1875, under the Quarry (Fencing) Act, 1887³⁸; and so also are unfenced shafts of coal and other mines.³⁹ Other duties are to remove impediments or obstructions in the highways caused by accumulation of snow, the falling of banks, or otherwise, upon receiving notice from a justice⁴⁰; to widen narrow highways to a width not exceeding thirty feet by direction of two justices, and compensate the owners of any land which may be taken for the purpose (such land not to include the site of any building, or any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to a house, or enclosed ground set apart for building or as a nursery for trees,⁴¹ the time for felling trees in pursuance of this provision being limited, in the case of oak trees, to April, May, and June, and in the case of other trees to December, January, February, and March⁴²); to take the necessary proceedings (by applying to two justices to view the place and grant a certificate, publishing the statutory notices, and obtaining an order of quarter sessions for stopping up, diverting, or turning highways) by direction of the person desirous of carrying out the work (or at their own discretion), but subject to appeal to a jury at quarter sessions by any person thinking that he would be aggrieved by the stopping up, diversion, or turning.⁴³

The above-mentioned provisions with respect to widening highways, and with respect to stopping up, diverting, and turning highways, are applicable to highways which are repairable by some person or body of persons by reason of their tenure of certain lands, or of any grant, limitation, or appointment of any charitable gift or otherwise, and also to highways repairable under local Acts, other than Railway, Canal, River Conservancy, or Navigation Acts, as well as to highways repairable by the inhabitants at large.⁴⁴

The following powers are exercisable by the district council, as surveyors of highways, viz.:—to require any person who has planted any tree (not being a timber tree growing in a hedge), or bush, or shrub on a cartway, or within fifteen feet from the centre of the metalled road, to cut down, grub up, and carry away such tree, bush, or shrub, under a penalty⁴⁵; to take summary proceedings to compel landowners to cut, prune, or slash hedges, prune or lop trees which obstruct or exclude the sun and wind from a highway, or remove hedges or trees which obstruct the cartway, and to carry out the work on default of the landowner in complying with the order made by the justices⁴⁶ (such hedges only to be pruned between the end of September and the beginning of March, and timber trees growing in hedges not being subject to this provision at all⁴⁷); to make, scour, cleanse, and keep open ditches, etc.⁴⁸; to take summary proceedings in respect of any encroachment which any person has made by making a building, hedge, ditch, or other fence on a cartway within fifteen feet from the centre of the highway,⁴⁹ or by making any building, pit, hedge, ditch, or fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish on the side or sides of any carriageway or cartway within fifteen feet of the centre, or by removing any soil or turf from the side or sides of any carriageway or cartway, except where such acts have been done for the purpose of improving the road and by order of the council (no encroachment being in any case permitted so as to reduce the carriageway to less than thirty feet where it is fenced on both sides⁵⁰), and on summary conviction of the person making the encroachment, to remove it and recover the expenses from such person; to require any person, who has laid or deposited any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing on a highway so as to be a nuisance, to remove it, and on default of such person to remove and dispose of it, and recover from such person any expenses incurred which are not covered by the value of the matter removed⁵¹; to impound cattle straying

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Materials for
highway
repairs—cont.

Miscellaneous
powers in
relation to
highways.

(36) 5 & 6 Wm. IV. c. 50, s. 24.

(37) 45 & 46 Vict. c. 27, s. 6.

(38) See s. 3, *ante*, p. 177.

(39) See *ante*, p. 176.

(40) 5 & 6 Wm. IV. c. 50, s. 26.

(41) *Ibid.*, s. 82.

(42) *Ibid.*, s. 66.

(43) *Ibid.*, ss. 84-91.

(44) *Ibid.*, s. 93; 25 & 26 Vict. c. 61, s. 44.

(45) 5 & 6 Wm. IV. c. 50, s. 64.

(46) *Ibid.*, s. 65.

(47) *Ibid.*, s. 66.

(48) *Ibid.*, ss. 67, 68, quoted *ante*, p. 129.

(49) *Ibid.*, s. 69.

(50) 27 & 28 Vict. c. 101, s. 51.

(51) 5 & 6 Wm. IV. c. 50, s. 73.

Sect. 144, n.

on a highway until the owner pays the penalty and charges ⁵²; to require the owner of any gate less than ten feet wide across a public cartway, or less than five feet wide across a public horseway, to remove or enlarge it, under a penalty,⁵³ and to enforce any bye-laws that may have been made by the county council prohibiting or regulating the erection of gates across highways, or prohibiting gates opening outwards on highways ⁵⁴; to abate nuisances to highways from barbed wire ⁵⁵; and to apprehend persons committing offences against the Highway Act, whose names are unknown, and to take them before a justice.⁵⁶ As to "roadside wastes," see the Note to sect. 26 of the Local Government Act, 1894.⁵⁷

Where Part II. of the Public Health Acts Amendment Act, 1907 (set out *post*, Part I., Div. III.), is in force, district councils have certain further powers—see sects. 15 and 16 (plans of streets), 17 (direction of streets), 18 (crossings over footways), 19 (urgent repairs), 20, 29, and 30 (excavations and other dangerous places), 21 (names of streets), 22 (rounding off corners), 26 (entrances to courts), 28 (old materials in streets), 31 (fences to adjoining lands), and 32 (hoardings).

The powers of district councils in relation to the regulation of the use on highways of hackney carriages, omnibuses, horses, and other animals let for hire, cycles, locomotives, and motors, are dealt with in a separate work.⁵⁸

Miscellaneous
offences in
relation to
highways.

Besides the penalties for the offences above mentioned, the district council, or other informer, may recover penalties summarily from persons committing the following offences, namely: taking away, without the consent of the council, any materials obtained for road repairs, or materials from a quarry opened for obtaining such materials (except by the landowner, if the quarry is opened in private land) ⁵⁹; sinking a pit, or shaft, or erecting a steam engine, gin, or other like machine within twenty-five yards, erecting a windmill within fifty yards, or making a fire for calcining or burning ironstone, limestone, bricks, or clay, or for making coke within fifteen yards from a cartway (except within a building or behind a wall or fence sufficient to screen the shaft, engine, mill, or fire from the road, and prevent danger to passengers, horses, or cattle), provided that this is not to apply to the use, repair, rebuilding, or enlarging of such engines, machines, etc., if they existed on the 31st August, 1835,⁶⁰ or to "any locomotive steam engine or any machinery attached thereto for the purpose of threshing" ⁶¹; riding, or leading, or driving any horse, cattle, carriage, truck, or sledge on the footpath at the side of a road; tethering any horse or cattle on a highway; wilfully injuring the surface of highways and highway fences, posts, etc.⁶²; playing football or any other game on a highway to the annoyance of a passenger; pitching a tent, booth, stall, or stand, or encamping on a highway by a hawker, higgler, gipsy, or other traveller; making a fire, firing a gun or pistol, or letting off fireworks within fifty feet of the centre of a cartway; bull-baiting on or near a highway; laying timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing on a highway to the injury, interruption, or personal danger of any passenger; suffering filth, dirt, lime, or other offensive matter to run or flow on a highway from adjoining premises ⁶³; allowing horses, cattle, swine, etc., belonging to the person charged with the offence to stray or lie about on or by the side of a highway (except where the highway passes over common, waste, or unenclosed ground, or where such person has a right of pasturage), the animals in such case being liable to be impounded until payment of the penalty and the expenses of impounding and keeping them ⁶⁴; releasing, or attempting to release, impounded horses or cattle which have been found straying on a highway ⁶⁵; contravening any bye-laws that may have been made by the county council for prohibiting or regulating the use on highways of waggons with wheels of less width than that prescribed by such bye-laws, or with nails or other projections on their wheels, or with the wheels locked when descending hills without skidpans or shoes under the wheels ⁵⁴; using or allowing anyone to use on a highway a wagon, cart, or other such carriage belonging to the person charged with the offence, without his name and address being painted on the off

(52) 27 & 28 Vict. c. 101, s. 25. See also *post*, Vol. II., pp. 1646, 1647.

(53) 5 & 6 Wm. IV. c. 50, s. 81.

(54) H. & L. Am. Act, 1878, s. 26, *post*, Vol. II., p. 1791.

(55) See Act of 1893, quoted *ante*, p. 177.

(56) 5 & 6 Wm. IV. c. 50, s. 79.

(57) *Post*, Vol. II., p. 2042.

(58) Glen's D. C. Guide, Chap. VII., §§ 20-22. See also T. Police Cl. Act, 1847, *post*, Vol. II., p. 1661.

(59) 5 & 6 Wm. IV. c. 50, s. 47.

(60) *Ibid.*, s. 70.

(61) Locomotive Threshing Engines Act, 1894 (57 & 58 Vict. c. 37), s. 2. A proviso to this section (as to signaller) was repealed by 6 & 7 Geo. V. c. 12, s. 11 (2).

(62) Quoted in full in Note to s. 149 (under heading "Injury to Street"), *post*, p. 305.

(63) 5 & 6 Wm. IV. c. 50, s. 72.

(64) 27 & 28 Vict. c. 101, s. 25; see also T. P. Cl. Act, 1847, s. 24, *post*, Vol. II., p. 1646.

(65) 5 & 6 Wm. IV. c. 50, s. 75.

side⁶⁷; driving more than two waggons, carts, or other such carriages at the same time, or two carts with the horse of the second cart not properly attached to the first⁶⁸; riding on a waggon, cart, or carriage of any kind, or on a horse drawing it, while driving it, without reins or without holding the reins of all the horses drawing it, unless there is some other person on foot or horseback to guide it; damaging any person, horse, cattle, or goods on a highway by negligence or wilful misbehaviour while driving any carriage; leaving any carriage on the highway unattended or so as to obstruct the way; refusing to disclose the name of the owner of a waggon, cart, or other such carriage driven by the person charged with the offence, when such name is not properly painted thereon; driving a waggon, cart, or any other carriage, or any horse or other beast of draught or burden, on the wrong side (viz. the off or right-hand side) of the road when meeting another vehicle, or horses, or beasts of burden; wilfully preventing any person from passing on a highway; negligently or by misbehaviour preventing the free passage of any person, vehicle, horses, or beasts of burden on a highway, or not keeping his vehicle, horses, or beasts of burden on the left or near side of the road to allow such passage; riding or driving furiously so as to endanger the life or limb of any passenger.⁶⁹ Certain decisions relating to the above offences have been noted elsewhere—see “Table of Statutes,” *post*, Vol. II., Part VI. (or, when this work is bound up in two Volumes only, *ante*).

See also the offences in streets enumerated in sect. 28 of the Town Police Clauses Act, 1847, and the Note to that section.⁷⁰

Where the council are the informers in the case of summary proceedings for offences against the Highway Act, 1835, the penalties are to be applied towards the repair of the highways: in any other case, half the penalty is to be so applied, and the other half is to be paid to the informer.⁷¹

The Act of 1835 gives a right of appeal to quarter sessions against any order, conviction, judgment, or determination, or other thing done by any justice or other person under the Act.⁷²

Application of Highway Acts.

It was held by the Common Pleas Division that work done by an urban sanitary authority as surveyors of highways was not done in the execution of any powers of the present Act, so as to entitle a person who had sustained damage by reason of the execution of the works to compensation under sect. 308.⁷³ And certain provisions of the Highway Acts which differed from corresponding provisions of the present Act—for instance, that with regard to the limitation of time for the commencement of actions against surveyors⁷⁴—were held by the Court of Appeal to apply to urban authorities when carrying out the powers conferred on them as surveyors of highways.⁷⁵

On the other hand, the Court of Appeal had held that the limitation with respect to the amount of the highway rate leviable by a surveyor of highways, imposed by sect. 29 of the Highway Act, 1835, did not apply to such a rate when it was made by an urban sanitary authority, even when the rate was made upon a portion of a parish which then formed part of the urban district for highway purposes only by virtue of the proviso to sect. 216 of the present Act.⁷⁶

Main Roads.

“Main roads” are roads which either were turnpike roads at the end of the year 1870, or have been declared to be main roads by order of the quarter sessions, or, since the Local Government Act, 1888, came into operation, the county council.

With regard to the maintenance of such roads, by or at the expense of the county council, where they are not retained by the urban district council, see sect. 11 of that Act,⁷⁷ and the Note to that section.

Sect. 144, n.
Miscellaneous
offences in
relation to
highways—
continued.

Application
of penalties.

Appeal.

Sanitary or
highway
powers.

Meaning of
main road.

(67) 5 & 6 Wm. IV. c. 50, s. 76.

(68) *Ibid.*, s. 77.

(69) *Ibid.*, s. 78.

(70) *Post*, Vol. II., p. 1647.

(71) 5 & 6 Wm. IV. c. 50, s. 103.

(72) *Ibid.*, s. 105.

(73) *Burgess v. Northwich Loc. Bd.*, *post*, p. 303 (7); but see the *Kingsbury Case*, *post*, p. 361 (26).

(74) 5 & 6 Wm. IV. c. 50, s. 109, now superseded by Public Authorities Protection Act, 1893, ss. 1, 2, *post*, Vol. II., pp. 1975, 1992.

(75) *Graham v. Newcastle-upon-Tyne Cpn.*, L. R. 1893, 1 Q. B. 643; 62 L. J. Q. B. 315; 69 L. T. 6; 57 J. P. 596; following *Burton v. Salford Cpn.* (1883), L. R. 11 Q. B. D. 286; 52 L. J. Q. B. 668; 49 L. T. 43; 47 J. P. 614; and overruling *Kay v. Atherton Loc. Bd.* (1878), 42 J. P. 792; and *Taylor v. Meltham Loc. Bd.* (1877), 47 L. J. C. P. 12.

(76) *Dyson v. Greetland Loc. Bd.* (1884), L. R. 13 Q. B. D. 946; 53 L. J. M. C. 106; 48 L. T. 636; 48 J. P. 596.

(77) *Post*, Vol. II., p. 1894. See also Glen's D. C. Guide, Chap. V., § 7 (c).

Sect. 144, n.

*Surveyor of Highways.*Duty of
surveyor of
highways.

With regard to the office of surveyor of highways, see the section on that subject in the above-mentioned separate work.⁷⁸ In rural as well as in urban districts, the functions of the office are now performed by the district council.⁷⁹

By the Highway Act, 1835, the surveyor of highways for a parish "shall repair and keep in repair the several highways in the said parish for which he is appointed, and which are now or hereafter may become liable to be repaired by the said parish."⁸⁰ Urban district councils have the further duty of causing all streets, which are highways repairable by the inhabitants at large, to be levelled, paved, metalled, flagged, channelled, altered, and repaired as occasion may require—see sect. 149 of the present Act, *post*.

*Inhabitants in Vestry.*Consent of
vestry.

The Highway Acts gave authority to the inhabitants in vestry in the matters of the adoption of the maintenance of highways,⁸¹ the formation of footways,⁸² the diversion and stopping up of highways,⁸³ the erection of direction-posts,⁸⁴ the amount of the highway rate,⁸⁵ and appeals and indictments.⁸⁶ But the provision of the present section, which confers on an urban district council the powers, etc., of the inhabitants in vestry, obviates the necessity for calling a vestry meeting in any case in which the consent of the vestry is required by the Highway Acts⁸⁷—for instance, before a highway is diverted under sects. 84—91 of the Highway Act, 1835.

In the case of a vestry under the Metropolis Management Acts, which upon its constitution was to supersede any existing vestry, there appears to have been some difference of opinion among the judges on the question whether the consent of the inhabitants was not necessary;⁸⁸ but it has not been the practice to obtain such consent.

In a rural district the consent of the parish council and parish meeting is necessary in certain cases, even though the rural district council may be the highway authority and have the powers of an urban authority under the present section.⁸⁹

*Ministerial Acts.*Highway
surveyors.

The distinction between a surveyor appointed by a district council under sect. 189 or 190, and a surveyor of highways appointed under the Highway Act, 1835, must be borne in mind, for it is only in respect of ministerial acts that the former officer may act as surveyor of highways.

Expenses
of perform-
ing minis-
terial acts.

On the application of certain landowners, an urban sanitary authority consented to the diversion of a highway, on condition that the landowners should pay all expenses in connection therewith. This condition was accepted and the clerk to the authority instructed the solicitors who usually acted for the authority to take the necessary steps under the Highway Act, 1835. The solicitors accordingly gave the necessary notices, obtained the certificate of justices, etc.; and the authority, having paid their taxed bill of costs, took summary proceedings for the recovery of the amount from the landowners.¹ On a special case, the court held that the acts done by the solicitors were ministerial acts, incidental to the office of the surveyor, and should have been done by the surveyor of the board; and whether or not the amount of the bill could have been recovered by action, it could not be recovered summarily in the manner provided by sect. 84 of the Act of 1835, for the recovery of the expenses incurred by a surveyor of highways in performing similar acts.²

*Rural Authorities.*Application of
enactments to
rural district
councils.

The present section is in terms confined to urban authorities; but by the Local Government Act, 1894,³ all the powers, duties, and liabilities of any highway authority (that is, any highway board or rural sanitary authority having the

(78) Glen's D. C. Guide, Chap. I., § 5.

(79) See the Note on "Rural Authorities,"

infra.

(80) 5 & 6 Wm. IV. c. 50, s. 6.

(81) *Ibid.*, ss. 23, 62.(82) *Ibid.*, s. 80.(83) *Ibid.*, s. 84.(84) *Ibid.*, s. 24.(85) *Ibid.*, s. 29.(86) *Ibid.*, s. 111.(87) *Dyson v. Greetland Loc. Bd.*, *ante*,

p. 275.

(88) *Reg. v. Harvey or Hervey* (1874), L. R. 10 Q. B. 46; 44 L. J. M. C. 1; 31 L. T. 505.(89) See L. G. Act, 1894, ss. 13, 19 (8), 25 (1), *post*, Vol. II., pp. 2012, 2024, 2038.

(1) Under 5 & 6 Wm. IV. c. 50, ss. 84, 101.

(2) *United Land Co. v. Tottenham Loc. Bd.* (1884), L. R. 13 Q. B. D. 640; 53 L. J. M. C. 136; 41 L. T. 364; 48 J. P. 726.(3) See s. 25 (1), *post*, Vol. II., p. 2038.

powers, etc., of such a board, or any parish highway board or surveyor or surveyors of highways) in a rural district, were from “the appointed day,”⁴ or some subsequent time fixed for the purpose, transferred to the district council, together with all the powers of an urban authority under sects. 144—148 of the present Act.

Sect. 144, n.

The highways in the rural part of a parish divided by the boundary of an urban district were in some cases under the jurisdiction of the urban authority by virtue of sect. 216 of the present Act; but upon the rural district council becoming the highway authority, that jurisdiction was determined by the Act of 1894.⁵

Urban powers in relation to streets, for the most part under sects. 150 and 157, have in numerous cases been conferred on rural authorities by special orders of the Local Government Board under sect. 276; and the Local Government Act, 1894, now authorises the application of urban provisions to rural districts by general orders of the Minister of Health.⁶

In rural districts powers with respect to public walks, open spaces, recreation grounds, and village greens are conferred on the parish councils,⁷ who are also authorised to acquire rights-of-way in their own or adjoining parishes,⁸ oppose highway diversions, etc.,⁹ undertake the repair of public footpaths,¹⁰ and complain of encroachments, etc.,¹¹ and the non-repair of highways repairable by district councils.¹²

Powers of parish council.

Protection of Public Rights.

The Local Government Act, 1888,¹³ confers on county councils with reference to main roads the same powers as those which were formerly possessed by highway boards for preventing and removing obstructions, and for asserting the right of the public to the use and enjoyment of the roadside wastes.

Powers of county council.

And under the Local Government Act, 1894,¹⁴ it is the duty of every council of every borough and district to protect the public rights-of-way, and to prevent as far as possible the stopping or obstruction of any such right-of-way, whether within their district, or in an adjoining district in the same county, where the stoppage or obstruction would be prejudicial to the interests of the district. It is also their duty under the same Act to prevent any unlawful encroachment on any roadside waste within their district; and if a parish council (or parish meeting where there is no such council) have represented to them that a public right-of-way has been unlawfully stopped or obstructed or roadside waste encroached on, they are required, unless satisfied that the representation is incorrect, to take proceedings accordingly, or if they refuse the county council may do so. See also sect. 10 of the Highways and Locomotives (Amendment) Act, 1878, and the Note thereto.¹⁵

Duty of district council.

Sect. 145. The inhabitants within any urban district shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district: Provided, that any person who in any place after the passing of this Act ceases under or by virtue of any provision of this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district.

Inhabitants of urban district not liable to rates for roads without district. P.H., s. 117. L.G., s. 37 (6).

Note.

In certain cases places not within the limits of the district for the general purposes of the Act, were for all purposes connected with the repairs of highways and the payment of highway rates, considered to be and treated as forming part

Parish partly without the district.

(4) In December, 1894.
(5) See s. 25 (4), *post*, Vol. II., p. 2039.
(6) See s. 25 (5-7), *post*, Vol. II., p. 2039.
(7) See L. G. Act, 1894, s. 8 (1, d), *post*, Vol. II., p. 2004.
(8) *Ibid.*, s. 8 (1, g), *post*, Vol. II., p. 2004.
(9) *Ibid.*, s. 13 (1), *post*, Vol. II., p. 2012.
(10) *Ibid.*, s. 13 (2), *post*, Vol. II., p. 2012.

(11) *Ibid.*, s. 26 (4), *post*, Vol. II., p. 2041.
(12) *Ibid.*, s. 16 (1), *post*, Vol. II., p. 2018.
(13) See s. 11 (1), *post*, Vol. II., p. 1894.
(14) See s. 26 (1) (7), *post*, Vol. II., p. 2041.
As to parish meetings, see *ibid.*, s. 19 (8), *post*, Vol. II., p. 2024.
(15) *Post*, Vol. II., p. 1770.

Sect. 145, n. of such district, until the rural district council became the highway authority for the place; see the first proviso to sect. 216, and the Note thereto.

Highway rates. With regard to highway rates and the expenses of repairs of highways, see sects. 216 and 217, and the general provisions as to urban rates in sects. 218—228.

Rural districts. With regard to the application of the present section to rural district councils, see the Note to sect. 144.

Power of urban authority to agree as to making of new public roads. L.G., s. 39.

Sect. 146. Any urban authority may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.

Note.

Rural districts. The present section is applied to rural district councils by the Local Government Act, 1894.¹

Agreements. A contract under the present section would be made by the council in their capacity of sanitary authority and not highway authority, when the provisions of sect. 174 (as to seal, etc.) must be complied with.²

The present section would not authorise an agreement for straightening a highway by an exchange of portions of highway for portions of private land without an order of quarter sessions.³

Covenant running with the land. Except in a case as between landlord and tenant, a covenant to do certain acts involving the outlay or expenditure of money, such as a covenant to make and maintain a road, does not run with the land either at law or in equity, as regards the burden or the benefit. For such a covenant to run with the land it must in some way touch or concern the land, as for instance, through the creation of a rentcharge.⁴ As to whether a covenant is "negative," and whether the breach is a "continuing" one, see the case cited below.⁵

Contribution towards expenses. The district council are only authorised to pay "a portion of the expenses;" from which it may be inferred that it is not intended that they shall pay the whole of such expenses, but that they must leave some substantial portion to be paid by the landowner.

Adoption of maintenance. Unless an agreement is made under the present section, the new street will only become repairable by the inhabitants at large when its maintenance has been duly adopted in the prescribed manner—see sect. 152 and Note, *post*.

The expression "maintaining and repairing" in a road Act was held not to include lighting the road.⁶

Where a new road had been treated by the urban authority as having been made under the present section, they failed to recover from the landowner the expenses of subsequently making it up under sect. 150.⁷

By an agreement made between the corporation of a borough, a railway company, and other parties, it was agreed that certain recently made roads should as and from a date shortly after that of the agreement be dedicated to the public, and should be accepted by the corporation as public highways repairable by the inhabitants at large, and should be maintained and repaired accordingly; but that nevertheless the corporation should retain and have the same powers of requiring the frontagers to sewer, pave, etc., as they would for the time being have if the roads had not been accepted by them as public highways and were not highways repairable by the inhabitants at large. On the corporation subsequently endeavouring to put into force the provisions of the Private Street Works Act, 1892, with respect to the roads, it was held by the Divisional Court that they could not take advantage of the reservation in the agreement in a proceeding where they were invoking the powers of a statute against persons who were not parties to and had no notice of the agreement.⁸

(1) See s. 25 (1), *post*, Vol. II., p. 2038.

(2) See *Hoare v. Kingsbury U.D.C.*, cited in Note to s. 174, *post*.

(3) See *Croft v. Fulwood U.D.C.*, cited in Note to s. 173, *post*.

(4) *Austerberry v. Oldham Cpn.* (1885), L. R. 29 Ch. D. 750; 55 L. J. Ch. 633; 53 L. T. 543; 49 J. P. 532.

(5) *Powell v. Hemsley*, L. R. 1909, 2 Ch.

252; 78 L. J. Ch. 741; 101 L. T. 262.

(6) *Lanark Road Trustees v. Kelvinside Trustees* (1886), 14 Court of Session Cases (4th series, H. L.) 18; s.c. *nom. Lanark, etc.*, v. *Fleming*, 1886 W. N. 180.

(7) *Bromley Loc. Bd. v. Lansbury*, *post*, p. 315.

(8) *Folkestone Cpn. v. Marsh*, cited in Note to P. S. W. Act, 1892, s. 7, *post*, p. 341.

In the same case Lord Alverstone, C.J., expressed the opinion that the road in question was substituted for and repairable by the inhabitants at large in the same manner as an old highway which had been so repairable, and had been stopped up by the railway company in pursuance of a special Act enabling them to stop it up; although this Act was not passed until after the completion of the new road and the date fixed by the agreement for taking it over.⁸

Sect. 146, n.

A lessee's covenant to pay a share of the expenses of repairing and maintaining a road until taken over by the local authority, does not extend to paying a share of the expense of an entire reconstruction of the road. In construing the covenant regard must be had to the nature of the road as originally constructed, and to its general condition at the date of the covenant.⁹

Meaning of repair.

By the Settled Estates Act, 1877,¹⁰ it is enacted that "it shall be lawful for the court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in that Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the court shall be deemed advisable." And "where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income, or accumulations during such period or periods of time as to the court shall seem advisable."¹¹

Settled Estates.

A tenant for life may cause streets to be laid out in connection with sales or leases for building purposes under the Settled Land Act, 1882.¹² See also the Law of Property Act, 1922.¹³

Sewers and bridges and other works may also be constructed on settled estates under the Settled Land Acts.¹⁴

Sect. 147. Any urban authority may agree with the proprietors of any canal railway or tramway to adopt and maintain any existing or projected bridge viaduct or arch within their district, over or under any such canal railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge viaduct or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge viaduct or arch at the expense of such proprietors; they may also, with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge viaduct or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto.

Power of urban authority to construct or adopt public bridges, &c., over or under canals, &c.
L.G., s. 40.

(8) See footnote (8), *ante*, p. 278.

(9) *Scott v. Brown*, *post*, p. 283.

(10) 40 & 41 Vict. c. 18, s. 20.

(11) 40 & 41 Vict. c. 18, s. 21. Orders made under this Act are published in the Law

Reports Weekly Notes of January 25, 1879, p. 47.

(12) 45 & 46 Vict. c. 38, s. 16.

(13) *Post*, Vol. II., p. 2355.

(14) See *ante*, p. 102.

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Agreements as to Bridges.

Rural districts.

The present section is applied to rural district councils by the Local Government Act, 1894¹

Contribution to expenses.

The district council are only authorised to pay “a portion of the expenses” of the construction or alteration of the bridge or of the purchase of the land; from which it may be inferred that it is not intended that they shall agree to pay the whole of the expenses, but that a substantial portion is to be paid by the other party to the agreement.

County councils.

The Local Government Board sanctioned a loan for a public subway under a railway, but refused to sanction one for a contribution towards a new bridge to be constructed by a railway company and kept closed for one day a year.

The Highways and Bridges Act, 1891,² authorises county councils and highway authorities to enter into agreements for the construction, reconstruction, alteration, improvement, or freeing from tolls, of bridges and their approaches.

Bridges on Crown lands.

The Crown Lands Act, 1906,³ authorises the Commissioners of Works, in accordance with the Crown Lands Acts, 1829—1894, to “convey to a bridge authority willing and able to accept such a conveyance any bridge under the management of the Commissioners and any land required for the purpose of widening or improving any bridge, either unconditionally or subject to such conditions and upon such terms as may be agreed upon between the Commissioners and the authority, anything in those Acts to the contrary notwithstanding,” and “for the purposes of this section the expression ‘bridge’ includes the approaches to and abutments of a bridge, and the expression ‘bridge authority’ means any local authority having the duty of the care and maintenance of bridges.”

Railway and Canal Bridges.

Approaches.

A railway company, as successors to a canal company that had made a bridge and approaches and were required by their Act to keep their bridges in repair, were held liable to maintain the approaches as well as the substructure of the bridge, although the road over the bridge had become a main road.⁴

Fences.

But in another case in which the special Act required the company to fence their bridges, and to repair such bridges and the wing walls, ramparts, and side banks thereof, subject to a proviso that they should not be liable to repair the roads approaching the bridges beyond the extremity of the wing walls of such bridges, the Court of Appeal held that the company were not liable to repair the fences to the raised approaches of a bridge, on the ground that the fences were not part of the “bridge, wing walls, ramparts, or side banks” which were repairable by them.⁵

Telegraph lines.

The Telegraph (Construction) Act, 1911,⁶ enables the Postmaster General to execute certain works over, upon, or under canals and railways which are crossed by bridges. Further as to the Telegraph Acts, see the Note to sect. 149, *post*.

Agreement to widen bridge.

Where an arrangement was made for the widening by a railway company of a railway bridge carrying a main road in consideration of the payment by the county council and the urban district council of a share of the cost, the Local Government Board advised that although the Highways and Bridges Act, 1891,⁷ would enable the county and district councils to enter into an agreement for the purpose of contributing towards the cost of the works, it was necessary for the purpose of legalising the scheme that an agreement should be made between the urban district council (with the consent of two-thirds of their number) and the railway company.

Liability of railway company.

Where a railway crosses a public footpath on the level, sect. 46 of the Railways Clauses Act, 1845,⁸ imposes no obligation on the company to carry

(1) See s. 25 (1), *post*, Vol. II., p. 2038.

(2) See s. 3, *post*, Vol. II., p. 1898. As to bridges generally, see Glen's D. C. Guide, Chap. I., § 4.

(3) 6 Edw. VII. c. 28, s. 6.

(4) *Notts C.C. v. Manchester, Sheffield, and Lincolnshire Ry. Co.* (1894), 71 L. T. 430.

(5) *A.G. v. Oxford Canal Navigation* (1903), 72 L. J. Ch. 285; 88 L. T. 250; 67 J. P. 130; 1 L. G. R. 282.

(6) 1 & 2 Geo. V. c. 39, ss. 1-7.

(7) See s. 3, *post*, Vol. II., p. 1898.

(8) *Post*, Vol. II., p. 1605.

the path over or under the railway;⁹ and, where a railway company have an option to provide either a bridge or a tunnel for an interrupted carriageway, they cannot by *mandamus* be compelled to exercise that option by providing a bridge.¹⁰

But if a highway provided under that section is carried by a bridge over the railway, the company are bound, not only to construct the bridge, and the roadway and approaches, but also to keep all these in repair for the future;¹¹ and the repair includes not only the structure of the bridge and the approaches, but the metalling of the road on both.¹² And this is the case even though no alteration may have been made by the company in the level of the road, and no additional expense in its maintenance or repair may have been caused by the railway works.¹³ And if the company make default in repairing the roadway, etc., they may be compelled by *mandamus* to repair.¹⁴ But if the railway is carried by a bridge over the highway, no liability devolves on the company to repair the portion of highway on either side of the bridge, even though the company have lowered the level of the highway in constructing their works; such portions of the highway not being approaches to the bridge within the meaning of the Act.¹⁵ Nor are the company liable to repair the approaches to a level crossing, although they have raised the road up to the level of the railway by means of inclined planes on each side;¹⁶ though, in a case to which the Act of 1845 did not apply, the Court of Appeal held a railway company to be liable at common law to maintain the inclined approaches to a crossing over a railway on an embankment.¹⁷

A special Act, passed before the Act of 1845, required a railway company to carry a public carriage-road over their line by a bridge, and enacted that the bridge should be formed and should "at all times be continued" of a certain width. The Court of Appeal held that this implied an obligation on the company to maintain the road, and the substructure of the bridge, and the approaches.¹⁸

Another section of the Act of 1845 requires a railway company to widen a bridge, if so required by the highway authority, when the road on either side is widened beyond the width of the bridge.¹⁹ This was held to apply only to the bridge proper, exclusive of the approaches.²⁰

By a case stated by justices on summary proceedings taken by an urban district council to enforce against a railway company the repair, under the Act of 1845, of a bridge over their railway, it appeared that, after the council (then a local board of health) had by agreement undertaken to repair the road over the bridge in consideration of the annual payment of a fixed sum by the company, the bridge had been taken down and rebuilt with a greater width and length by a tramway company under a special Act, and the council therefore repudiated the agreement. During the promotion of the Bill for this special Act the tramway company had entered into an agreement with the railway company as to the mode in which the new bridge should be constructed, and an agreement with the council undertaking not to construct their tramway over the bridge until it had been widened to at least a certain width in such manner as the railway company should approve. The decision of the justices, dismissing the summary proceedings, was upheld by the Divisional Court on the ground that the bridge had not been rebuilt by or for the railway company so as to render sect. 46 of the Act of 1845 applicable to it as a whole, but by the tramway company under the paramount authority of their special Act.²¹

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Liability of
railway com-
pany—cont.

(9) *Dartford R.D.C. v. Bexley Heath Ry. Co.*, L. R. 1898 A. C. 210; 67 L. J. Q. B. 231; 77 L. T. 601; 62 J. P. 227.

(10) *Reg. (Edwards) v. South Eastern Ry. Co.* (1853), 4 H. L. C. 471; 17 Jur. 901.

(11) *North of England Ry. Co. v. Langbaugh* (1871), 24 L. T. 544; 35 J. P. 581; *Newcastle-under-Lyme and Leek Turnpike Trustees v. North Staffordshire Ry. Co.* (1860), 5 H. & N. 160, s.c. nom. *Leech v. North Staffordshire Ry.*, 29 L. J. Ex. 239; 1 L. T. 332.

(12) *North Staffordshire Ry. Co. v. Dale* (1858), 8 E. & B. 836; 27 L. J. M. C. 147; 4 Jur. (N.S.) 631.

(13) *Lancashire and Yorkshire Ry. Co. v. Bury Cpn.* (1889), L. R. 14 A. C. 417; 59 L. J. Q. B. 85; 61 L. T. 417.

(14) *Reg. v. South Eastern Ry. Co.* (1875), 32 L. T. 858; 40 J. P. 200. See also *Rex (Berks C.C.) v. Wilts and Berks Canal Co.* (1912, K. B. D.), L. R. 1912, 3 K. B. 623; 82 L. J. K. B. 3; 77 J. P. 24; 10 L. G. R. 1033.

(15) *London and North Western Ry. Co.*

v. Skerton (1864), 5 B. & S. 559; 33 L. J. M. C. 158; 10 L. T. 648; *Waterford and Limerick Ry. Co. v. Kearney* (1860), 3 L. T. 90; 12 Ir. C. L. R. 224; *Fosberry v. Waterford and Limerick Ry. Co.* (1862), 13 Ir. C. L. R. 494.

(16) *West Lancashire R.D.C. v. Lancashire and Yorkshire Ry. Co.*, L. R. 1903, 2 K. B. 394; 72 L. J. K. B. 675; 89 L. T. 139; 67 J. P. 410; 1 L. G. R. 788.

(17) *Hertfordshire C.C. v. Great Eastern Ry. Co.*, L. R. 1909, 2 K. B. 403; 78 L. J. K. B. 1076; 101 L. T. 213; 73 J. P. 353; 7 L. G. R. 1006.

(18) *A.G. v. Midland Ry. Co.* (1909), 100 L. T. 866; 73 J. P. 337; 7 L. G. R. 998.

(19) See s. 51, post, Vol. II., p. 1606.

(20) *Rhondda U.D.C. v. Taff Vale Ry. Co.*, L. R. 1909 A. C. 253; 78 L. J. K. B. 647; 100 L. T. 713; 73 J. P. 257; 7 L. G. R. 616.

(21) *Teddington U.D.C. v. L. & S. W. Ry. Co.* (1910), 102 L. T. 328; 74 J. P. 119; 8 L. G. R. 253.

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Where a special Act, authorising a canal company to alter public or private roads and make and maintain bridges over their canal, contained an express provision that any road altered by them should thereafter be repaired "by the persons who were by law bound to repair the old road before such alteration," the Court of Appeal held that the company and their successors, a railway company, were liable to repair the surface of the road over a bridge made to carry a highway repairable by the inhabitants at large over the canal which had been cut through the highway, but that the local authority, who had executed the work, although under no liability to do so, could not recover their expenses from the company.²² See also the case cited below,²³ where a local drainage Act defined "drainage works" as including "repairing all bridges"; and it was held that "the repairing of a public highway which passed over a bridge was not a repairing of a bridge within that definition, and was therefore not a drainage work within the meaning" of the Act.

Standard of repair.

The standard to which bridges repairable by highway authorities must be repaired is according to the needs of the moment,²⁴ but, where the liability is imposed upon others by enactments such as sect. 46 of the Railways Clauses Consolidation Act, 1845,²⁵ the standard is that of the time when the bridge was completed.²⁶

Settlement of differences.

The Act of 1845 provides for the settlement of differences between the company and the road authority by a referee appointed by the Board of Trade.²⁷

*Tramways on Bridges.***Interference with bridge by tramway company.**

The Tramways Act, 1870, which has been set out in full in Volume II. of this work,²⁸ does not require tramway companies to construct any bridges, but it contains restrictions with respect to the construction of tramways over bridges (see sect. 26), and requires roads broken up by the company to be reinstated, and to a certain extent maintained at their expense for six months (see sect. 27). It also requires the company to maintain the portion of road which lies between the rails, and so much as extends eighteen inches beyond the rails on each side (see sect. 28 and the cases cited below²⁹). Under the same Act, the "road authority" may agree with the company for the repair of any road in which the tramway may be laid, and for the payment of contributions towards the expense of paving and maintaining the road (see sect. 29 and the cases cited below³⁰).

Telegraph wires over bridges.

A special Tramway Act authorised the construction of an overhead electric tramway over a railway bridge. The wires were required by a Board of Trade regulation to be at least a specified height above the roadway on the bridge, but there were telegraph and other wires belonging to the railway company crossing the road at a less height. It was held that, under sect. 30 of the Act of 1870,³¹ the tramway company were entitled to alter the position of the railway company's wires, so as to enable them to erect their own wires in accordance with the regulation.³²

*Light Railways.***Interferences with highways.**

The Light Railways Acts, 1896 and 1912, have been set out in full.³³ The Railways Clauses Act, 1845, is not to apply, unless expressly incorporated in the Light Railway Order.³⁴

(22) *Macclesfield Cpn. v. Great Central Ry. Co.*, L. R. 1911, 2 K. B. 528; 80 L. J. K. B. 884; 104 L. T. 728; 75 J. P. 369; 9 L. G. R. 682.

(23) *Per Sankey, J., in Somerset Drainage Comrs. v. Langport Drainage Bd.* (1919, K. B. D.), 84 J. P. 19; 18 L. G. R. at p. 99.

(24) *Kilkenny C.C. v. Hayden* (K. B. D., I.), 46 Ir. L. T. 95; 4 Glen's Loc. Gov. Case Law 69; and see *per Swinfen Eady, J., in A.G. (Worcester Cpn.) v. Sharpness New Docks Co.*, L. R. 1914, 3 K. B. at p. 20; and *per Lord Atkinson* in the same case, L. R. 1915 A. C. at p. 665.

(25) *Post*, Vol. II., p. 1605.

(26) *Sharpness New Docks Co. v. A.G.*, L. R. 1915 A. C. 654; 84 L. J. K. B. 907; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; *A.G. (Pickfords, Ltd.) v. Great Northern Ry. Co.*, L. R. 1916, 2 A. C. 356; 85 L. J. Ch. 717; 115 L. T. 235; 80 J. P. 337; 14 L. G. R. 997.

(27) See s. 33, *post*, Vol. II., p. 1358; and *Rex (London United Tramways, Ltd.) v. Garrett and Hammersmith B.C.* (1909,

K. B. D.), 100 L. T. 533; 73 J. P. 188; 7 L. G. R. 541.

(28) *Post*, Vol. II., p. 1349.

(29) *St. Luke Vestry v. North Metropolitan Tramways Co.* (1876), L. R. 1 Q. B. D. 760; 35 L. T. 329; *Reg. v. Croydon, etc., Tramways Co.* (1886), L. R. 18 Q. B. D. 39; 56 L. J. Q. B. 125; 56 L. T. 78; 51 J. P. 420.

(30) *Howitt v. Nottingham and District Tramways Co.* (1883), L. R. 12 Q. B. D. 16; 53 L. J. Q. B. 21; 50 L. T. 99; *Steward v. North Metropolitan Tramways Co.* (1886), L. R. 16 Q. B. D. 556; 55 L. J. Q. B. 157; 54 L. T. 35; 50 J. P. 324; *Aldred v. West Metropolitan Tramways Co.*, L. R. 1891, 2 Q. B. 398; 60 L. J. Q. B. 631; 65 L. T. 138; 55 J. P. 824.

(31) *Post*, Vol. II., p. 1356.

(32) *In re Rhondda U.D.C. and Taff Vale Ry. Co.* (1907 C. A.), 97 L. T. 892; 72 J. P. 44; 6 L. G. R. 131.

(33) *Post*, Vol. II., pp. 1369, 1378.

(34) See ss. 12 (1) and 28 of Act of 1896, *post*, Vol. II., pp. 1373, 1376.

As to the diversion, etc., of highways in connection with light railways, see the Rules mentioned below.³⁵
Light railways and steam tramways are “railways” for the purposes of the Railway Fires Act, 1905,³⁶ which relates to damage caused by sparks and cinders from locomotives.

Sect. 147, n.
Railway fires.

Sect. 148. Any urban authority may by agreement . . .³⁷ with any person liable to repair any street or road, or any part thereof, or with the surveyor of any county bridge, take on themselves the maintenance repair cleansing or watering of any such street or road or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said streets or roads within their district . . .³⁷ on such terms as the urban authority and such trustees or persons or surveyor as aforesaid may agree on : . . .³⁷

Power of urban authority to enter into agreements with turnpike trustees as to repair, &c., of roads.
L.G., s. 41.

Note.

The present section, like the four preceding sections, is applied to rural district councils by the Local Government Act, 1894.³⁸ Further as to the adoption of private streets, see sect. 152 and Note, *post*.

Rural district councils.

The section does not merely enable a district council to contract with the person primarily liable to repair the road in question, namely, the occupier, to execute the repairs for him; but a road repairable *ratione tenuræ* can be permanently converted into a highway repairable only by the inhabitants at large, but in that case the owner must be a party to the agreement. Warrington, J., further held, without deciding whether the *ratione tenuræ* liability was an “incumbrance” within the meaning of the Settled Land Act, 1882,³⁹ that trustees, having the power to manage and improve the settled estate, as if they were the owners or occupiers, could enter into the agreement and apply capital moneys belonging to the trust for the purpose of discharging the estate from the liability.⁴⁰

Ratione tenuræ highways.

By a covenant in a conveyance of a piece of land forming part of a building estate the purchaser undertook to pay and contribute a proportionate share of the expenses of *repairing and maintaining* a road and the footways thereon, until those matters were undertaken by the local authority. This was held not to extend to the expenses of reconstructing the road under an arrangement made between the vendor and the local authority with a view to the road being taken over by them.⁴¹

Recon-struction of roadway.

Under the Highways and Bridges Act, 1891,⁴² highway authorities and county councils may make agreements for the construction, reconstruction, alteration, or freeing from tolls, of any main road or other highway, or of any bridge and the approaches thereto.

County council.

A district council may also by contract with the county council undertake the maintenance, repair, improvement, and enlargement of, or other dealing with, any main road, under the Local Government Act, 1888.⁴³

The words omitted from the present section referred to turnpike roads and trustees, and were repealed by the Statute Law Revision Act, 1898, the trusts of all the turnpike roads having expired. As to the meaning of “turnpike road,” see the Note to sect. 4.⁴⁴

Turnpike roads.

The General Turnpike Act of 1823,⁴⁵ and the Annual Turnpike Acts Continuance Acts, 1866, 1871, and 1875,⁴⁶ contained provisions for the removal of toll-houses, and the addition of their sites to the road by the turnpike trustees.

Toll houses.

By the Annual Turnpike Acts Continuance Act, 1870,⁴⁷ “where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly. Provided that for the purposes of this Act such bridges

Bridges on disturnpiked roads.

(35) Nos. 16, 18, and 22-26, *post*, Vol. II., p. 1380.
(36) 5 Edw. VII. c. 11, s. 4.
(37) As to turnpike roads and trustees, see Note, *infra*.
(38) See s. 25 (1), *post*, Vol. II., p. 2038.
(39) 45 & 46 Vict. c. 38, s. 21 (2).
(40) *Re Earl of Stamford and Warrington's Settled Estates*; *Payne v. Grey* (No. 2), L. R. 1911, 1 Ch. 648; 80 L. J. Ch. 361; 105 L. T. 12; 75 J. P. 346; 9 L. G. R. 719. See also *post*, Vol. II., p. 2041.
(41) *Scott v. Brown* (1904), 68 J. P. 181; 2 L. G. R. 441, affirmed in C. A., 69 J. P. 89; 4 L. G. R. 103. See also *Ballard v. Wands-worth B.C.* (1906, K. B. D.), 4 L. G. R. 708.
(42) See s. 3, *post*, Vol. II., p. 1898.
(43) See s. 11 (4), *post*, Vol. II., p. 1895.
(44) See *ante*, p. 26.
(45) 4 Geo. IV. c. 95, ss. 55, 57, 63.
(46) 29 & 30 Vict. c. 105, s. 2; 34 & 35 Vict. c. 115, s. 17; 38 & 39 Vict. c. exciv., s. 9.
(47) 33 & 34 Vict. c. 73, s. 12.

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shall be treated as if they were bridges built subsequently to the passing of " the Highway Act, 1835.

This enactment applies to all bridges which the turnpike trustees were liable to repair, whether they ever actually repaired them or not.⁴⁸ And the proviso has reference to sect. 21 of the Highway Act, 1835,⁴⁹ which enacts that " if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge bound to repair the said highways : Provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof."

Adoption of turnpike roads.

The Annual Turnpike Acts Continuance Acts, 1873 and 1874,⁵⁰ enabled the Local Government Board to deal with the mortgage debts of turnpike trusts when any highway board or local authority were desirous of taking over the maintenance of the roads of the trust.

South Wales highways.

Under the South Wales Highway Act of 1860⁵¹ (as amended by the South Wales Highway Act Amendment Act, 1878,⁵² and by the Local Government Acts, 1888⁵³ and 1894⁵⁴), which is in force in the six South Wales counties, namely, the counties of Brecknock, Cardigan, Carmarthen, Glamorgan, Pembroke, and Radnor, a rural district council may contract with the county council or an urban district council for the repair and maintenance by the rural district council of all or any of the highways under the care of the county council or urban district council, or of the highways over and at the ends of bridges, which are maintainable at the expense of the county or of any borough; or any other highways which are maintainable at the expense of the borough: and such rural district council may so contract upon such terms as to the payments to be from time to time made to them in respect of their undertaking such repairs and maintenance as may be agreed upon between the parties. While any contract made under this provision is in force the rural district council and their surveyor " shall, in respect of the repairs and maintenance of the highways to which such contract relates, have and perform the same powers and duties and be subject to the same responsibilities as with regard to highways within the " rural district, " and the other contracting party shall be divested of all powers, duties, and responsibilities in respect of such repairs and maintenance, and all money payable under such contract shall be paid out of the moneys which would have been applicable to defray the expenses of the repair and maintenance of such highways if such contract had not been made."

The South Wales Highway Act is repealed in the districts of Llanelly,⁵⁵ Aberavon,⁵⁶ Briton Ferry,⁵⁷ and Llanwonno (portion of the district of Mountain Ash).⁵⁸

Further as to highways in South Wales, see the Note to sect. 13 of the Local Government Act, 1888.⁵⁹

(48) *Reg. v. Somerset Inhabitants* (1878), 38 L. T. 452.

(49) 5 & 6 Wm. IV. c. 50, s. 21.

(50) 36 & 37 Vict. c. 90, s. 15; 37 & 38 Vict. c. 95, s. 11.

(51) 23 & 24 Vict. c. 68, s. 20.

(52) 41 & 42 Vict. c. 34.

(53) See s. 13, *post*, Vol. II., p. 1904.

(54) See s. 25 (1), *post*, Vol. II., p. 2038.

(55) 28 & 29 Vict. c. 108, s. 2.

(56) *Ibid.*

(57) 29 & 30 Vict. c. 79, s. 2.

(58) 30 Vict. c. 21, s. 4.

(59) *Post*, Vol. II., p. 1905.

Sect. 149.

REGULATION OF STREETS AND BUILDINGS.

Sect. 149. All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they may think fit, and may place and keep in repair fences and posts for the safety of foot passengers.

Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

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Highways repairable by the Inhabitants at large.

By sect. 4, "if not inconsistent with the context . . . 'street' includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not." The meaning of this definition is discussed in the Note to that section.¹

Eve, J., considered that, though there is no vesting of highways repairable by rural district councils in such councils, they "have control" of the surface to a depth of eighteen inches.²

The subject of the liability to repair highways is dealt with at length in "Glen's Law Relating to Highways." It will suffice to state here that by the common law all ways dedicated to the use of the public were *primâ facie* repairable by the inhabitants at large of the parishes in which they were situated; and that the inhabitants were liable to be indicted for suffering any highway in their parish to become impassable for want of repair, and could only avoid the duty by showing a liability in some other body of persons or some particular person.

In the present section "'repairable by the inhabitants at large' seems to mean primarily so repairable, and not ultimately as in the case of a highway repairable *ratione tenuræ*."³ And *per* Lord Halsbury, L.C.: "Over and over again it has been decided that where a person is bound *ratione tenuræ* to repair a main road, and becomes insolvent, the obligation immediately falls upon the parish, and that the parish, or the authority whatever it is, is bound to take upon itself the repair. You cannot, for reasons of public policy, which are obvious enough, allow the roads to get out of repair. The obligation has always been held to be absolute and everlasting, and you cannot get rid of it except by statute."⁴

Since the passing of the Highway Act, 1835, however, the mere dedication of a new highway has not been sufficient to throw the burden of maintaining it upon the parish, for that Act required certain formalities to be observed and the consent of the vestry, or finding of the magistrates that the road was of public utility, to be obtained before the highway could become repairable by the inhabitants at large.⁵ Sects. 146, 147, and 152 of the present Act, sect. 41 of the Public Health Acts Amendment Act, 1890,⁶ and sects. 19 and 20 of the Private Street Works

Vesting of streets, etc. in urban authority. P.H., s. 68, 15 & 16 Vict. c. 42, s. 13.

Definition of street.

Rural districts.

Common law liability to repair.

Adoption of maintenance.

(1) *Ante*, p. 23.

(2) *Schweder v. Worthing Gas Co.* (No. 2), *post*, Vol. II., p. 1204. On this point, see L. R. 1913, 1 Ch. at p. 124.

(3) *Per* Lindley, L.J., in *Austerberry v. Oldham Cpn.*, *post*, p. 361, and *per* Hannen, J., in *Gibson v. Preston Cpn.*, *post*, p. 298.

(4) *Sandgate U.D.C. v. Kent C.C.* (1898), 79 L. T. 425.

(5) 5. & 6 Wm. IV. c. 50, s. 23. And see the summing-up of Wills, J., approved by the Court of Appeal, in *Eyre v. New Forest Highway Bd.* (1892), 56 J. P. 517.

(6) *Post*, Part I., Div. II.

Sect. 149, n.	Act, 1892, ⁷ prescribe methods by which new roads or bridges or existing streets may be rendered repairable by the inhabitants at large. District councils may also "take upon themselves" the maintenance, repair, cleansing, or watering of streets and roads; ⁸ and new streets which they make under sect. 154 will have to be maintained by them. ⁹
Main roads.	Certain disturnpiked roads and other "main roads" are now repairable by the county council, under the Local Government Act, 1888, ¹⁰ unless they have been retained by an urban district council, or unless an urban or rural district council have undertaken their maintenance.
Extra-ordinary traffic.	The expenses of making good damage caused to a highway repairable by the inhabitants at large by extraordinary traffic, or traffic of excessive weight, may be recovered from the person by or in consequence of whose order the traffic was conducted, under the Highways and Locomotives Amendment Act, 1878, as amended by the Locomotives Act, 1898. ¹¹
Private street works.	Sect. 150 of the present Act, and the Private Street Works Act, 1892, ⁷ provide for the paving and improvement of streets which are not highways repairable by the inhabitants at large, at the expense of the owners of the adjoining premises. See also sect. 19 of the Public Health Acts Amendment Act, 1907, ¹² as to "urgent repairs" at such expense.
Vaults, etc., under streets.	Where the Public Health Acts Amendment Act, 1890, ¹³ has been adopted, vaults, arches, and cellars under streets, and openings into them, are to be kept in good condition and repair by the owners or occupiers, and if they are not, the urban district council may after notice cause them to be repaired or put into good condition, and recover the cost from the owners or occupiers. See also sect. 26 of the present Act as to the construction of vaults, etc., under streets.
Precautions during repairs.	With regard to the precautions to be taken to protect the public during the execution of repairs to the streets and sewers, see the provisions of the Towns Improvement Clauses Act, 1847, ¹⁴ and the Public Health Acts Amendment Acts, 1890 ¹⁵ and 1907. ¹⁶
Highway.	A road or path may be a "highway," or way which all the public are entitled to use, either because it has been rendered a highway by or in pursuance of some statute, as, for instance, where a new street is made by a district council under their statutory powers, or because at some time some absolute owner (including in this expression several persons having between them the absolute ownership) of the soil has dedicated, or ought in the circumstances to be presumed to have dedicated, the way to the use of the public, that is, has thrown it open to the public with the intention that it should remain open to public use permanently, and the public have used it accordingly. <i>Per</i> Brett, J. : ¹⁷ "It is, of course, not obligatory on the owner of land to dedicate the use of it as a highway to the public. It is equally clear that it is not compulsory on the public to accept the use of a way when offered to them." Acceptance by the public is ordinarily proved by user by the public; and user by the public is also evidence of dedication by the owner. Both dedication by the owner and user by the public must concur to create a road otherwise than by statute." ¹⁸
Dedication to use of the public.	
Acceptance by the public.	
Length of time for dedication.	The length of time during which the public have used a way is, in England, ¹⁹ only an element to be taken into consideration when deciding whether the owner intended dedication or a mere revocable licence. ²⁰ Thus, it was held in one case that the erection of a barrier after the way in question had been used by the public without interruption for only eighteen months was too late; ²¹ while in another, where there had been uninterrupted public user for sixty-seven years, it was held that there had been no dedication because throughout that period there had been no person able to dedicate. ²² But where the land over which a road

(7) Set out at end of Note to s. 150, *post*.(8) Under s. 148, *ante*, p. 283.(9) See *Kingston-upon-Hull Loc. Bd. v. Jones*, *post*, p. 314 (32).(10) See s. 11, *post*, Vol. II., p. 1894.(11) See s. 23 of Act of 1878, and Note, *post*, Vol. II., p. 1775.(12) *Post*, Part I., Div. III.(13) See s. 35, *post*, Part I., Div. II.(14) See ss. 79-83, *post*, Vol. II., p. 1627.(15) See s. 34, *post*, Part I., Div. II.(16) See s. 32, *post*, Part I., Div. III.(17) Quoting Blackburn, J., in *Fisher v. Prowse* (1862), 2 B. & S. 770; 31 L. J. Q. B. 212; 8 Jur. (N.S.) 1208; 6 L. T. 711.(18) *Cubitt v. Maxse* (1873), L. R. 8 C. P.

704; 42 L. J. C. P. 278; 29 L. T. 244.

(19) In Scotland there is a fixed period of 40 years, see *per* Lord Blackburn in *Mann v. Brodie* (1885), L. R. 10 A. C. at p. 387.(20) See *Reg. v. Chorley* (1848), 12 Q. B. 515; 2 Jur. 822; 3 Cox C. C. 262, where it was held misdirection to tell a jury that 20 years' public user was necessary. See also *per* Lord Blackburn in *Mann v. Brodie*, L. R. 10 A. C. at p. 386.(21) *North London Ry. Co. v. Islington Vestry* (1872, Q. B.), 27 L. T. 672; 37 J. P. 341; 21 W. R. 226.(22) *Roberts v. James* (1903, C. A.), 89 L. T. 282; 19 T. L. R. 573. See also *Fuller v. Chippenham R.D.C.* (1914, Ch. D.), 79 J. P. 4.

ran had been in strict settlement for 293 years, it was presumed to have been dedicated before the strict settlement commenced.²²

If it can be established that a road has at some time been dedicated, mere non-user by the public, even though coupled with user for private purposes, will not destroy its character as a highway;²³ and an obstruction subsequently erected will have no effect though it may have been allowed to remain for many years,²⁴ particularly if the obstruction was not put up for the purpose of preventing public user.²⁵ But long-continued obstructions or user for private purposes, if acquiesced in by the public, may result in a finding either that the way never was a highway,²⁶ or that the proper steps had been taken to stop it up.²⁷

Dedication of a highway may not be limited to particular persons, such as certain parishioners.²⁸ In a Privy Council case from India, it was held that a highway could not be dedicated solely for the processional ambit of a particular Hindoo idol.²⁹ Nor may dedication be limited to "through traffic" only.³⁰ There cannot be dedication, *e.g.*, for all traffic except coal carts,³¹ but dedication may be limited to foot traffic, or bridle traffic.³² A carriageway is not necessarily a "driftway."³³ A "church way" is not a highway if it only leads to a church,³⁴ though such ways may be highways and are included in the definition of "highway" for the purposes of the Highway Act, 1835.³⁵ Apparently dedication may be limited in point of time, *e.g.*, during floods only.³⁶ It may be subject to existing obstructions, such as gates,³⁷ or to temporary obstructions such as markets,³⁸ or to the right to plough the land.³⁹ A *cul de sac* may,⁴⁰ or may not,⁴¹ be a highway, according to the length and nature of the user. User by the public for "pleasure purposes" only does not as a rule lead to an inference of dedication.⁴² As to the dedication of "tow paths,"⁴³ and the capacity of statutory bodies to dedicate,⁴⁴ see the cases stated below. As to "roadside wastes," see the Note to sect. 26 of the Local Government Act, 1894.⁴⁵ Further, as to the law relating to highways, see the Note to sect. 144, *ante*.

Bodies holding land under statutory duties may not dedicate highways over such land if such dedication is "inconsistent with the proper performance of these duties."⁴⁶

Vice-Chancellor Bacon, upon certain evidence, found that there had been no dedication in fact to the public use of the way then in question, and further laid down the principle that, assuming that the road had been made as the local authority asserted, that would affix no liability upon the owner; that is, if the

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Once a highway always a highway.

Limited dedication.

Dedication by statutory bodies.

Liability to repair.

(22) *Rex v. West Sussex C.C.*, *post*, Vol. II., p. 1771.

(23) *St. Ives Cpn. v. Wadsworth* (1908, Ch. D.), 72 J. P. 73; 6 L. G. R. 306. In this case the private user continued for 18 years. See also *per* Joyce, J., in *Harvey v. Truro R.D.C.*, *post*, Vol. II., p. 2044. On this point, see 1 L. G. R. at p. 763.

(24) *South Eastern Ry. Co. v. Warr* (1923, C. A., *aff.*), M.S. In this case a level crossing gate for foot passengers was kept locked more or less continuously for nearly 30 years. Reported (Ch. D.), 21 L. G. R. 65.

(25) *A.G. (Truro R.D.C.) v. Hemingway* (1916, Ch. D.), 81 J. P. 112; 15 L. G. R. 161.

(26) *Young v. Cuthbertson* (1854), 1 Macq. H. L. C. 455.

(27) *Representative Church Body v. Barry*, 1918 Ir. Ch. 402.

(28) *Poole v. Huskisson* (1843), 11 M. & W. 827.

(29) *Moodelly v. Moodelly* (1910), 1 Glen's Loc. Gov. Case Law 52.

(30) *McRobert v. Reid*, 1914 S. C. (S.) 633; 51 S. C. L. R. 500; 5 Glen's Loc. Gov. Case Law 74.

(31) *Marquis of Stafford v. Coyney* (1827), 7 B. & C. 257.

(32) *Roberts v. Karr* (1808), 1 Camp. 262.

(33) *Ballard v. Dyson* (1808), 1 Taunt. 279.

(34) *Austin's Case* (1688), 1 Vent. 189.

(35) 5 & 6 Wm. IV. c. 50, s. 5, and see, as to such ways, *Brocklebank v. Thompson*, L. R. 1903, 2 Ch. 344; 72 L. J. Ch. 626; 89 L. T. 209; *Farquhar v. Newbury R.D.C.*, L. R. 1909, 1 Ch. 12; 78 L. J. Ch. 170; 100 L. T. 17; 73 J. P. 1; 7 L. G. R. 364.

(36) *Rex v. Northampton Inhabitants*

(1814), 2 M. & S. 262.

(37) *A.G. v. Meyrick* (1915), 79 J. P. 515.

(38) *A.G. v. Horner*, *post*, Vol. II., p. 1430. As to obstructions by street stalls, see *Benjamin v. Bloomstein* (1922), 57 L. J. Jo. 365. See also *post*, p. 296.

(39) *Dennis & Sons v. Good*, *post*, Vol. II., p. 1654. See also *Shearburn v. Chertsey R.D.C.* (1914, Ch. D.), 78 J. P. 289; 12 L. G. R. 622. This case also dealt with evidence of "reputation."

(40) *Josselsohn v. Weiler* (1911, K. B. D.), 75 J. P. 513; 9 L. G. R. 1132. See also footnote (16), *post*, p. 323.

(41) *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.*, L. R. 1916, 1 Ch. 31; *Vine v. Wenham* (1915, Ch. D.), 84 L. J. Ch. 913; 79 J. P. 423; 14 L. G. R. 180.

(42) *Webb v. Baldwin* (1911, Ch. D.), 75 J. P. 564; *A.G. v. Antrobus*, L. R. 1905, 2 Ch. 188; *Green v. Leek R.D.C.* (1911, Ch. D.), 3 Glen's Loc. Gov. Case Law 67; *A.G. (Heys-ham U.D.C.) v. Sewell* (1919, C. A.), 88 L. J. K. B. 425; 120 L. T. 363; 83 J. P. 92; 17 L. G. R. 197.

(43) *Thames Conservators v. Kent* (1916, C. A.), 83 J. P. 85; 17 L. G. R. 88.

(44) *Taff Vale Ry. Co. v. Pontypridd U.D.C.* (1905, Ch. D.), 69 J. P. 351; 3 L. G. R. 1339; *Great Central Ry. Co. v. Balby-with-Herthorpe U.D.C.*, L. R. 1912, 2 Ch. 110; 81 L. J. Ch. 596; 106 L. T. 413; 76 J. P. 205; 10 L. G. R. 687.

(45) *Post*, Vol. II., p. 2042.

(46) *Per* Scrutton, J., in *Thames Conservators v. Kent*, L. R. 1918, 2 K. B. at p. 293 (as to towing path). But see *S. E. Ry. Co. v. Warr*, *supra*.

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Liability to
repair—*cont.*

owner had thrown open his land from end to end, and had permitted the public to traverse and use a passage over it at their pleasure, that would not make him liable to keep it in repair. He continued, however, as follows: "In the public interest a highway must and ought to be repaired, and the legal liability so to repair rests of necessity upon the inhabitants at large."⁴⁵ This last proposition was in accordance with the law as it was at the time of the passing of the Highway Act, 1835; but sect. 23 of that Act above mentioned⁴⁶ relieves the inhabitants of the liability which the common law would otherwise have thrown upon them with respect to new highways, in cases where the procedure prescribed by that section, or by, *e.g.*, sect. 152 of the present Act, has not been adopted.

The distinction between a "highway," or "public highway" and a "highway repairable by the inhabitants at large," is illustrated by a case, in which, by virtue of a local Act, an action was brought by a local board to recover certain expenses declared by the board to be "private improvement expenses" under sect. 69 of the Public Health Act, 1848. It was pleaded that the street in question was a "public highway." The replication alleged that it was not and never had been a "public highway repairable by the inhabitants at large;" and on demurrer to this replication it was held that the plea was nought, because it merely alleged the street to be a highway, and not that it was a highway repairable by the inhabitants.⁴⁷ The distinction was not observed in framing the 69th section of the Public Health Act, 1848, which applied to "any present or future street, or any part thereof (not being a highway)," and it was therefore enacted⁴⁸ that the term "highway" in that and the following section of the Public Health Act, 1848, should mean "any highway repairable by the inhabitants at large;" while sect. 150 of the present Act is expressly limited to "any street within any urban district (not being a highway repairable by the inhabitants at large)."

An enactment in a local Act similar to sect. 150, but extending to any street "whether a public highway or not," was held to extend to highways repairable by the inhabitants at large.⁴⁹

A street made before the passing of the Highway Act, 1835, in the town of Bradford, had been repaired by the owners of the land in the year 1828, and the public had ever since been allowed freely to pass through it, and great numbers had used it; but there had been no formal dedication or certificate of justices under sect. 23 of that Act, rendering the township liable to repair it, and it had never in fact been repaired by any one since the above date, and did not need repair. In the year 1851 the local board called on the adjoining owner to sewer, level, and pave it under sect. 69 of the Public Health Act, 1848, and on his refusal, did the work themselves, and obtained an order of justices on him to pay the expenses; but on a case stated for the opinion of the Queen's Bench, it was held that there was ample evidence that the road was a highway dedicated to and adopted by the public, and the decision of the justices was reversed accordingly.⁵⁰

Turnpike
road.

A road made in pursuance of a temporary Turnpike Act was held to be, during the continuance of the Act, a highway repairable by the inhabitants at large, in respect of which such inhabitants could be indicted for non-repair, although the trustees had power to repair it and to take tolls from passengers.⁵²

With reference, however, to another road which had been made by turnpike trustees under their special Act, Coleridge, J., said, that on the expiration of the Act things then reverted to the state they were in at common law before the Act passed; that the owner of the land which had been taken for the turnpike road might resume it, and the parish might decline further to repair it, or the public to use it; but that the owner might continue to allow the public to use the road, and if the public did use it as a highway the burden of repair would fall upon the parish, whether they would or not, sect. 23 of the Highway Act, 1835, being inapplicable to the case.⁵³

Modern road

On the other hand, the Bradford case above cited was followed by a county court judge, but the evidence of the public use of the road in question having related only to a period long subsequent to the Highway Act, 1835, his decision (that sect. 150 was not applicable to the road) was reversed on appeal.⁵⁴

(45) *Healey v. Batley Cpn.* (1875), L. R. 19 Eq. 375; 44 L. J. Ch. 642.

(46) *Ante*, pp. 285, 286.

(47) *Sunderland Cpn. v. Herring* (1853), 17 J. P. 741.

(48) 15 & 16 Vict. c. 42, s. 13.

(49) *Ashton-under-Lyne Cpn. v. Pugh* (1897, C. A.), 67 L. J. Q. B. 32; 77 L. T. 583; 61 J. P. 788.

(50) *Illingworth v. Montgomery* (1860), 2

L. T. 726; 24 J. P. 101.

(52) *Reg. v. Lordsmere Inhabitants* (1850), 15 Q. B. 689; 15 Jur. 82; 19 L. J. M. C. 215; 4 New Sessions Cases 205.

(53) *Reg. v. Thomas* (1857), 7 E. & B. 399; 3 Jur. (N.S.) 713; doubted by Lord Dunedin in *Cababé's Case*, *post*, p. 289 (61), see L. R. 1914 A. C. at pp. 117, 118.

(54) *Beeston U.S.A. v. Cotton* (1891), M.S. and 90 L. T. Jo. 227.

And in another case a road, which had not sufficient houses erected along it to render it a street in the ordinary sense of the term, had become a highway, but the only evidence of user of it before 1835 was consistent with its having been then a mere occupation road, or if public, a mere footpath. Some slight repair had been done to the street by the rural sanitary authority (who subsequently obtained urban powers under sect. 150), and they had, by acquiring land from the owners, widened the street for their own and the public convenience, the street forming an approach to their sewage farm; but there was no evidence of, and it was not alleged that there had been, any formal adoption of the liability to repair it by the parish or highway authority. It was accordingly held that it was not repairable by the inhabitants at large, and that sect. 150 could be applied to it.⁵⁵

A road was held to be a highway repairable by the inhabitants at large, though there was no evidence that it had ever been repaired at the public expense.⁵⁶

Sargant, J.,⁵⁷ said: "The absence of repair at the public expense has not been such strong negative evidence since by the operation of sect. 23 of the Highway Act, 1835, dedication to the public has not in itself involved repair at the public expense." But the absence of such repairs is, even now, an element to be considered.⁶²

Certain inclosure commissioners, by their award, made in 1849, set out a public highway which ran in the same track as, and included, but straightened and widened, an ancient highway repairable by the parish. Before and since the award, the parish had done repairs to the road, but the commissioners had taken no steps for putting the road into complete repair pursuant to the Inclosure Act,⁵⁸ nor had there been any declaration by justices at their special sessions that the road had been fully and sufficiently formed, completed, and repaired under sect. 23 of the Highway Act, 1835. In these circumstances it was held that the road was not repairable by the inhabitants at large, and the parish was not indictable.⁵⁹

In a later case it appeared that a road was originally set out as a private road under an inclosure award of 1789, and the adjoining owners or occupiers were directed by the award for ever after to keep it in repair. There was, however, sufficient evidence of such user by the public before the Highway Act, 1835, as would have supported the presumption of dedication in an ordinary case; and it was accordingly held that notwithstanding the provisions of the award the road had become a highway repairable by the inhabitants at large, and that the inhabitants could be indicted for non-repair of it.⁶⁰

It has now been held, in cases arising under the Private Street Works Act, 1892, that, where ways are set out under such awards before 1836, and after the award are used uninterruptedly by the public, they may be highways repairable by the inhabitants at large, even though they were only set out as "private occupation ways."⁶¹

A street was made in the year 1830, connecting two public highways, and opened throughout to the public, the owner of the land intending it to be used as a common and public highway, and it had ever since been adopted and used uninterruptedly as such; but there was in force at the time of the dedication a local Act for paving, lighting, and cleansing the town, by which it was enacted that when any new streets should be made in the town, and well and effectually flagged and paved to the satisfaction of the improvement commissioners appointed under the Act, the commissioners, on application by the owner or owners of the soil, should, by writing under their hands, declare the same to be public highways, and that from and after such declaration the same should be deemed and taken to be highways and be repaired by the commissioners. The commissioners had never declared the street a public highway under this enactment, and neither they, nor the landowners, nor, when the Public Health Act was put in force in the

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Absence of repairs at public expense.

Inclosure award roads.

Local Acts.

(55) *Fenwick v. Croydon R.S.A.*, L. R. 1891, 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. 645; 55 J. P. 470.

(56) *A.G. (Robinson's Trustees) v. Watford R.D.C.*, L. R. 1912, 1 Ch. 417; 81 L. J. Ch. 281; 75 J. P. 74; 10 L. G. R. 346. See also *A.G. (Hastie) v. Godstone R.D.C.* (1912, Parker, J.), 76 J. P. 188; 3 Glen's Loc. Gov. Case Law 71.

(57) In *Hull Cpn. v. N. E. Ry. Co.*, 12 L. G. R. at p. 595. Overruled in C. A. on ground of insufficiency of evidence of public user—see *ante*, p. 287.

(58) 41 Geo. III. c. 109, ss. 8, 9.

(59) *Reg. v. East Hagbourne (Inhabi-*

tants) (1859), 28 L. J. M. C. 71; 1 Bell. C. C. R. 135; 5 Jur. (N.S.) 346.

(60) *Reg. v. Bradfield* (1874), L. R. 9 Q. B. 552; 43 L. J. M. C. 155; 30 L. T. 700; 38 J. P. 536; see also *Reg. v. Horley Inhabitants* (1863), 8 L. T. 382; 11 W. R. 433.

(61) *Cababé v. Walton-on-Thames U.D.C.*, L. R. 1914 A. C. 102; 83 L. J. K. B. 243; 110 L. T. 674; 78 J. P. 129; 12 L. G. R. 104. See also *Wembley U.D.C. v. Barham* (1912, Wealdstone P.S.), 77 J. P. Jo. 4; 3 Glen's Loc. Gov. Case Law 90; *Edmonton U.D.C. v. Oliver*, *post*, p. 344.

(62) See the *New Forest Case*, *ante*, p. 285 (5).

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district, the local board, had ever repaired it. In these circumstances it was held that though the street would have been a highway which the inhabitants at large would have been bound to repair, if the matter had rested on the common law, the provisions of the local Act prevented it from being so repairable without adoption by the commissioners, and that therefore the local board could cause it to be repaired at the expense of the owners under sect. 69 of the Public Health Act, 1848.⁶⁰ The foregoing decision was affirmed by the Exchequer Chamber in a subsequent case,⁶¹ in which the court held that the fact that the local Act had been repealed did not render null and void the effect which that Act had, while it was in existence, of making the road not repairable by the inhabitants at large.⁶² This last case was distinguished in another, in which a local Act exempted all persons paying the rates levied by the commissioners under that Act from all other charges for paving and lighting the streets. The Act did not require a street to be adopted by the commissioners before it could become repairable by the inhabitants, and it was held not to have prevented a street, which had been open to the public since 1819, from becoming repairable by them.⁶³

Private Acts.

Before 1827 the public wandered on foot without restriction along wild uncultivated and unenclosed land facing the sea. This land was in strict settlement. In 1827 Jacob Earl of Radnor, the life tenant, developed it under a private Act of Parliament,⁶⁴ and constructed across it a roadway to which from then onwards the public were restricted. Houses were erected along the road and toll gates were put up across the road. Spaces were left for foot passengers, and tolls were only charged for carriages. Notice boards were put up containing the words "Private road" and "Private road to Sandgate." The road was never repaired by the local authority, and was not lighted by them until after 1875. There was no statutory adoption of the road by the local authority. It was always repaired by Lord Radnor, and in 1851 another part of the same road was, by arrangement with the Folkestone Commissioners, repaired by Lord Radnor and taken over by them. In 1910 the local authority duly served notices under the Private Street Works Act, 1892, for the purpose of making up a certain portion of this road as a private street. The frontagers objected before the justices that the road, having been dedicated as a public footway before 1836, was a "highway repairable by the inhabitants at large." The local authority contended that the road had not been dedicated for any purpose before 1836, and that, even if it had been dedicated as a public footpath before that date, that fact did not render the road "repairable by the inhabitants at large" so as to take it out of the Act of 1892, for those words meant repairable for all purposes. The justices found, *inter alia* (1) that there was no evidence that the road was "required for any purpose except the use of the occupiers of the houses erected along its course their servants tradespeople and visitors"; (2) that "from the year 1831 the road was to some extent used by the inhabitants of Folkestone and Sandgate other than the said occupiers, for business and other purposes"; and (3) that "prior to 1836 the road in question was open to foot-passengers without interruption and has so continued to the present time." The conclusion of the justices was stated in the special case thus: "Upon our findings of fact we come to the conclusion that it was not the intention of Jacob Earl of Radnor in 1827 or later to make and dedicate the road in question as a public highway, that there was, in fact, no dedication of such road as a highway prior to March 20th, 1836, and that since that date there has been no dedication as prescribed by sect. 23 of the Highway Act, 1835." They therefore decided that the road in question was not a highway repairable by the inhabitants at large. The appellants contended that this conclusion meant that there was no dedication for carriage traffic, that on the facts found there was no evidence to rebut the *prima facie* evidence of dedication for foot-passengers and that, on the authority of the *Haslingden Case*,⁶⁵ this dedication, having taken place before 1836, was enough to take the road out of the Act of 1892. The respondents contended that the High Court had no jurisdiction to review the justices' conclusion of fact, which was that there was no dedication for any purpose before 1836. The King's Bench Division held that the decision of the justices was ambiguous, and ordered that the case be remitted with the direction that if they meant that there

(60) *Wallington v. White* (1861), 10 C. B. (N.S.) 128; 30 L. J. M. C. 209; 4 L. T. 290; 7 Jur. (N.S.) 1013.

(61) *Willes v. Wallington* (1863), 13 C. B. (N.S.) 865; 32 L. J. C. P. 86.

(62) See also on this point *Gwynne v. Drewitt*, L. R. 1894, 2 Ch. 616; 63 L. J.

Ch. 870; 71 L. T. 190; 60 J. P. 104.

(63) *Hirst v. Halifax Loc. Bd.* (1870), L. R. 6 Q. B. 181; 40 L. J. M. C. 43; 35 J. P. 261.

(64) Lord Radnor's Estate Act, 1825 (6 Geo. IV. c. xxvii.), s. 5.

(65) *Rishton v. Haslingden Cpn.*, *post*, p. 338.

was no dedication for foot-passengers before 1836 the appeal must be dismissed, but that it must be allowed if they meant that there was such limited dedication.⁶⁵ On receipt of this order, the justices stated that they meant to find that there was no highway for any purpose before 1836. Special leave to appeal to the Court of Appeal was then obtained from the King's Bench Division. The Court of Appeal (Fletcher Moulton, L.J., dissenting) held that, the private Act of 1825 having given Lord Radnor power to "allot and set out a competent part" of his estate "for public squares, roads, streets, ways, avenues, or otherwise, for the use and convenience of the occupiers" on such estate, authorised his dedication of the way in question, although the land was in strict settlement, and that, on the facts stated in the case the justices ought in law to have found that there was a highway for foot-passengers before 1836, and accordingly quashed the provisional apportionment.⁶⁶ But it was held by the House of Lords (Lord Loreburn doubting) that, as there was some evidence on which the justices could find as they did, their decision could not be disturbed, for a question of intention to dedicate was one of fact for them alone.⁶⁷ *Per* Lord Atkinson: ⁶⁸ "The line of reasoning adopted by counsel for the respondents . . . was to this effect: 'proof of open uninterrupted and continuous user raises a *presumptio juris* in favour of dedication. If evidence be not produced to rebut this presumption, it must prevail. Tribunals which are exclusive judges of fact, whether juries or justices, are bound in law to act upon it, and their finding against it is an error in law. In the present case there was evidence of user, no rebutting evidence was produced, the justices were therefore bound in law to find that this way was dedicated to the public, and their decision to the contrary was a decision made without any evidence to support it, and consequently, invalid in point of law.' What the justices have really and in fact done is not to find a negative without any evidence to support it, but, they have refused, on the evidence laid before them, to find the affirmative proposition contended for by the respondents that the owner, the Earl of Radnor, had intended to dedicate, and had dedicated, this footway to the public. The existence of this intention, which is crucial in such matters, being an inference of fact, the justices were clearly within their right in so refusing."

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Private Acts
—continued.

The circumstances may, however, be such that, although there may be no direct evidence that the requirements of a statute have been so complied with as to render a highway repairable by the inhabitants at large, the court will presume in the absence of evidence to the contrary that they have been duly satisfied. For instance, an old highway had been diverted in 1842 in pursuance of a resolution of the parish vestry,*but there was no evidence (at the hearing of an objection under the Private Street Works Act, 1892) that any proceedings had been taken under the Highway Act, 1835, to render the substituted road repairable by the inhabitants at large, and it had on one occasion only been repaired by the surveyor of highways. The justices having found as a fact that the road so substituted was a highway repairable by the inhabitants at large, the court upheld their finding, on the ground that, after the lapse of sixty years, the proper formalities might be presumed to have been observed.⁶⁹

Presumption
as to com-
pliance with
formalities.

As to estoppel and *res judicata*, see the Note to sect. 150, under the heading, "Recovery of Expenses," *post*.

Estoppel and
res judicata.

Vesting of Street in Urban District Council.

Generally the freehold of a public highway is in the owner of the soil, for the dedication of the land for the passage of the public is not a transfer of the absolute property in the soil.¹ The "control" of non-vested highways is in the owner of the soil.²

Ownership of
subsoil.

As to the presumption of ownership *usque ad medium filum viæ*, see the case cited below.³

(65) *Brockman v. Folkestone Cpn.* (1911, K. B. D.), 2 Glen's Loc. Gov. Case Law 129-131, 170.

(66) *Brockman v. Folkestone Cpn.* (1912, C. A.), 3 Glen's Loc. Gov. Case Law 87-90.

(67) 5 & 6 Wm. IV. c. 50, s. 23. *Folkestone Cpn. v. Brockman*, L. R. 1914 A. C. 338; 83 L. J. K. B. 745; 110 L. T. 834; 78 J. P. 273; 12 L. G. R. 334. See further extracts from judgments in 5 Glen's Loc. Gov. Case Law 89-93.

(68) L. R. 1914 A. C. at p. 361.

(69) *Leigh - on - Sea U.D.C. v. King* (Q. B. D.), L. R. 1901, 1 K. B. 747; 70 L. J. K. B. 313; 83 L. T. 777; 65 J. P. 243. And see *per* Lord Dunedin in *Cababé's Case*, ante, p. 289, in 12 L. G. R. at p. 114; and *Representative Church Body v. Barry*, ante, p. 287.

(1) *Lade v. Shepherd* (1735), 2 Str. 1004.

(2) See the *Hendon Case*, post, p. 310 (50).

(3) *Mappin Bros. v. Liberty & Co.*, L. R. 1903, 1 Ch. 118; 72 L. J. Ch. 63; 87 L. T. 523; 67 J. P. 91; 1 L. G. R. 167.

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Trees.

The owner is also generally entitled to all profits, trees, and minerals upon and under it,³ and may bring trespass or ejectment.⁴ Where, however, a grand jury had thrown out a bill of indictment preferred against an urban sanitary authority for creating a nuisance by planting a tree in a highway which was vested in them as a street, the occupier of the adjoining premises was subsequently restrained by injunction from cutting down the tree.⁵

Trees which interfere with telegraphic lines may be lopped.²

**Reservation
of minerals.**

It is expressly enacted by sect. 27 of the Highways and Locomotives (Amendment) Act, 1878,⁶ that persons entitled to mines or minerals are to have the same powers of working and getting the same as if the road or highway had not become vested under the present section, but that in such working and getting no damage may be done to the road or highway.

But this enactment was described by Lord Halsbury, L.C.,⁷ as merely having been passed to quiet doubts and fears as to what might have been the effect of the vesting clause.

Where a local Inclosure Act reserved to the lord of the manor all rights, mines, etc., with powers to do all necessary acts for working such mines, etc., as fully as formerly, without making satisfaction, it was nevertheless held that he had no right so to work the mines as to cause the highways to sink, and that he was liable to an action by the persons on whom the duty of keeping the highways in repair was cast, for the recovery of the cost of repairing the injury so done, his rights being subject to the paramount right of the public to have the highways preserved and maintained in a fit and proper condition for the free use of them by all the subjects of the Crown.⁸

With regard to the levelling of a road after a subsidence in it has taken place by reason of the working of minerals beneath it, see the Note on "Subsidence."⁹

**Meaning of
vest.**

The meaning of the term "vest," in connection with public sewers, has been discussed in the Note to sect. 13; and it will be seen from the cases there cited,¹⁰ as well as from those cited below, particularly from the decision of the House of Lords in the Tunbridge case,¹¹ that the "vesting" does not transfer the freehold or the legal ownership of the soil to the urban district council, but only gives them certain limited rights in relation to it. In a case in which it was held that a county council had no power to authorise the laying of tram-lines across a highway so as to cause a nuisance,¹² Farwell, J., said: "Parliament has vested the soil of the roads in them *quâ* roads, and simply to the extent necessary for the purpose of preserving and maintaining and using them as roads."

Under the Sewers Act, 1833,¹³ which vests in commissioners of sewers the property of and in certain lands and other things, it was contended that the land was vested in the commissioners as trustees, but Lord Abinger, C.B., said, "for what purpose? For some peculiar estate created, wholly unknown to the law in any other respect? We do not find that the statute warrants that construction."¹⁴

With reference to a similar vesting clause in the Metropolis Management Act, 1855,¹⁵ Kindersley, V.-C., described the interest of a district board in the soil as a dry strict title to a legal estate, and one which was unaccompanied by any beneficial enjoyment, where the benefit of the public was the only thing which the board had to protect, and refused to grant the board an injunction to restrain a railway company, whose compulsory powers had expired, from widening their bridge over a road, where the new piers would occupy a part of the soil of the road, without causing any material inconvenience to the public.¹⁶ In another case the vesting of the street was held not to render the district board liable for an accident caused

(2) See *post*, p. 308.

(3) 1 Roll. Abr. 392; 1 Burr. 143. And see *per* Bramwell, L.J., in *Coverdale v. Charlton*, L. R. 4 Q. B. D. at p. 117.

(4) *Stevens v. Whistler* (1809), 11 East, 51.

(5) *Surbiton Improvement Comrs. v. Metcalf*, 1889 Loc. Gov. Chron. 216; *Times*, Nov. 14th, 1888. In *Reg. (Hammond) v. Lewes Cpn.* (1886), *Times*, March 9th, p. 3, col. v., the defendants were fined 1s. on an indictment for obstructing a highway by planting on it ten trees.

(6) *Post*. Vol. II., p. 1791.

(7) In *Tunbridge Wells Cpn. v. Baird*, *post*, p. 294.

(8) *Benfieldside Loc. Bd. v. Consett Iron Co.* (1877), L. R. 3 Ex. D. 54; 47 L. J. Ex. 491; 38 L. T. 530; see also *London and*

North Western Ry. Co. v. Evans, L. R. 1893, 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630. See also *post*, p. 303.

(9) *Post*, p. 303.

(10) See *ante*, pp. 52, 53.

(11) *Tunbridge Wells Cpn. v. Baird*, *post*, p. 294.

(12) *A.G. v. Barker* (1900), 83 L. T. at p. 247, col. ii.; 16 T. L. R. 502.

(13) 3 & 4 Wm. IV. c. 22, s. 47.

(14) *Stracey v. Nelson* (1844), 12 M. & W. 543; 13 L. J. Ex. 97; followed in *Nesbitt v. Mablethorpe U.D.C.*, *ante*, p. 12.

(15) 18 & 19 Vict. c. 120, s. 96.

(16) *Wandsworth Bd. of Works v. London and South Western Ry. Co.* (1862), 31 L. J. Ch. 854; 8 Jur. (N.S.) 691.

by a dangerous railway bridge, which had been erected before the road became vested in them.¹⁷

The term "vest" was thus explained by Bramwell, L.J.: "What is the meaning of the word 'vest' in this section? The Legislature might have used the expression 'transferred' or 'conveyed,' but they have used the word 'vest.' The meaning I should like to put upon it is, that the street vests in the local board *quâ* street; not that any soil or any right to the soil or surface vests, but that it vests *quâ* street. I find some difficulty in giving it a meaning, and I do not know how far it adds to the words 'shall be under the control of it.' The meaning I put upon the word 'vest' is, the space and the street itself, so far as it is ordinarily used in the way that streets are used, shall vest in the local board. . . . 'Street' comprehends what we may call the surface, that is to say, not a surface bit of no reasonable thickness, but a surface of such a thickness as the local board may require for the purpose of doing to the street that which is necessary for it as a street, and also of doing those things which commonly are done in or under the streets; and to that extent they have a property in it." In the case in which this statement was made, it was considered by the Court of Appeal that the urban authority had, to a certain depth of the land and to the whole surface, the ordinary rights of proprietors; and it was accordingly decided that the local board could demise the right of pasturage on the sides of a road which was vested in them.¹⁸ With reference to this case, James, L.J., subsequently¹⁹ pointed out that in the view of the learned judges the soil and freehold in the ordinary sense, that is, the soil from the centre of the earth up to an unlimited extent into space, did not pass to the urban authority, and that no stratum or portion of the soil, defined or ascertainable like a vein of coal, or stratum of iron stone, or anything of that kind, passed to the authority, but that they had only the surface, and with the surface such right below the surface as was essential to the maintenance and occupation and exclusive possession of the street and the making and maintaining the street for the use of the public. And he added that it seemed to him very reasonable to interpret the enactment in a way which gave everything that was wanted to be given to the public authority for the protection of the public rights without any unnecessary violation of the rights of the landowner, and to say that according to its true construction what is to vest is not those pieces of property which have now got the name and are distinguished by the name of street, but those things which now, or at any time hereafter, shall for the time being be streets and highways within the district.

The interest in so much of the soil as constitutes the "street" which is vested in the local authority was described by Farwell, L.J., as being "either a statutory fee simple conditional or statutory freehold."²⁰

So also the board of works of a district in the metropolis were held merely to possess a limited property in the surface of the street, and over as much space above and below the surface as came within the range of ordinary user, and not to be entitled to complain of a telegraph wire thirty feet above the surface which caused no appreciable damage.²¹ But a local board were held to be entitled, by virtue of the vesting of the streets in them, to set up poles and wires in such streets for lighting them by electricity; and an injunction was granted to restrain the owner of the freehold of a street in which such poles and wires were set up from interfering with them.²²

In a Scottish case the House of Lords held that the provisions of the Waterworks Clauses Act, 1847, authorising the undertakers of waterworks to break up streets and bridges to lay their pipes, did not allow them to remove plates lying on the tops of the girders of a railway bridge which carried a public road, for the purpose of suspending their pipes to the girders. Lord Watson said, "Of course, on the surface of the road there must be a certain extent of air space which is dedicated

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Meaning of
vest—cont.Interest in
soil.Space above
street.Space under
bridge.

(17) *Warner v. Wandsworth Dist. Bd.* (1889), 53 J. P. 471.

(18) *Coverdale v. Charlton* (1878), L. R. 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. 88; 43 J. P. 268; but see *Tunbridge Wells Cpn. v. Baird*, post, p. 294. In *Schweder's Case*, post, p. 294, 18 inches was the depth suggested.

(19) In *Rolls v. St. George's, Southwark, Vestry*, post, p. 296.

(20) *Foley's Charity Trustees v. Dudley Cpn.*, post, p. 295.

(21) *Wandsworth Dist. Bd. of Works v. United Kingdom Telephone Co.* (1884), L. R. 13 Q. B. D. 904; 53 L. J. Q. B. 449; 51 L. T. 148; 48 J. P. 676. As to the regulation of such wires, etc., by bye-laws, see P.H. Acts Am. Act, 1890, s. 13, post, Part I., Div. II.

(22) *Fareham Loc. Bd. v. Smith*, 7 T. L. R. 443; 1891 W. N. 76; 90 L. T. Jo. 466, 467; cited by Kennedy, J., in *Escott v. Newport Cpn.*, post, p. 296.

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to the public with the use of the road; but with the lower part of each girder the interest of the public in my opinion entirely ceases. Whatever is below the lower part of the archway of the bridge, below the girder and altogether outside of the bridge, is not in my opinion dedicated to the public, and is not land or a hereditament in which the public have the least interest."²³ In a previous case Lord Watson had pointed out that the fabric of a railway bridge, as distinguished from the road carried over the railway by the bridge, was not vested in the local authority by reason of the inclusion of bridges (not being county bridges) in the definition of "street."²⁴

Subsoil under street.

The House of Lords, in deciding that an urban authority were not entitled to construct lavatories under the streets, by virtue of such vesting, disapproved of the view that there is transferred to such an authority, in addition to what is necessary for the maintenance of the street as a highway, any soil below that which is sufficient for all the ordinary uses of land below a highway. Lord Halsbury, L.C., adopted the view expressed by James, L.J., in the *Southwark Case*,²⁵ and said that there was given to the urban authority something more than an easement, namely, an actual property in the street and in the materials thereof; and he explained the above-quoted statement of Bramwell, L.J.,²⁶ as meaning only that the authority would be empowered to do such things as are usually done in a street for the purpose of maintaining it as a street, and are incident to the maintenance and repair of the street as a street. Lord Herschell said that he was unable to see why the vesting should be supposed to transfer to and vest in the urban authority the subsoil below for sewerage purposes, because that was provided for, and amply provided for, by other provisions in the statute. And Lord Macnaghten said that the meaning of the enactment was to give the urban authority the control and management of streets coming within the description therein contained, and such statutory right in the nature of a right of property as might be sufficient to authorise them to sue and be sued as occasion might require in the course of such control and management.²⁷

A municipality in whom the public ways were "vested" have since been held by the Privy Council not to be entitled to compensation in respect of portions of such ways taken by a tramway company under statutory powers.²⁸ But a metropolitan sanitary authority were held by the Court of Appeal to be liable to land tax in respect of a public lavatory constructed under a street by virtue of the Public Health (London) Act, 1891,²⁹ which for the purposes of such structures vests the subsoil in the local authority.³⁰ A similar decision was given with regard to a "tube" railway.³¹

Eve, J., said: ³² "As soon as the parties are agreed that a depth of eighteen inches is all that is required for the support of the road, any claim by the road authority of a dedication of soil beyond the eighteen inches is precluded."

Street transferred by private Act.

The transfer of a road to a local authority under a private Act was held only to vest it in them for the purposes of a road, and to give them no right to apply for an injunction to prevent a company, in whom the site of the road had been vested for the purposes of the company's undertaking, from running a pipe or drain under it for the purposes of such undertaking in a manner which would not interfere with the use of the road as a road.³³

Site of street purchased by turnpike trustees.

A distinction which had been adopted by Farwell, J., in the case of a street which was originally a turnpike road and had been constructed by the turnpike trustees on land conveyed to them under the Turnpike Acts for that purpose, was overruled by the Court of Appeal, who held that in such a case the rights given to the urban district council did not extend further than in other cases, and did not empower them to cut down wires for the supply of electricity which had been

(23) *Glasgow, Lord Provost, etc. v. Glasgow and South Western Ry. Co.*, L. R. 1895 A. C. 382; 64 L. J. P. C. 171; 72 L. T. 809; 59 J. P. 788. See also *Taff Vale Ry. Co. v. Pontypridd U.D.C.* (1905), 93 L. T. 126; 69 J. P. 351.

(24) *Great Eastern Ry. Co. v. Hackney Bd. of Works* (1883), L. R. 8 A. C. 691; 52 L. J. M. C. 105; 49 L. T. 509; 48 J. P. 52.

(25) *Post*, p. 296.

(26) In *Coverdale v. Charlton*, ante, p. 293.

(27) *Tunbridge Wells Cpn. v. Baird*, L. R. 1896 A. C. 434; 65 L. J. Q. B. 451; 74 L. T. 355; 60 J. P. 788. See also ante, p. 113, with regard to public conveniences

under streets.

(28) *Sidney Municipality v. Young*, L. R. 1898 A. C. 457; 67 L. J. P. C. 40; 78 L. T. 365.

(29) 54 & 55 Vict. c. 76, s. 44.

(30) *Westminster Cpn. v. Johnson, and the same v. Fuller*, L. R. 1904, 2 K. B. 737; 73 L. J. K. B. 774; 91 L. T. 334; 68 J. P. 549; 2 L. G. R. 1378.

(31) *City of London Land Tax Comrs. v. Central London Ry. Co.*, ante, p. 113.

(32) In *Schweder v. Worthing Gas Co.*, post, Vol. II., p. 1204. For quotation, see L. R. 1913, 1 Ch. at p. 124.

(33) *Poplar B.C. v. Millwall Dock Co* (1904), 68 J. P. 339.

carried over the street at a height of thirty-four feet from the ground by a limited company who had no statutory powers for supplying electricity.³⁴

Where turnpike trustees had acquired a strip of land for widening a turnpike road, and had paid a small fee farm rent to the trustees of a certain charity in respect of it; and after the expiration of the turnpike trust, the local authority had for about twenty-three years continued to pay the rent and then repudiated liability, the Court of Appeal held that a legal origin for the fee farm rent must be presumed, and that the local authority were liable to pay it by reason of the vesting of the road in them.³⁵

The vesting in the urban district council of a street and the control over it will not enable the council, by licensing other persons to interfere with the street, to protect those persons from the consequences of any nuisance to the public or danger to individuals, which may be caused by such interference. And even in the absence of such nuisance or damage it was doubted whether a metropolitan vestry had power to grant the use of a street for the erection of a *châlet* or kiosk for a public urinal and water-closets by a company who might make a profit by the use of it.³⁶ The continuance of a tram-line across a highway, if such tram-line is in fact a nuisance to the public, may be restrained by injunction in an action by the Attorney-General, although the line may have been laid with the sanction of the authority in whom the highway is vested.³⁷

The London County Council being authorised to adapt certain tramways for electric traction, made a temporary line or "turnout" for the diversion of the tramway traffic during the execution of the work. The rails of the "turnout" projected above the surface and caused damage to an omnibus. Warrington, J., held that the making of the "turnout" could not be justified as a work necessary for adapting the tramways to be worked by electricity, for it was only necessary if at all for maintaining the tramcar service uninterrupted.³⁸

An injunction was granted at the instance of the owners of the soil of a street, not only restraining a trading firm from laying pipes in the macadam or made ground of the roadway under a licence from the urban authority, but also requiring them to remove the pipes which they had already laid there.³⁹ But where an electric lighting company had without lawful authority broken up the surface of a street vested in a metropolitan vestry, and placed their pipes and wires about two feet below the surface, the Court of Appeal held that the vestry were not owners of the soil at that depth, and that although the company had acted illegally, the vestry could not maintain an action against them to compel them to remove the pipes and wires, there being no continuing trespass against the vestry.⁴⁰

Where an urban district council had purchased strips of land to widen a highway which was repairable by the inhabitants at large, and, by virtue of a provisional order under the Electric Lighting Acts, had erected on the strips standards for the supply of electric light and energy by overhead mains, it was held by the Court of Appeal that, although the conveyances of the strips had not the effect of vesting the fee simple of them in the council, but only such a stratum as was necessary for street purposes, the vendor was not entitled to a mandatory injunction for the removal of the standards in the absence of evidence that such standards extended above that stratum, but that he was entitled to such an injunction in respect of a standard erected on a strip not included in the conveyance.⁴¹

A telephone company claimed damages from a local authority in Guernsey for cutting down certain wires which they had stretched across a public street, alleging that their statutory rights had been interfered with thereby. But the Privy Council held (apparently on the ground that the company had not the statutory right which they pleaded) that the action failed, although the local authority did not succeed in establishing the right, which they claimed under an alleged custom, to remove wires stretched across public streets without their permission.⁴²

In a subsequent case an electric light company claimed an injunction and

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Licence to interfere with street.

Removal of pipes, &c., from street.

(34) *Finchley Electric Light Co. v. Finchley U.D.C.*, *post*, p. 296.

(35) *Foley's Charity Trustees v. Dudley Cpn.*, cited in Note to s. 176, *post*.

(36) *Mogg v. Bocker*, *ante*, p. 114; see also the *Paddington Case*, *post*, p. 304 (21).

(37) *A.G. v. Barker* (1900), 83 L. T. 245.

(38) *Tilling, Ltd. v. Dick Kerr & Co.*, L. R. 1905, 1 K. B. 562; 74 L. J. K. B. 359; 92 L. T. 731; 69 J. P. 172; 3 L. G. R. 369.

(39) *Salt Union v. Harvey & Co.* (1897), 61 J. P. 375.

(40) *Battersea Vestry v. County of London and Brush Provincial Electric Lighting Co.*, L. R. 1899, 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31.

(41) *Andrews v. Abertillery U.D.C.*, L. R. 1911, 2 Ch. 398; 80 L. J. Ch. 724; 105 L. T. 81; 75 J. P. 449; 9 L. G. R. 1009. See also *post*, p. 334 (7), as to this case.

(42) *National Telephone Co. v. St. Peter Port Constables*, L. R. 1900 A. C. 317; 69 L. J. P. C. 74; 82 L. T. 398.

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damages against an urban district council who had cut the wires carried over a street by the company. In this case the company did not claim any statutory right, but the council claimed the freehold in the soil of the street including the space above it, on the ground that the fee simple had been purchased by the turnpike trustees who made the street. On this ground Farwell, J., dismissed the action, but the Court of Appeal reversed his decision, being of opinion that the council only possessed the same rights as they had in respect of other streets repairable by them, and the wires being admittedly too high to be within the space required for the use of the street as such.⁴³

Limited dedication.

The vesting of the street and the control of the urban authority over it may be subject to certain rights exercisable by private persons, such as the right of holding markets in the street.⁴⁴

Where a county court judge had found that the public had acquired a right to use as a footpath a piece of ground that had been thrown into a street by the lessee of the adjoining premises with the concurrence of the owner, subject to the right reserved by the owner to obstruct such path temporarily by placing furniture for sale upon it in the course of his lessee's business, Lord Alverstone, C.J., said that therefore the *locus in quo* was vested in the corporation so far as the surface was concerned, and it was held that they could not be prevented from erecting on it an iron standard for their tramway cables, the remedy of the lessee being to claim compensation under the Lands Clauses Act.⁴⁵

Closed street.

Before a highway can be obliterated, it is necessary to obtain an order of a court of quarter sessions.⁴⁶ The property in disused streets, which have been closed by such an order, ceases to be in the authority in whom the streets were vested, and the owner of the adjoining land is entitled to convert them to his own use.⁴⁷

Possessory title.

On the diversion of a turnpike road by a railway company under the Railway Clauses Consolidation Act, 1845, in about the year 1850, a portion of the old road was left as a *cul-de-sac*, and a neighbouring landowner had since used it for stacking hay and had erected a cowshed on it. In 1890 the urban district council made a yearly agreement with the county council that this portion of the old road should belong to the former council, the latter paying a certain sum for its maintenance. The urban district council never repaired the road, and it was not used by the public. In an action of ejectment brought by the council against the above-mentioned landowner, Day, J., held that either the highway had been extinguished, or, if not, it was vested in the county council, and gave judgment for the defendant.⁴⁸

A Turnpike Act vested the ground and soil of a turnpike road in the turnpike trustees absolutely, and allowed the trustees to authorise the construction of a tunnel under the road. The tunnel was made by a company in pursuance of a licence from the trustees, and after the Turnpike Act had expired the company remained in occupation for more than twelve years. It was held that they had acquired a prescriptive title to the tunnel.⁴⁹ And churchwardens and overseers were held by the Court of Appeal to have acquired a prescriptive title to a highway subject to the public right-of-way.⁵⁰

Main roads.

The Local Government Act, 1888,⁵¹ enacts that "a main road and the materials thereof, and all drains belonging thereto, shall, except where the urban authority retain the powers and duties of maintaining and repairing such road, vest in the county council." But inasmuch as the Act makes a distinction between the "main road" and the "roadside wastes," and expressly gives the county council "the same powers as a highway board . . . for asserting the right of the public to the use and enjoyment of the roadside wastes," North, J., held that such wastes

Roadside wastes.

(43) *Finchley Electric Light Co. v. Finchley U.D.C.*, L. R. 1903, 1 Ch. 437; 72 L. J. Ch. 297; 88 L. T. 215; 67 J. P. 97; 1 L. G. R. 244.

(44) See *Great Eastern Ry. Co. v. Goldsmid*, *post*, p. 433 (11).

(45) *Escott v. Newport Cpn.*, L. R. 1904, 2 K. B. 369; 73 L. J. K. B. 693; 90 L. T. 348; 68 J. P. 135; 2 L. G. R. 779. Distinguished in *Andrews v. Abertillery U.D.C.*, as to which case see *ante*, p. 295, and *post*, p. 334 (7).

(46) See *Reg. v. Platts*, *post*, p. 361 (32).

(47) *Rolls v. Southwark Vestry* (1880), L. R. 14 Ch. D. 785; 49 L. J. Ch. 691; 43 L. T. 140; 44 J. P. 680.

(48) *Melksham U.D.C. v. Gay* (1902), 18 T. L. R. 358; following *Lord Salisbury v. Great Northern Ry. Co.* (1858), 5 C. B. (N.S.) 174; 5 Jur. (N.S.) 70; 28 L. J. C. P. 40; 23 J. P. 22. But see, as to extinction point, *A.G. (Balby-with-Hexthorpe U.D.C.) v. Great Central Ry. Co.*, L. R. 1912, 2 Ch. 110; 81 L. J. Ch. 596; 106 L. T. 413; 76 J. P. 205; 10 L. G. R. 687.

(49) *Bevan v. London Portland Cement Co.* (1892), 67 L. T. 615.

(50) *Haigh v. West*, L. R. 1893, 2 Q. B. 19; 62 L. J. Q. B. 532; 69 L. T. 165; 57 J. P. 358.

(51) See s. 11 (6), *post*, Vol. II., p. 1895.

did not form part of the main road for the purposes of the vesting clause, and that the owners of the soil and their tenants were therefore still entitled to the herbage, trees, and other growths on the wastes.⁵²

Enforcement of Repair of Highways.

The repair of highways may be enforced by indictment at common law.¹ Sects. 144 and 149 of the present Act do not, however, render an urban district council liable to be indicted for the non-repair of a highway.² But if complaint is made under the Highways and Locomotives (Amendment) Act, 1878,³ the county council may direct an indictment to be preferred against them in order to try the question of their liability to repair the highway.⁴

The costs of such indictments are to be dealt with as if the proceedings were a civil action.⁵

The Criminal Appeal Act, 1907,⁶ provides as follows:—"Notwithstanding anything in any other Act, an appeal shall lie from a conviction on indictment at common law in relation to the non-repair or obstruction of any highway, public bridge, or navigable river in whatever court the indictment is tried, in all respects as though the conviction were a verdict in a civil action tried at assizes, and shall not lie under this Act."

The Highway Acts provide summary modes of procedure for enforcing the duty. The justices at special or petty sessions⁷ may, by order, limit the time within which the authority or persons liable to repair shall perform their duty, and in default of compliance may appoint a person to execute the repairs at the expense of those in default; except in cases where the parties charged with the repair dispute their liability, when the justices are to direct an indictment to be preferred against the inhabitants of the parish in which the highway is situate.⁸ These provisions are, however, practically superseded by the somewhat similar power to make an order limiting the time within which a district council are to execute the repairs,⁹ and on their default to appoint a person to execute them, or, if the liability is disputed, to direct an indictment to be prepared against them, which is given to the county council by the above-mentioned Act of 1878. And in rural districts a provision in the Local Government Act, 1894,¹⁰ enables the county council, on the complaint by a parish council of the default of the rural district council in repairing a highway, either to take over and execute the powers of the district council themselves at the expense of that council, or to limit a time for carrying out the repairs, and if they are not carried out, to appoint a person to carry them out.

In the cases cited below, declarations were granted, in actions in the name of the Attorney General, that highway authorities,¹¹ and others,¹² were liable to repair highways.

No action lay against a surveyor of highways appointed under the Highway Act, 1835,¹³ for damage resulting from an accident caused by his neglect to repair the highway, because although the legislature imposed on the surveyor the duty of repairing the roads, yet he was only the officer of the parish, and as no action could be brought against the latter, it could not be supposed that it was the intention of the legislature that such an action should be maintainable against the officer.¹⁴ *Per* Channell, B.: "This is not a case in which a surveyor of highways has done any act which of itself has caused injury to the plaintiff. If personally or by his servants he had put a heap of stones in the road and left them there at night without being sufficiently protected, that would be an omission to do something to render harmless the act which he had affirmatively done."¹⁵

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Indictment.

Costs.

Appeal.

Summary proceedings.

Action for declaration.

Action for damages.

(52) *Curtis v. Kesteven C.C.* (1890), L. R. 45 Ch. D. 504; 60 L. J. Ch. 103; 63 L. T. 543. Further as to roadside wastes, see *post*, Vol. II., pp. 2042-2045.

(1) See Glen's "Law of Highways," 2nd Edit., Book I., Ch. V.

(2) *Reg. v. Poole Cpn.* (1887), L. R. 19 Q. B. D. 602, 683; 56 L. J. M. C. 131; 52 J. P. 84.

(3) See s. 10, *post*, Vol. II., p. 1770.

(4) *Reg. v. Wakefield Cpn.* (1888), L. R. 20 Q. B. D. 810; 57 L. J. M. C. 52; 52 J. P. 422.

(5) See Costs in Criminal Cases Act, 1908, s. 9 (3), *post*, Vol. II., p. 2212.

(6) 7 Edw. VII. c. 23, s. 20 (3).

(7) 5 & 6 Wm. IV. c. 50, ss. 94-98; 25 & 26 Vict. c. 61, s. 18.

(8) *Rex v. Morse*, 1904 W. N. 114.

(9) A county council were directed by *mandamus* to make such an order in *Rex v. West Sussex C.C.*, *post*, Vol. II., p. 1771.

(10) See s. 16 (1, 2), *post*, Vol. II., p. 2018.

(11) *A.G. v. Watford R.D.C.*, *A.G. v. Godstone R.D.C.*, *ante*, p. 289.

(12) *A.G. v. Great Northern Ry. Co.*, *ante*, p. 282.

(13) 5 & 6 Wm. IV. c. 50, ss. 6, 11.

(14) *Young v. Davis* (1863), 2 H. & C. 197; 10 Jur. (N.S.) 79; 9 L. T. 145.

(15) *Ibid.*, in the Court of Exch., 7 H. & N. 775; 8 Jur. (N.S.) 286; 10 W. R. 524.

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And though the highways within the district "vest" in the urban district council, the common law liability of the inhabitants of a parish to repair its highways is not thereby transferred to the authority. Therefore no action lies against the council at the suit of an individual who has sustained damage in consequence of a neglect to repair a common highway within the district.¹⁶

Non-feasance.

Most of the cases relating to the distinction between "non-feasance" and "misfeasance" have been dealt with in the Note to sect. 308,¹⁷ but it may be mentioned here that the non-liability of a highway authority for mere non-feasance was established by the House of Lords in a case in which a jury had found that a local board had been guilty of negligence consisting of "the combination of leaving a dwarf wall in the footway and not supplying sufficient light." The wall had been made by the adjoining owner some sixteen years previously to sustain the footway where he had cut it away, without the authority or sanction of the local authority, to a depth of about eighteen inches, in order to form a sloping entrance to his stable yard; and the plaintiff having fallen over the wall into the slope after dark.¹⁸

On this ground a metropolitan borough council were held not to be liable for an injury to a person, who fell, in a highway repairable by the inhabitants at large, at a spot where the footpath had fallen away at the entrance to adjoining land which belonged to and was used as a ballast depot by the council, and was at a lower level than the path but had not been lowered by the council.¹⁹

Misfeasance.

Although the neglect to repair a highway, for which an action will not lie, is an offence in the nature of a non-feasance, yet, if there is any actual misfeasance on the part of the urban authority, then an action for damages will lie at the suit of a person injured thereby. Thus, in a case in which a surveyor of highways, having been ordered by the vestry to raise the level of a highway, set out the work, determined the levels, contracted with G. to do the works, and superintended its execution, the Court of Appeal held that he was responsible for the due performance of the work; that he might have divested himself of the responsibility by contracting for the whole work; and that he was liable in an action brought by a person who had sustained damage in the dark through the works being insufficiently lighted and fenced.²⁰ With respect to the limitation of the time within which such an action must be commenced, see the Public Authorities Protection Act, 1893.²¹

Repair by person aggrieved.

Although the non-repair, as well as the obstruction, of a highway is a public nuisance, a distinction was drawn by the Court of Appeal between the right of an individual to abate a nuisance caused by an obstruction to the highway, from which he sustains special damage, and his right to make good by a permanent structure the result of mere non-feasance on the part of those charged with the duty of repairing a highway; and it was held that a person, who was merely entitled as one of the public to use a foot-bridge carrying a highway over a river, was not justified in entering upon the land of another in order, not merely by some temporary makeshift to get across the river (as by putting down a plank or stepping-stone), but to re-erect the permanent bridge. An injunction was accordingly granted restraining the person who had re-erected the bridge from preventing the landowner from removing it.²²

Footway injured by excavation.

As to the repair of footways injured by excavations, see sect. 20 of the Public Health Acts Amendment Act, 1907.²³ Sects. 29 and 30 of that Act also deal with excavations and other places dangerous to persons using highways.

*Materials for Repair of Highways.***Power to obtain materials.**

Powers are given by the Highway Act, 1835,¹ to surveyors of highways to obtain materials for the repair of the highways from commons and waste lands,

(16) *Parsons v. Bethnal Green Vestry* (1867), L. R. 3 C. P. 56; 37 L. J. C. P. 62; 17 L. T. 211; *Gibson v. Preston Cpn.* (1870), L. R. 5 Q. B. 218; 39 L. J. Q. B. 131; 22 L. T. 293; 10 B. & S. 942.

(17) Under heading, "Action for Damages," *post*. But see also *ante*, pp. 66, 80, and *Rochford v. Essex C.C.*, *post*, p. 302.

(18) *Cowley v. Newmarket Loc. Bd.*, L. R. 1892 A. C. 345; 62 L. J. Q. B. 65; 67 L. T. 486; 56 J. P. 805.

(19) *Short v. Hammersmith B.C.* (1910, K. B. D.), 104 L. T. 70; 75 J. P. 82; 9 L. G. R. 204.

(20) *Pendlebury v. Greenhalgh* (1875), L. R. 1 Q. B. D. 36; 45 L. J. Q. B. 3; 33 L. T. 372.

(21) *Post*, Vol. II., p. 1974.

(22) *Campbell Davys v. Lloyd*, L. R. 1901, 2 Ch. 518; 70 L. J. Ch. 714; 85 L. T. 59.

(23) *Post*, Part I., Div. III.

(1) 5 & 6 Wm. IV. c. 50, ss. 46-57.

and subject to certain restrictions from enclosed lands. These powers are limited in certain cases by the Commons Act, 1876.²

As to the non-disqualification of members of parish and non-municipal district councils by reason of interest in a bargain or contract with the council for the supply of materials for making or repairing highways or bridges, or the transport of such materials, see sect. 46 (2) (a) of the Local Government Act, 1894.³

Provision was usually made in Inclosure Acts for the allotment of part of the waste to the surveyors of highways for getting materials. Where such an Inclosure Act authorised the surveyor of highways of a parish to take gravel from certain pits, the local board, who were the successors of the surveyor, though at first considered not to be entitled to work laterally beyond the limits of the pit as it existed at the passing of the Act, were held on appeal to have power to cut the sides of the pit so far as the bed of gravel extended, for the purpose of taking a reasonable amount of gravel for the repair of the highways.⁴

Where the materials on land allotted for highway materials have been exhausted, the land may be sold by the highway authority under the Highway Act, 1835, and amending enactments,⁵ or in certain cases under the Sale of Exhausted Parish Lands Act, 1876,⁶ which enacts that "where land has been allotted to or otherwise acquired by a parish, whether in the name of the surveyor of highways or other trustees, or generally for the purpose of the supply of materials for the repair of the public roads and highways in such parish, and also for the repair of private roads therein, or for some other purpose, public or private, and the materials in such land shall be exhausted, or shall not be suitable or required, and the land shall not be available for such other purpose, if any, the same shall be dealt with as land which falls within the operation of the third section of the Union and Parish Property Act, 1835,⁷ and the Parish Property and Parish Debts Act, 1842,⁸ subject to the provisions hereinafter contained." The Acts here mentioned provided for the sale, exchange, and letting of parish lands by the guardians of the poor with the approval of the Poor Law Commissioners, now the Minister of Health; but the Local Government Act, 1894,⁹ transfers these powers of the guardians to the parish councils.

The Sale of Exhausted Parish Lands Act, 1876,¹⁰ also provides for the settlement of disputed claims to the land, pre-emption by adjoining owners, and reservation of mines or minerals; and enacts that "the [Minister of Health], in dealing with the interest of the parish in the produce of the sale, shall cause such produce to be applied as far as practicable in the repair of the highways in the parish, or in some permanent improvement of the highways, or in an investment, so that the annual dividends may be applicable in aid of the highway rate until the [Minister] shall otherwise order; and the [Minister] shall have the like power of dealing with the produce of the sale of lands under the Highway Acts, if applied to by the surveyor of highways or any authority exercising the powers of such surveyor, where such produce cannot be conveniently appropriated in the manner provided by those Acts."

For other sources of supply of highway materials, see the Note to sect. 144, *ante*.

In an action for an injunction to restrain a local board from inclosing or obstructing the highway in front of the plaintiff's house, and from using the highway as a stone yard and dépôt for road materials, Chitty, J., being of opinion that the plaintiff had suffered special damage by a public nuisance, granted the injunction, but limited it "so as not to preclude the defendants from lawfully exercising over or in relation to the said highway any power or authority which is or may be vested in them by statute or otherwise."¹¹

The Local Government Board stated that they were not aware of any legal objection to the letting by a district council to an adjoining authority of their steam roller, when it is not needed for the purposes of their own district.

Improvements.

Land may be purchased for the improvement of a street under sect. 154 of the present Act, *post*.

An agreement between a metropolitan borough council and the owners of a

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Supply of materials by members.

Gravel-pit allotments.

Sale of exhausted allotments.

Other sources.

Obstruction of highway by road materials.

Steam roller.

Purchase of land.

Agreement for widening road.

(2) See s. 20, *post*, Vol. II., p. 1461.

(3) *Post*, Vol. II., p. 2068.

(4) *Ellis v. Bromley Loc. Bd.* (1876), 45 L. J. Ch. 763; 35 L. T. 182; 24 W. R. 716.

(5) 5 & 6 Wm. IV. c. 50, s. 48; 8 & 9 Vict. c. 71. See also L. G. Act, 1894, s. 52 (3), *post*, Vol. II., p. 2087.

(6) 39 & 40 Vict. c. 62, s. 1.

(7) 5 & 6 Wm. IV. c. 69.

(8) 5 & 6 Vict. c. 18.

(9) See s. 6 (1, d), *post*, Vol. II., p. 2001.

(10) 39 & 40 Vict. c. 62, ss. 2-6.

(11) *Grosvenor v. Sutton Loc. Bd.*, 1888 W. N. 223.

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public-house, by which the latter agreed to throw into the highway a "draw-up" or piece of ground on which a watering-trough and signpost stood, on the terms that they should have the right to have a signpost near the public-house, either on the footpath or on the high-road, was held by the Court of Appeal to be justified under the powers of improving streets given to the council by the Metropolitan Acts; and the "draw-up" having been thrown into the road accordingly, an appeal against an injunction granted by Lawrence, J., to restrain the council from removing the signpost, after its re-erection on the edge of the footpath, was dismissed.¹²

Bona fide improvement.

The King's Bench Division had made absolute a rule for a writ of *certiorari* to remove an order of the council of the borough of Brighton for payment of the cost of paving with "tarmac" (a then new form of tar macadam) a certain street which was at the time in good repair as a road macadamised in the ordinary manner, on the ground that the paving was executed on the application of the Automobile Club to provide a surface suitable for certain intended motor speed trials. The Court of Appeal, however, distinguished between the purpose of the work and the immediate motive which induced the council to carry it out at the time in question; and as the work effected an improvement of the street which was desirable in the interests of the town apart from the intended motor speed trials, the decision of the Court below was reversed, Fletcher Moulton, L.J., observing that there was no evidence that convinced him that those who voted in favour of the improvement had not a *bonâ fide* belief that the alteration of the road would be for the benefit of the public to such an extent that they were justified in spending the required amount of public money upon it.¹³

Alteration of character of road.

In an action commenced in the Chancery Division, and tried at assizes by Channell, J., the learned judge held that an urban district council were not entitled, as against the owner of the soil, to improve a public park or prime way in such a manner as to alter its character, as by building bridges where no bridges previously existed, or by making cuttings so as to alter substantially the level of the highway.¹⁴

Gas and electric light.

With regard to lighting streets and public places with gas, see sects. 161—163, and the Notes to those sections; and with regard to electric lighting, see the Electricity (Supply) Acts, 1882 to 1922.¹⁵

Lighting Streets.

Meaning of "cause."

"Cause to be paved" may be satisfied by exercising the power to compel others to do the work.¹⁶

Negligence.

Where a local authority take upon themselves the making up of a road, and the work is of itself likely to be dangerous to the public unless carefully done, a duty is cast upon them to see that no dangerous obstructions to passengers using the road are allowed to exist; and this duty is not evaded by employing an independent contractor.¹⁷

Where an urban district council in repairing a highway spread some five inches of granite over the whole width for a distance of forty or fifty yards, without previously scarifying or watering it, and one of the horses drawing a heavy waggon, which could not be turned back by reason of the narrowness of the road, died from a rupture of the heart caused by the strain of pulling the waggon over the granite, the Divisional Court and the Court of Appeal considered that the finding of negligence on the part of the council by a county court jury was supported by the evidence; but Lord Alverstone, C.J., and the Court of Appeal were of opinion that, as the driver had elected to go forward without the assistance from the engine of the council's steam roller, which it appeared he might have obtained, the loss of the horse was not due to such negligence so as to render the council responsible for it.¹⁸

Paving.

(12) *Hoare & Co. v. Lewisham Cpn.* (1902), 87 L. T. 464; 67 J. P. 20.

(13) *Rex (Shoemith) v. Brighton Cpn.* (1907), 96 L. T. 762; 71 J. P. at p. 267; 5 L. G. R. 584. Further as to the "bonâ fide" exercise of statutory powers, see the *Hemsworth Case*, ante, p. 110 (20); and the *Manchester Case* cited in Note to Housing Act of 1909, s. 17, post, Part II., Div. III.

(14) *Radcliffe v. Marsden U.D.C.* (1908), 72 J. P. 475; 6 L. G. R. 1186; following

Sutcliffe v. Sowerby Highway Surveyors (1859), 1 L. T. 7.

(15) *Post*, Vol. II., pp. 1276-1348, 2364-2373.

(16) *Per* Ridley, L.J., in *Ashton-under-Lyne Cpn. v. Pugh*, ante, p. 288.

(17) *Hill v. Tottenham U.D.C.* (1898), 79 L. T. 495.

(18) *Torrance v. Ilford U.D.C.* (1909, C. A.), 73 J. P. 225; 7 L. G. R. 554.

As to the construction of a new access to premises for vehicles, cattle, etc., across the kerb or paved footway of a highway repairable by the inhabitants at large, see sect. 18 of the Public Health Acts Amendment Act, 1907.¹⁹

The owner of premises in the metropolis used them for the deposit of heavy machinery, and it was found that the property could not be reasonably enjoyed without access across the existing footway, and that the rights of ownership and those of the public might be jointly exercised consistently with the general welfare. He was held to have been justified in conveying the machinery across the flagging in waggons, though he thereby crushed and injured it, the vestry, as surveyors of highways, having refused to permit him to take up the flags and make a proper paved carriage-way across the footway to his premises; and a summons under sect. 72 of the Highway Act, 1835,²⁰ for doing damage to a highway was held to have been properly dismissed.²¹ On the other hand, a district board in the metropolis recovered damages on a counterclaim against the owners of premises, who had torn up the pavement and kerb placed by the board across the end of a road or track which passed between two houses in a street and formed the only approach to the premises; and an injunction to restrain the alleged obstruction to the approach was refused. But in this case the board only continued an existing footpath, substituting asphalte for ballast and not altering the height of the kerb; the owners had not suggested a carriage-way to their premises when the board were proceeding with the work, and there was no evidence of damage to them or of any carriage being obstructed.²²

In 1902 a local authority purchased land for a public park and the defendant purchased adjoining land. In 1905 the defendant deposited plans showing his intention to develop his land as a building estate. The plan showed a new road contiguous to the public park running East to West between two existing highways. It was shown forty feet wide and with footpaths seven feet wide on each side. The Southern half of the Eastern portion of the road was made up as required by the byelaws. The Northern half, which adjoined the park, was left unmetalled. The whole of the Western portion was made up. In 1908 the defendant removed a fence from the Eastern end. In 1909 the local authority took over the Western portion. In 1911 the local authority made a gap in the fence separating the park from the unmetalled portion of the road, and authorised a contractor for some new schools to cart materials through the gap. The defendant placed a wire obstruction across the gap, contending (1) that the unmetalled portion had not been dedicated at all, and (2) that, if it had been dedicated, it was only available for foot traffic. It was contended by the local authority as to (1) that, as the public had used the whole road for all purposes when necessary since 1908, the whole road had been dedicated for all purposes, and, as to (2) that even if the portion near the park had only been dedicated for foot traffic, they had an adjoining owner's common law right of access across it to the carriageway for all purposes. It was held by the House of Lords that the local authority's contentions were correct.²³

The Court of Appeal had come to the same conclusion, and there Kennedy, L.J., said: ²⁴ "In fact, there is no footway. But supposing that there was, I am of opinion that the plaintiffs as owners of the land immediately adjoining the highway would be entitled to cross the footway with vehicles, provided always that they used the right of access to and out of the highway reasonably and without doing damage to or interfering with pedestrian traffic, not travelling along it with any vehicles, but merely crossing it so as to get to or from their adjacent land from or into the part of the road used especially for vehicular traffic."

Abutting upon a highway a person had land upon which an inn and some stabling were erected. These stood back from the highway, and in front of them was an open space (forming part of the same land) which had been left open to and on a level with the highway until the local board, in exercise of their powers under the present section, and for the convenience of the public, placed kerb-stones and a

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Access to premises.

Access to highway.

(19) *Post*, Part I., Div. III.

(20) 5 & 6 Wm. IV. c. 50, s. 72.

(21) *Newington Vestry v. Jacobs* (1871), L. R. 7 Q. B. 47; 41 L. J. M. C. 72; 25 L. T. 800.(22) *New Land Development Association v. Lewisham Dist. Bd. of Works* (1891, Romer, J.), Loc. Gov. Chron. 558.(23) *Rowley v. Tottenham U.D.C.*, L. R. 1914 A. C. 95; 83 L. J. Ch. 44; 110 L. T.546; 78 J. P. 97; 12 L. G. R. 90. For sequel, action by above-mentioned contractor for damages for delay caused by Rowley's interference with his access to works, which was dismissed, see *Porter v. Tottenham U.D.C.* (C. A.), L. R. 1915, 1 K. B. 776; 84 L. J. K. B. 1041; 112 L. T. 711; 79 J. P. 169; 13 L. G. R. 216.

(24) L. R. 1912, 2 Ch. at pp. 647, 648.

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raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the adjoining land and premises. It was held that the owner was not entitled to a mandatory injunction directing the local board to remove the kerb-stones, and that in the absence of any unreasonable conduct, the remedy for an injury caused by the kerb-stones would be by claiming compensation under sect. 308.²⁵

Several cases dealing with claims for compensation in respect of damage caused by obstruction of access to premises will be found in the Note to that section, under the heading "Nature of the Damage."²⁶

A. used for advertisements a wall which projected into a highway eighteen inches beyond and at right angles to B.'s shop next door. B. was restrained from erecting rival advertisement boards a few inches from the projection because he had thereby obstructed A.'s right of access to the highway by a door if he thought fit to make one.²⁷

Access to private way.

As to the distinction between the right of access to a highway and the right of access to a private way, see the case cited below.²⁸

Access to wharf.

The Thames Conservancy Act, 1857,²⁹ after authorising the conservators to erect piers at any convenient place, contained a saving of all rights to which any owners or occupiers of any lands on the banks of the river, including the banks thereof, were by law entitled. It was held that the right of access to a wharf was a private right within this saving; but that a pier which rendered the approach to the wharf less convenient, without rendering access impossible, was an interference, not with the private right of access, but with the public right of navigation enjoyed by the wharf owner in common with the rest of the public, and that such right was not comprised in the saving.³⁰ It appears from this case that the right of access to a highway from the adjoining premises is to be distinguished from the right of user of the highway after access to it has been obtained.³¹ And on this ground the court refused an injunction to restrain a metropolitan council from erecting a lamp-post on the edge of the footway opposite the premises of the plaintiffs so as to interfere with the loading of goods at that point.³²

Access to lake.

As to the effect of a reclamation of land, between a highway and a lake, on the right of access to the lake, see the case cited below.³³

Tramways and light railways.

The laying down a tramway is not a mode of paving or repairing the street so as to be justifiable under the general powers given to urban district councils.³⁴ The construction of tramways and light railways in streets is regulated by the Tramways Act, 1870,³⁵ the Light Railway Acts, 1896 and 1912,³⁶ and the special Acts and orders authorising the construction of each particular line.

Levelling.

Meaning of levelling.

As to the meaning of "levelling" in the present section, see the Note to sect. 150.¹

Injury to adjoining premises.

Where a local board had so altered the level of a footpath in front of a warehouse as to cause an accumulation of water to take place to the injury of the owner, the court granted an injunction to restrain the board from permitting the water to remain so accumulated.² And raising the level of a footpath, and thereby injuring the gravel boards of the adjoining owner's fence, was held to be a trespass for which damages were recoverable.³ But a district council were held by the Court of Appeal not to be liable for damage caused by an unusual flow of water occasioned by the wrongful act of a third party, who had obstructed a gulley which would otherwise have carried off the water. The ground on which it was suggested that the council were liable was that they had, in the course of altering the level of a street, constructed a retaining wall in such a manner as to throw the water on

(25) *Sellors v. Matlock Bath Loc. Bd.* (1885), L. R. 14 Q. B. D. 928; 52 L. T. 762. As to the limitation of time for such a claim, see *Turner v. Midland Ry. Co.*, post, Vol. II., p. 1578.

(26) *E.g., Lingke v. Christchurch Cpn.*, post.

(27) *Cobb v. Saxby*, L. R. 1914, 3 K. B. 822; 83 L. J. K. B. 1817; 111 L. T. 814.

(28) *Petty v. Parsons* (C. A.), L. R. 1914, 2 Ch. 653; 5 Glen's Loc. Gov. Case Law 191.

(29) 20 & 21 Vict. c. cxlvii., s. 179.

(30) *A.G. v. Thames Conservators* (1862), 1 Hemming & Miller 1.

(31) *Per Page Wood, V.-C.*, *ibid.*, at p. 31.

(32) *Chaplin & Co. v. Westminster City*

Cpn., L. R. 1901, 2 Ch. 329; 70 L. J. Ch. 679; 85 L. T. 88; 65 J. P. 661.

(33) *Canadian Pacific Ry. Co. v. Toronto City Cpn. and Grand Trunk Ry. Co.*, L. R. 1911 A. C. 461; 81 L. J. P. C. 5; 104 L. T. 724.

(34) See *Reg. v. Train* (1862), 2 B. & S. 640; 31 L. J. M. C. 149; 6 L. T. 380; 26 J. P. 469.

(35) *Post*, Vol. II., p. 1349.

(36) *Post*, Vol. II., pp. 1369, 1378.

(1) *Post*, p. 324.

(2) *Milward v. Redditch Loc. Bd. of Health*, 21 W. R. 429; 1873 W. N. 39.

(3) *Rochford v. Essex C.C.* (1915, Joyce, J.), 85 L. J. Ch. 281; 14 L. G. R. 33.

the plaintiff's premises; but it was found as a fact that the wall did not interfere with the ordinary flow of water, or even with a heavy flow caused by heavy rains.⁴ Sect. 149, n.

The Court of Appeal refused to restrain a metropolitan district board from lowering the surface of a street so as to expose water mains to injury from frost.⁵

A local board took upon themselves the maintenance of part, namely, the footway, of a turnpike road, and the House of Lords, after holding that the street was none the less a street because it was a turnpike road, decided that the board had power to cause it to be raised, lowered, or altered, and that having raised it, they were liable to compensate under the Public Health Act, 1848, a person who sustained damage thereby.⁶

The abstraction of salt from beneath the surface of the ground caused a subsidence of a highway and of the adjoining houses. The local board raised the level of the highway again to such an extent as was reasonably necessary, having regard to the obstruction to traffic caused by floods after the subsidence; but excluding the consideration of the floods, the raising of the level, though a reasonable and prudent act, was not necessary to put the road into a proper state for traffic. The owners of the houses raised such houses, and then claimed compensation for the expense incurred in so doing. It was held that, as the highway was vested in the board, no action of trespass could have been maintained by the owners, even if more materials had been placed on the road than a surveyor of highways could justify; that they had no right to have the road maintained at the level to which it had accidentally and recently sunk; that the works done by the local board were not done "in the exercise of the powers of this Act" within the meaning of sect. 308, but in the exercise of such powers as surveyors of highways have, which are transferred by sect. 144, but are not created by this Act; and that therefore the owners were not entitled to compensation.⁷ Subsidence.

The Court of Appeal upheld the refusal of an injunction to restrain the raising, to their original level, approaches to a county bridge which had sunk by reason of brine pumping.⁸

A colliery company by working their mines caused a highway to subside but without damaging it. The highway had crossed a railway on the level; and the railway company had from time to time ballasted their line so as to keep it at its original level, until there was an embankment ten feet high at the place where the level crossing had been. In an action by the urban district council against the colliery company, it was held that they were not entitled to recover as damages the cost of making a subway under the railway; but (*per Collins, J.*) they were entitled to nominal damages.⁹

Where the banks and towing-path of a canal had subsided in consequence of mining operations, and the canal company raised them so as to keep the canal at its old level, a railway company, whose bridge crossed the canal and sank from the same cause, were held to be under the obligation to raise their bridge, the Act under which it was constructed having prohibited them from interfering with the canal except by a bridge with a clear height of 8 feet above the towing-path.¹⁰ This case was distinguished by Warrington, J., in one in which the only similar enactment in relation to the bridge there in question was a provision that no obstruction or impediment to the traffic in the canal should be occasioned by or in the course of any alteration of the bridge under the Act, which enabled certain turnpike trustees to widen and enlarge or take down and rebuild the bridge; and be accordingly decided that the local authority, by whom the bridge and road over it had become repairable, were not liable to raise it when the level of the water in the canal below it had been raised in consequence of subsidence caused by mining operations. The Court of Appeal, however, overruled his decision on the

(4) *Ely Brewery Co. v. Pontypridd U.D.C.* (1903), 68 J. P. 3; 2 L. G. R. 40.

(5) *Southwark Water Co. v. Wandsworth Dist. Bd.*, L. R. 1898, 2 Ch. 603; 67 L. J. Ch. 657; 79 L. T. 132; 62 J. P. 756.

(6) *Nutter v. Accrington Loc. Bd.* (1878, C. A.), L. R. 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. 803; 43 J. P. 635. The House of Lords (see 43 L. T. 710; 1880 W. N. 148) affirmed the decision of the Court of Appeal, but there is no report of the judgments, if any, that were delivered in that House. The decision was distinguished, as regards the first point, by Fry, J., in *Swansea Improvements Co. v.*

Glamorganshire Roads Bd. (1879), 41 L. T. 583. It was "explained" in *Payne v. Grey*, *post*, Vol. II., p. 2041. See also Note to s. 308, *post*.

(7) *Burgess v. Northwich Loc. Bd.* (1880), L. R. 6 Q. B. D. 264; 50 L. J. Q. B. 219; 44 L. T. 154; 45 J. P. 256. See also *post*, p. 305 (7).

(8) *Atherton v. Cheshire C.C.* (1895), 60 J. P. 6.

(9) *A.G. v. Conduit Colliery Co.*, L. R. 1895, 1 Q. B. 301; 64 L. J. Q. B. 207; 71 L. T. 771; 59 J. P. 70.

(10) *Rhymney Ry. Co. and Great Western Ry. Co. v. Glamorgan Canal Co.* (1904, H. L.), 91 L. T. 113; 20 T. L. R. 593.

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ground that the local authority, having taken down the bridge in consequence of its state of disrepair, could not rebuild it in such a manner as to create a nuisance by obstructing the traffic on the canal.¹¹

Further as to injuries caused by subsidence of highways, see the cases cited below.¹²

Fences, etc.

Liability to repair fences.

The present section authorises the urban district council to keep in repair fences for the safety of foot-passengers; but it was held under the corresponding clause of the Public Health Act, 1848,¹³ that the enactment did not impose upon them an absolute duty to fence so as to render them liable to an action for injury arising from the absence of proper fences.¹⁴ Where, however, a rural district council had themselves removed an existing fence from the side of a ditch for the purpose of repairing it, and the jury found that its removal was inconsistent with reasonable regard for the safety of the public using the adjoining highway, the council were held to be liable in damages to the representatives of a person who drove into the ditch and was drowned at a time when the ditch and highway were flooded.¹⁵

A local Act authorised an urban sanitary authority to have streets fenced by the owners by procedure similar to that prescribed by sect. 150 of the present Act. It was held that an owner was not liable when the fence was rendered necessary by the road giving way.¹⁶

As to the liability of private persons for defective fences, see the case cited below.¹⁷

Street refuges, &c.

Where Part III. of the Public Health Acts Amendment Act, 1890,¹⁸ has been adopted, the urban district council may make street refuges, with pillars and fences, for the protection of passengers and traffic, and for making the crossing of the streets less dangerous; they may provide cabmen's shelters, erect and maintain statues or monuments, and, subject to certain restrictions, may plant trees and erect guards or fences for their protection, in the streets. As to liability for accidents due to ineffective lighting of street refuges, see the cases cited in the Note to sect. 11 of the Local Government Act, 1888.¹⁹ See also the Note to sect. 161, *post*.

Telegraph posts, &c.

Urban district councils may also, under Part II. of the Act of 1890,²⁰ make bye-laws for regulating posts and other apparatus placed along or across the streets for telegraph or other purposes.

Unauthorised structures.

The vesting of the streets in an urban district council does not enable them to obstruct the passage of the public, or cause damage to an adjoining occupier, by erecting in the street any structure, the erection of which is not expressly or impliedly authorised by statute. Thus, where a metropolitan borough council erected a stand in a public street in order to enable the members of the council and their friends to view a Royal funeral procession, they were held to be liable in damages to the occupier of an adjoining house for the loss which she sustained by being prevented by the stand from letting seats in her windows from which such procession could otherwise have been viewed.²¹

Injury to Street.

Public nuisance.

Any obstruction of a highway, or any injury to it, as by digging a ditch, or making a hedge across it, or laying logs of timber on it, or doing any other act which will render it less commodious to the King's subjects, is a public nuisance,

(11) *North Staffordshire Ry. Co. v. Hanley Cpn.* (1909, C. A.), 73 J. P. 477; 8 L. G. R. 375; 26 T. L. R. 20.

(12) In consequence of faulty laying of water mains, *Harpur v. Swansea Cpn.*, *post*, Vol. II., p. 1236; faulty laying of electric cables, *Charing Cross Electric Supply Co. v. London Hydraulic Power Co.*, cited in Note to s. 308, under heading, "Action for Damages," *post*; failure to repair sewer, *Hart v. St. Marylebone B.C.*, *post*, Vol. II., p. 1989; and bursting of water main, *Stewart v. Metrop. Water Bd.* (1912, Horridge, J.), 3 Glen's Loc. Gov. Case Law 197.

(13) 11 & 12 Vict. c. 63, s. 68.

(14) *Wilson v. Halifax Cpn.* (1868), L. R. 3 Ex. 114; 37 L. J. Ex. 44; 17 L. T. 660; 32 J. P. 230.

(15) *Whyler v. Bingham* (C. A.), L. R.

1901, 1 Q. B. 45; 70 L. J. K. B. 207; 83 L. T. 652; 64 J. P. 771.

(16) *Rotherham Cpn. v. Fullerton* (1884), 50 L. T. 364.

(17) *Heath's Garage, Ltd. v. Hodges* (C. A.) L. R. 1916, 2 K. B. 370; 85 L. J. K. B. 1289; 115 L. T. 129; 80 J. P. 321; 14 L. G. R. 911.

(18) See ss. 39, 40, 42, and 43, *post*, Part I., Div. II.

(19) *Post*, Vol. II., p. 1903.

(20) See s. 13, *post*, Part I., Div. II.

(21) *Campbell v. Paddington B.C.* (K. B. D.), L. R. 1911, 1 K. B. 869; 80 L. J. K. B. 739; 104 L. T. 394; 75 J. P. 277; 9 L. G. R. 387. See also *Lingke v. Christchurch Cpn.*, cited in Note to s. 308 (under heading, "Action for Damages"), *post*; and *Mogg's Case*, *ante*, p. 295 (36).

and is indictable as a misdemeanour, and punishable by fine or imprisonment or both.¹

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Sect. 72 of the Highway Act, 1835,² enacts that " if any person . . . shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof; or shall wilfully obstruct the passage of any footway; or wilfully destroy or injure the surface of any highway; or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed; ³ or dig or cut down the banks which are the securities and defence of the said highways; or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same; or pull down, destroy, obliterate, or deface any milestone or post, graduated or direction post or stone, erected upon any highway . . .; or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon; or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto; or shall in any way wilfully obstruct the free passage of any such highway; every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby."

Damage to surface, fences, sign posts, mile stones, &c.

The Larceny Act, 1916,⁴ also deals with injuries to street fences, trees, etc.

Several instances of injury to the level of a street caused by mining and other operations have been mentioned under the head of " Levelling." ⁵ For a successful action in respect of injury to a highway caused by a landslide due to the negligent tipping of colliery refuse on the side of a hill, see the case cited below.⁶

In an action brought by an urban authority against a colliery company for damage to a highway from subsidence caused by mining operations, the authority claimed the amount which they had expended in raising the highway to its original level, contending that they were entitled to do so, regardless of the cost, and whether or not it was necessary so to raise it in order to make it as commodious as before. It was, however, proved that a much smaller expenditure would have been sufficient for making an equally commodious road at a lower level, and Jelf, J., accordingly gave judgment for the defendants, who had paid into court a sum which would have covered the smaller expenditure. His judgment was reversed by the Court of Appeal, but was restored by the House of Lords; although, as Lord Loreburn, C., pointed out, there is authority that as between the owners of a public road and the owners of the adjacent lands, the former may be entitled to restore the ancient level.⁷

Measure of damages.

The Malicious Damage Act, 1861,⁸ contains provisions under which persons unlawfully and maliciously injuring fences, turnpike gates, toll houses, and weighing machines, bridges, and other property may be punished. A landowner encroached on the highway by altering the drain under the access to his property and substituting a culvert. The surveyor of highways, acting on a *bonâ fide* supposition of right, took up and injured the culvert. It was held that a conviction of the surveyor under sect. 52 of that Act was wrong, the owner having only a qualified property in the drains, etc., subject to the control of the surveyor.⁹ See also sect. 14 of the Criminal Justice Administration Act, 1914.¹⁰

Malicious injuries.

A person may be justified in injuring the flagging or kerbing of a street by taking vehicles across it to and from his own premises, if the district council have so flagged and kerbed the street as to afford him no convenient means of access to his premises.¹¹

Injury to kerb.

Projections from houses, which obstruct the street, may be removed under the

Projections.

(1) 1 Hawk. P. C. 700; 2 Roll. Abr. 137, 265.
(2) 5 & 6 Wm. IV. c. 50, s. 72.
(3) Namely, by *ibid.*, s. 24. As to the "standardisation of road direction posts and warning signs" erected under this section, see the Ministry of Transport Circular, Feb. 28, 1921, set out in 19 L. G. R. (Orders) 185.
(4) See s. 8, quoted in Note to s. 164, *post*.
(5) *Ante*, pp. 302, 303.
(6) *A.G. v. Cory Bros.*, L. R. 1921 A. C. 521; 90 L. J. Ch. 221; 125 L. T. 98; 85 J. P. 129; 19 L. G. R. 145.

(7) *Lodge Holes Colliery Co. v. Wednesday Cpn.*, L. R. 1908 A. C. 323; 77 L. J. K. B. 847; 99 L. T. 210; 72 J. P. 417; 6 L. G. R. 924. See also *West Leigh Colliery Co. v. Hampson, Ltd.*, L. R. 1908 A. C. 27; 77 L. J. Ch. 102; 98 L. T. 4; and *Riley v. Halifax Cpn.* (1907, Joyce, J.), 71 J. P. 428.
(8) 24 & 25 Vict. c. 97, ss. 25, 33, 34, 51, 52.
(9) *Denny v. Thwaites* (1876), L. R. 2 Ex. D. 21; 46 L. J. M. C. 141; 35 L. T. 628.
(10) Quoted in Note to s. 164, *post*, p. 429.
(11) See *Newington Vestry v. Jacobs*, *ante*, p. 301.

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Towns Improvement Clauses Act, 1847.¹² The same Act,¹³ and the Public Health Acts Amendment Act, 1890,¹⁴ require hoardings, etc., to be erected during the construction and repair of sewers, streets, and houses. The Town Police Clauses Act, 1847,¹⁵ contains provisions for preventing certain obstructions in streets.

Laying pipes, &c.

As to breaking up streets to lay pipes, etc., see sect. 161 and the Note thereto, *post*.

*Telegraph Works.***Telegraph posts.**

A telegraph company were held liable on indictment for a nuisance where they had set up telegraph posts along the road, though the posts were not placed on the hard or metalled part of the highway, nor on the footpath artificially formed upon it, and though sufficient space was left for the public traffic.¹⁶

Telegraph Acts.

The Telegraph Act, 1863, contains various provisions and restrictions in relation to telegraphs under streets and public roads, the removal of works affecting such streets and roads, and the opening of streets and roads.¹⁷ One of these restrictions is that a telegraph shall not be laid under a street in the metropolis, in a municipal borough, or in a town with a population of 30,000 or upwards, without the consent of the body having the control of the streets; and with reference to this it was held by the Railway and Canal Commissioners that the road authority could only raise objections or impose conditions as to matters which concerned them as the road authority, and that they therefore could not impose conditions as to the mode in which the service was to be carried on, or as to the reasonableness of the charges.¹⁸

The above-mentioned provisions and restrictions of the Act of 1863 are extended by the Telegraph Act, 1868, to the Postmaster-General, who was authorised by that Act to purchase the undertaking of any telegraph company.¹⁹ The Telegraph Act, 1869, under which the Postmaster-General obtained, subject to certain exceptions,²⁰ a monopoly in the transmission of telegrams, defined "telegraph" and "telegram" so as to include telephonic communication.²¹ The Telegraph Act, 1878, provides for the settlement of differences between the Postmaster-General and the highway authority in relation to telegraph posts on streets or public roads, by a police or stipendiary magistrate or by the county court judge.²² But where the council of a borough refused to consent to certain works being executed under the streets by the National Telephone Company as licensees of the Postmaster-General, with whom they had agreed not to execute such works without the consent of the corporation, it was held by the Court of Appeal that the refusal of consent was absolute, and that the county court judge had no jurisdiction, under the Act of 1878, to determine that such consent should be given; and a writ of prohibition was granted to restrain him from acting in the matter.²³

By the Telegraph Act, 1892,²⁴ "the provisions of the Telegraph Acts, 1863 and 1878, relating to streets, public roads, lands, and buildings within the limits of any city or municipal borough, or town corporate, or any town having a population of 30,000 inhabitants or upwards, shall, as amended by this Act, extend to streets, public roads, lands, and buildings within the limits of any urban sanitary district; and for the purposes of those Acts the terms public road and street shall respectively include a public highway for carriages and a public way, although not repairable in manner in the Telegraph Act, 1863, mentioned, and the term 'public road' shall include a public highway for horses and a private road which is also a public footpath, if such highway or road is enclosed between hedges, walls, or other fences."

The same Act provides as follows²⁵ :—“(1) Where a telegraphic line of the Postmaster-General has been constructed, either before or after the passing of this Act, whether by him or a person through whom he claims, and has been constructed independently of or without compliance with the Telegraph Acts, 1863 and 1878, or this Act, any road authority, owner, lessee, occupier, or person whose consent

(12) See ss. 69 and 70, *post*, Vol. II., pp. 1622, 1624.

(13) See ss. 79-83, *post*, Vol. II., pp. 1627-1629.

(14) See s. 34, *post*, Part I., Div. II.

(15) See s. 28, *post*, Vol. II., p. 1647.

(16) *Reg. v. United Kingdom Telegraph Co.* (1862), 9 Cox C. C. 144, 174; 31 L. J. M. C. 166; 6 L. T. 378; 8 Jur. (N.S.) 1153; 26 J. P. 324.

(17) 26 & 27 Vict. c. 112, ss. 9-20.

(18) *Postmaster-General v. London City*

Cpn. (1898), 78 L. T. 120; 62 J. P. 390.

(19) 31 & 32 Vict. c. 110, ss. 2, 4.

(20) See *Postmaster-General v. National Telephone Co.*, L. R. 1909 A. C. 269; 78 L. J. Ch. 422; 100 L. T. 658; 73 J. P. 321.

(21) 32 & 33 Vict. c. 73, ss. 3, 4.

(22) 41 & 42 Vict. c. 76, ss. 3-5.

(23) *National Telephone Co. v. Tunbridge Wells Cpn.* (1901), 85 L. T. 368 (C. A., affirming 64 J. P. 756; 48 W. R. 686).

(24) 55 & 56 Vict. c. 59, s. 3.

(25) *Ibid.*, s. 4.

would have been required if the line had been constructed in accordance with the Acts, and who is aggrieved, or who would, if the line had been constructed in accordance with the Acts, be entitled to require its removal, may require the removal of such line, but until the removal is required in pursuance of this section the line shall be deemed to have been lawfully constructed: Provided, that if and so far as the telegraphic line is constructed under or along a street or public road, sections three, four, and five of the Telegraph Act, 1878, shall apply as if the requisition to remove were a failure to consent within the meaning of those sections. (2) Where, either before or after the passing of this Act, any consent for the construction of a telegraphic line along a street or public road has been given subject to any term, condition, or stipulation, to a person through whom the Postmaster-General claims, the Postmaster-General may give a notice to the authority or person giving the consent asking for the withdrawal of that term, condition, or stipulation, and if the authority or person fail to withdraw it within twenty-one days after the notice is given, a difference shall be deemed to have arisen between that authority or person and the Postmaster-General, and shall be determined in manner provided by sections four and five of the Telegraph Act, 1878." It also provides as follows ²⁶:—“(1) Any company or person authorised to lay an electric line within the meaning of the Electric Lighting Act, 1882, may, with the approval of the [Minister of Transport ²⁵], and with the consent of the local authority as defined by the Electric Lighting Act, 1882, for the district within which such electric line is laid, and by agreement with the Postmaster-General, or, if so authorised by the Postmaster-General, with his licensee, place, or authorise the Postmaster-General or his licensee to place, telegraphs in the trenches, tubes, pipes or apparatus used for the purpose of such electric line. (2) The enactments relating to the company or person in relation to the powers, operations, trenches, tubes, pipes, and apparatus of such company or person for the purpose of the electric line shall, so far as applicable, extend to the said telegraphs, and to anything done in pursuance of this section.” In this Act “road authority” is defined as meaning “the body having the control of the street or public road, and where a street or public road is not repairable at the public expense, means the body which would have control of such street or road if it were repairable at the public expense; expressions referring to the construction and maintenance of a telegraphic line along a street or public road, mean the placing and maintaining of a telegraph over, along, or across a street or public road, and the placing and maintaining of posts in or upon a street or public road; expressions referring to the refusal or failure to give a consent shall include a reference to a withdrawal of a consent, and to the attaching to a consent of any terms, conditions, or stipulations to which the Postmaster-General objects; and other expressions have the same meaning as in the Telegraph Acts 1863 and 1878.” ²⁷

The Act of 1892 ²⁸ enables the Postmaster-General to licence any company or person to exercise for a specified period the powers conferred on the Postmaster-General by the Acts of 1863 and 1878, and by the provisions of the Act of 1892 (relating to provisional orders for the construction of work on private land) subject to the following provisos, namely, that “(a) a licensee shall not exercise any powers under the said enactments except in an urban sanitary district or such area adjoining an urban sanitary district as is described in the licence; (b) notwithstanding anything in the Telegraph Act, 1878, a licensee shall not exercise any powers under the said enactments without the consent, in London of the county council, or in any urban sanitary district outside London of the urban sanitary authority, and elsewhere of the county council, and shall be subject to any terms and conditions which the county council or urban sanitary authority may attach to any such consent, and shall comply with any regulations of such council or authority from time to time in force in relation to telegraphic lines.”

The Telegraph Act, 1899, ²⁹ enacts that “where the council of a borough or an urban district are licensed by the Postmaster-General to provide a system of public telephonic communication, they may defray the expenses of exercising the powers conferred by the licence in the case of a borough out of the borough fund or borough rate, and in the case of an urban district not a borough, out of the rate out of which the general expenses of the council in the execution of the Public Health Acts are defrayed, and may borrow money for the purpose in accordance with the Public Health Acts, but in the case of a borough any money so borrowed shall be borrowed

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Acts—cont.

(25) *Quære*, still B. of T., see E. L. Act, 1919, s. 39, *post*, Vol. II., p. 1347.

(26) 55 & 56 Vict. c. 59, s. 6.

(27) *Ibid.*, s. 9.

(28) *Ibid.*, s. 5.

(29) 62 & 63 Vict. c. 38, s. 2 (1).

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Acts—*cont.*

on the security of the borough fund or borough rate; and the council may, subject to the provisions of the Telegraph Acts, 1863 to 1897, and of the licence, exercise their powers under the licence throughout the area for which it is granted, although part of that area may be outside the borough or urban district." The same Act contains provisions for granting new licences to existing companies licensed at the passing of the Act, subject to the condition that a licence to provide telephonic communication shall not be granted by the Postmaster-General, except to the council of a borough or urban district, unless it is shown to his satisfaction that the application for the licence is approved by the council of each borough or urban district within which it is proposed by the application to establish a telephonic exchange. It also provides for the extension of the licence of an existing company subject to certain conditions in cases in which a local authority or a new company provides a system of telephonic communication in competition with the existing company. These provisions were held to be applicable only where the powers of the existing company were in existence at the date of the grant of the new licence.³⁰

By the Telegraph (Construction) Act, 1908,³¹ "2. Those provisions of sect. 21 of the Telegraph Act, 1863,³² which (as amended by sect. 3 of the Telegraph Act, 1892³³) are not of general application, shall be of general application, and extend to rural districts and to public roads as well as to streets; but, in the case of a street or public road in a rural district, the publication of notice required under sect. 23 of the Telegraph Act, 1863,³⁴ shall be substituted for the publication of notice under sect. 21 of that Act. 3. Notwithstanding the provisions of this Act no telegraphic line shall be constructed on, over, along, or across any land dedicated to the recreation of the public, or any hedge or bank adjoining such land, without the consent of the person under whose control and management such land for the time being remains. Provided that if such consent is withheld or any condition is attached thereto to which the Postmaster-General objects, a difference shall be deemed to have arisen between the Postmaster-General and that person, and sects. 3, 4, and 5 of the Telegraph Act, 1878,³⁵ shall apply accordingly as if it were a difference arising under that Act . . .³⁶ 5.—(1) Where any tree overhangs any street or public road and obstructs or interferes with the working of any telegraphic line constructed along that street or road or will obstruct or interfere with the working of any telegraphic line about to be so constructed, the Postmaster-General may give notice to the owner and to the occupier of the land on which the tree is growing, requiring the tree to be lopped so as to prevent the obstruction or interference. (2) If within one month from the service of notice by the Postmaster-General the owner or the occupier of the land on which the tree is growing gives a counter-notice to the Postmaster-General objecting to the lopping of the tree, a difference shall be deemed to have arisen between the Postmaster-General and that owner or occupier, and sects. 4 and 5 of the Telegraph Act, 1878,³⁷ shall apply accordingly as if it were a difference under that Act. (3) If on the expiration of one month after notice is given by the Postmaster-General under this section, neither the owner nor the occupier has complied with the notice, or given a counter-notice under this section, or if the authority determining a difference under this section make an order in that behalf, the Postmaster-General may himself cause the tree to be lopped; and sect. 7 of the Telegraph Act, 1863 (which relates to compensation),³⁸ shall apply to the exercise of that power by the Postmaster-General. (4) The Postmaster-General shall issue instructions to his officers with a view to ensuring that trees shall be lopped in a husbandlike manner and so as to avoid injury to their growth. 6. Notwithstanding anything in the Railway and Canal Traffic Act, 1888, any difference directed to be determined by the Railway and Canal Commission under the Telegraph Acts, 1863 to 1907, or this Act, may in the discretion of the Commission be heard and determined by the two appointed Commissioners, whose order shall be deemed to be the order of the Commission. 7. The provisions of sect. 4 (2) of the Telegraph Act, 1892,³⁹ shall be deemed to extend to telegraphs placed and maintained under a street or public road. 8. Nothing in this Act shall apply to the undertaking of

(30) *National Telephone Co. v. Kingston-upon-Hull Cpn.* (1903), 89 L. T. 291; 68 J. P. 62; 1 L. G. R. 777.

(31) 8 Edw. VII. c. 33, ss. 2, 3, 5-9. The Act of 1916 (6 & 7 Geo. V. c. 40), s. 5 (3), and Sched., repealed ss. 1 and 4. Further as to recreation grounds, see footnotes (45) and (54), *post*.

(32) 26 & 27 Vict. c. 112, s. 21.

(33) 55 & 56 Vict. c. 59, s. 3.

(34) 26 & 27 Vict. c. 112, s. 23.

(35) 41 & 42 Vict. c. 76, ss. 3-5.

(36) As to omitted s. 4, see footnote (31), *supra*.

(37) 41 & 42 Vict. c. 76, ss. 4, 5.

(38) 26 & 27 Vict. c. 112, s. 7.

(39) 55 & 56 Vict. c. 59, s. 4 (2).

any canal company authorised by an Act of Parliament. 9.—(1) In this Act any expressions to which a special meaning is attached under the Telegraph Acts, 1863 to 1907, or any of them, shall have the same respective meanings in this Act; and the expression ‘ hedge ’ or ‘ bank ’ includes any ditch adjoining to the hedge or bank and forming part of the boundary of the street or public road, as if it was part of the hedge or bank. . . .”

The Telegraph (Arbitration) Act, 1909,⁴⁰ enacts as follows : “ 1. Any difference between the Postmaster-General and any body or person under the Telegraph Acts, 1863 to 1908, or under any licence or agreement relating to telegraphs (including telephones), shall, if the parties to such difference have before the passing of this Act agreed, or hereafter agree, to such reference, be referred to the Railway and Canal Commission, and that Commission shall determine the same. 2. All proceedings relating to any difference directed to be determined by the Railway and Canal Commission under this Act shall be conducted by the Commission in the same manner as any other proceeding is conducted by them under the Railway and Canal Traffic Acts, 1873 and 1888, or any Act amending the same, and any order of the Commission on any such difference or question shall be enforceable as any other order of the Commission : Provided—(1) that any matter of difference or any question arising before the Commission under this Act may, in the discretion of the Commission and with the consent of the parties, be heard and determined by the two appointed Commissioners, whose order shall be deemed to be the order of the Commission; and (2) that the costs of every proceeding before the Commission shall be in the discretion of the Commission. 3. Nothing in this Act shall restrict or prejudice the operation of any provision of the Telegraph Acts, 1863 to 1908, or of any other Act by which any difference is referred to the Railway and Canal Commission.”

The Telephone Transfer Act, 1911,⁴¹ effected the transfer of the undertaking of the National Telephone Company to the Postmaster-General.

By the Telegraph (Construction) Act, 1916,⁴² “ 1. If the owner, lessee, or occupier of any land or building refuses or fails to give his consent to the placing of a telegraphic line under, in, upon, over, along or across the land or building within two months after being required to do so by notice from the Postmaster-General, a difference shall be deemed to have arisen between the Postmaster-General and that owner, lessee, or occupier, and sects. 3, 4, and 5 of the Telegraph Act, 1878,⁴³ shall apply accordingly as if it were a difference arising under that Act : Provided that the tribunal to which the difference is referred under these sections shall not give its consent to the placing of the line unless satisfied that such refusal or failure is contrary to the public interest; and in deciding whether to give its consent or to impose any terms, conditions, or stipulations, including the carrying of any portion of the line underground, the tribunal shall, among other considerations, have regard to the effect, if any, on the amenities or value of the land of the placing of the line in the manner proposed : Provided also that, subject as aforesaid, all the provisions of the Telegraph Act, 1863, shall apply in the case of the exercise of any powers authorised to be exercised under this section, and such owner, lessee, or occupier, shall have and enjoy all the benefits of such provisions. 2. The proviso to sect. 4 (1) of the Telegraph Act, 1892 (which relates to telegraphic lines constructed irregularly or by persons other than the Postmaster-General),⁴⁴ shall extend and apply to a telegraphic line placed under, in, upon, over, along or across any land or building, as well as to a telegraphic line constructed under or along a street or public road. 3. Sects. 3 and 6 of the Telegraph (Construction) Act, 1908 (which relate to public recreation grounds and the determination of differences),⁴⁵ shall apply as if they were herein re-enacted and in terms made applicable to this Act. 4. Before entering on land or buildings for the purpose of the construction or maintenance of any telegraphic line the Postmaster-General shall, except in case of emergency, endeavour to make an arrangement with the occupier of the land as to the times of entry for such purpose, and if any difference arises between the Postmaster-General and the occupier it shall be determined in manner aforesaid. 5.—(1) In this Act any expressions to which a special meaning is attached under the Telegraph Acts, 1863 to 1915,⁴⁶ or any of them, shall have the same respective meanings in this Act. . . .”

Where the only substantial objection to a proposal of the Postmaster-General

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(40) 9 Edw. VII. c. 20, ss. 1-3.

(44) 55 & 56 Vict. c. 59, s. 4 (1).

(41) 1 & 2 Geo. V. c. 26. See also 1 &

(45) 8 Edw. VII. c. 33, ss. 3, 6.

2 Geo. V. c. 56.

(42) 6 & 7 Geo. V. c. 40, ss. 1-5.

(43) 41 & 42 Vict. c. 76, ss. 3-5.

(46) Act of 1915 (5 & 6 Geo. V. c. 82) relates only to postal and telegraph rates.

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to carry telephone wires overhead along a certain street, which had been taken by the witnesses called by the district council in the county court in opposition to the proposal, was that the poles for carrying the wires would obstruct the traffic, and it appeared that the poles were not to be erected in a busy part of the street, and were to be 70 yards apart and to be of less dimensions than the existing lamp posts, and that the district council had themselves recently erected poles for fire-alarm wires in a busier and narrower street, the Railway and Canal Commissioners allowed the wires to be carried overhead as proposed.⁴⁶

But where underground wires had been laid in the neighbourhood the Commissioners required the wires to be laid underground in a street where the houses were of such a class that the purchasers might reasonably have concluded that poles would not be erected in front of them.⁴⁷ And in a residential district, admirably kept by the local authority with a view to its being residential, when overhead wires would have been a disfigurement to the streets, and the objection to them was considered by the commissioners to be a very real objection, the general rule was laid down that where the cost of laying the wires underground, as compared with that of carrying them overhead, would be excessive, the extra burden of the former method would not be imposed upon the Postmaster-General, that is, upon the taxpayers; an opportunity was given to the objectors to find the necessary funds for laying the wires underground in all or any of the streets in question.⁴⁸

In 1887 a local authority granted a company a licence to erect telephone poles on certain land in their district. In 1910 the local authority, having made arrangements with the Postmaster-General for an underground service from January 1st, 1912, gave the company notice to remove the poles. The local authority desired this removal before December 27th, 1911, because, if they were removed before then, the Postmaster-General would not have to pay the telephone company the £300 which he would have to pay if they remained till then. On October 16th, 1910, at a meeting of the local authority, the town clerk expressed the opinion that they could take down the poles. On March 19th, 1911, the town clerk wrote to the company, saying that "extreme measures" would be taken if the poles were not removed. It was held that there was a sufficient threat, and insistence upon the right to remove the poles, to entitle the company to an injunction restraining the local authority from removing them.⁴⁹

The Postmaster-General desired that telegraph posts and wires should be placed along certain roads which had been dedicated, but were not repairable by the inhabitants at large, or by private persons *ratione tenuræ*, or otherwise. The district council refused their consent apparently on the ground that they had no jurisdiction to give or withhold it, because the roads were not under their "control." It was held, extending the case where it had been decided that rural district councils did not have control over such highways, that urban district councils had no such control.⁵⁰ *Per* Cozens-Hardy, M.R.⁵¹:—"Who is the person who has the control of a road, though dedicated to the public, not adopted by them, and as to which it cannot be said that it is vested in anybody else? It seems to me it is the owner of the soil. The owner of the soil is the person who, as long as he does not interfere with the right of passage over the same, may, if he thinks right, repair it, macadamise it, make it a good or bad road, and, in fact, may have what is really meant by these words 'control of the road.'" But the owner of the soil has no right to refuse his consent, except subject to payment of an annual sum for use and occupation as distinguished from a sum to cover the actual damage done.⁵² But where compensation is payable, payment of an annual sum may be ordered, instead of a lump sum.⁵³

A local authority's consent to the erection of a telegraph post was obtained after the erection of the post. It was held that this was not a sufficient compliance

(46) *Postmaster-General v. Watford U.D.C.* (1908, Ry. & C. C.), 72 J. P. 184; 13 Ry. Cas. 160; 6 L. G. R. 504.

(47) *Postmaster-General v. Woolwich B.C.* (1908, Ry. & C. C.), 72 J. P. 186; 13 Ry. Cas. 165; 6 L. G. R. 509; *Postmaster-General v. Tottenham U.D.C.* (1910, Ry. & C. C.), 74 J. P. 434; 8 L. G. R. 791.

(48) *Croydon Cpn. v. Postmaster-General* (1910, Ry. & C. C.), 74 J. P. 424; 8 L. G. R. 1005.

(49) *National Telephone Co. v. Hythe Cpn.* (1911, Ch. D.), 75 J. P. 557; 2 Glen's Loc. Gov. Case Law 178.

(50) 26 & 27 Vict. c. 112, ss. 3, 12, 13; 41 & 42 Vict. c. 76, ss. 3, 4; 55 & 56 Vict. c. 59, s. 9; *Postmaster-General v. Hendon U.D.C.* (C. A.), L. R. 1914, 1 K. B. 564; 83 L. J. K. B. 618; 110 L. T. 213; 78 J. P. 145; 12 L. G. R. 437.

(51) L. R. 1914, 1 K. B. at p. 573.

(52) *Postmaster-General v. Hutchins*, L. R. 1916, 1 K. B. 774; 85 L. J. K. B. 1008; 115 L. T. 78; 80 J. P. 246; 14 L. G. R. 554.

(53) *Postmaster-General v. Brooks* (1922, Ry. & C. C.), L. R. 1922, 2 K. B. 176; 91 L. J. K. B. 689; 127 L. T. 529; 20 L. G. R. 538.

with sect. 21 of the Act of 1863. A declaration that the posts had been unlawfully erected was accordingly granted with costs, also £1 damages for trespass, but an injunction was refused as the company were in liquidation and the Postmaster-General, to whom their business was in process of transfer, had not been joined as a party. It was also held that "pleasure ground" in the same section (which prohibits the erection of posts and wires over such grounds) meant ground which had "some equipment of a more or less permanent character that would be of service to persons frequenting it for the purpose of recreation," and accordingly that a yard, which was used by the plaintiff mainly for the purposes of his business and was without such equipment, was not such a ground, though his children were in the habit of playing there. It was also held that sect. 22 of this Act only applied to rural districts.⁵⁴

In an Irish case it was held that the Postmaster-General was not bound by a company's undertaking to pay wayleaves to the highway authority in respect of telephone poles erected in highways, and to give telephone facilities to the authority's officials at reduced rates, though the transfer was "subject to all wayleave and other rentals, contracts, and burdens of every kind, subject to which" the company held their property; and that the only remedy for loss of wayleaves and facilities was that provided in the Act of 1878 for the determination of differences.⁵⁵

Costs may be awarded against the Postmaster-General if unsuccessful in proceedings under sect. 11 of the Act of 1878.⁵⁶

For a case relating to an injury to cables of the Postmaster-General by electricity from a tramway, see sect. 55 of the Act of 1870 and Note.⁵⁷

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Costs.

Injury to
cables.

Sect. 150. Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriageway footway or any other part of such street is not sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting the same within a time to be specified in such notice.

Power to compel
paving, &c., of
private streets.
P.H., s. 69.
L.G., s. 38.
L.G. Am.,
ss. 16, 17.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

(54) 26 & 27 Vict. c. 112, ss. 21, 22; *Stevens v. National Telephone Co.*, 1914 Ir. Ch. 9; 4 Glen's Loc. Gov. Case Law 75.

(55) 41 & 42 Vict. c. 76, ss. 3, 5; 55 & 56 Vict. c. 59, ss. 4, 5; *Dublin C.C. v. Postmaster-General*, 1914 Ir. K. B. 208;

5 Glen's Loc. Gov. Case Law 81.

(56) 41 & 42 Vict. c. 76, s. 11; *Postmaster-General v. Great S. & W. Ry. Co.* (C. A., I.), 1916 Ir. Ch. 74.

(57) *Post*, Vol. II., p. 1363.

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Application to rural district councils.

The present section refers only to urban districts. Rural district councils may obtain orders of the Minister of Health under sect. 276, giving them urban powers under the section; but the Local Government Board intimated that it would be contrary to their practice to invest a rural district council with powers under the present section to require frontagers to defray the cost of works of sewerage, the reason assigned being that, by sect. 15, it is the duty of the district council to provide such sewers as are required for effectually draining their district; and the Board stated that they would only be prepared to put the remaining powers of the present section in force in respect of such streets or parts of streets as had already been sewered, and that the application for the powers referred to should therefore be limited to particular streets in which sewers had been provided.

Private Street Works Act, 1892.

The Minister of Health may, by order under sect. 276 of the present Act, put the Private Street Works Act, 1892, in force in any rural district, or in any part of such a district—see sect. 4 of that Act and Note.¹ Where that Act is in force the present section has, as in urban districts where it has been adopted, no application.²

Public Health Act, 1907.

Where sect. 19 of the Public Health Acts Amendment Act, 1907,³ is in force, the district council may require frontagers to execute repairs which are needed to obviate or remove danger to any passenger or vehicle, in a street not being a highway repairable by the inhabitants at large. The notice must specify a reasonable time for the execution of the works. But when they have served such a notice, the owners may, within the time so specified, by a counter notice call on the council to proceed instead under the present section or the Private Street Works Act, 1892.

Definition.

Meaning of "Street."
The meaning of the term "street" is discussed in the Note to sect. 4 of the present Act,⁴ and in the Note to sect. 5 of the Act of 1892.⁵ With reference to the interpretations which have been placed upon the term in connection with the present section, the following decisions may be noted:—

Paper road.

The term does not apply to streets which exist only on paper, and have not been actually made, dedicated to the public, or built upon.⁶ And the mere setting out an intended road which was never completed was held not to be such an irrevocable act that the person who did it, and allowed the public to use the road, was to be considered to have dedicated the road to the use of the public so as to enable the local authority to take proceedings under the present section with regard to it.⁷

Unformed street.

Nor does the present section apply to tracks which, though in fact used for slight vehicular traffic, are not in a condition to be so used.⁸

Private road.

In one case Jessel, M.R., said: "The Act expressly calls places 'streets,' whether they are public property or private property; and whether the public have any rights over them, or have no rights over them. There is a series of sections beginning with the 150th, the marginal note of which explains what I mean: 'power to compel paving, etc., of private streets.' The word 'streets' in this

(1) *Post*, p. 337.

(2) See s. 25, *post*, p. 354.

(3) *Post*, Part I., Div. III.

(4) *Ante*, p. 23.

(5) *Post*, p. 338.

(6) See *Mackett v. Herne Bay Comrs.*,

ante, p. 26.

(7) *Hall v. Bootle Cpn.*, *ante*, p. 28. See also *Healey v. Batley Cpn.*, *ante*, p. 288.

(8) See the *Dunfermline* and other cases, cited *ante*, p. 26.

Act of Parliament clearly extends to places which are in all respects private, and over which the public have no right.”⁹ There must, however, be a certain amount of publicity about the road or passage,¹⁰ such as would arise from the fact that it was used as a means of access to houses in the occupation of a number of different persons; ¹¹ for the term would obviously not be applicable to a mere carriage-drive, path, or passage within the curtilage of a private house. On a new road, which was in question in another case, there were continuous lines of houses and shops, to part of which there was a dedicated footway: the proprietors had erected bars and gates, at which they took toll without parliamentary powers. It was held that there was sufficient evidence to justify the magistrates in finding the road to be a street to which the present section could be applied.¹²

Lord Macnaghten, in a case from Australia,¹³ apparently suggested that the owner of an undedicated street could, on receipt of a paving notice, “close up all means of access and cut off all communication,” in which case “there would be no liability upon him”; but it is doubtful if that could be done with success in this country with regard to a way which had a sufficient element of “publicity” about it to make it a “street.”

In one case it was held that the justices were not bound to find as a matter of law that a road, if a highway, was a street within the definition of that word in sect. 4.¹⁴ In another, part of a road to a cemetery, which part had no houses along it, and in which there did not appear to be any intention to build, was held not to be within the section, although there was a public right of footway along that part and there were houses along another part.¹⁵ But Mathew, J., in the last-mentioned case, and Lord Watson in a previous case,¹⁶ expressed the opinion that the term “street” was not to be construed only in the popular sense, and that it might in certain cases mean something short of that. In a subsequent case, however, Charles, J., whose judgment was affirmed by the Court of Appeal, held that the words in the definition of “street” in sect. 4 were to be read into the present section;¹⁷ and that the question whether a place came within the meaning of “street” in the present section was a question of law for the judge and not of fact for the jury. Judgment was therefore entered for the defendants, notwithstanding a verdict for the plaintiff in the action, which was based on an alleged trespass by a local board in exercising the powers of the present section in relation to a private alley or court leading from a highway to a mill and to about twenty cottages which abutted, or the gardens or yards of which abutted, on the alley. There was considerable traffic over the alley, but the only persons having a right-of-way over it were the owners and occupiers of the adjoining property.¹⁸

Lord Blackburn and Lord Watson doubted whether sect. 53 of the Towns Improvement Clauses Act, 1847,¹⁹ applied to a mere country road which was not a “street” in the popular sense of the term. But the case was decided in favour of the defendants, on the ground that the road had been “theretofore” made up.²⁰

The exercise by an urban district council of their powers under the present section with respect to a street was held not to be inconsistent with the purposes to which the site of the street had been appropriated by a special Railway Act, as the site appeared to have been acquired for the purposes of an accommodation or other road. But Vaughan Williams, L.J., said that where it would be inconsistent with the appropriation of the land to the purposes defined by the special Act of a railway company to deal with a street under the present section, the powers of that section cannot be applied.²¹

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Road without houses.

Road made by railway company.

(9) *Taylor v. Oldham Cpn.* (1876), L. R. 4 Ch. D. at p. 407; 46 L. J. Ch. 105; 35 L. T. 696. See also *Jowett v. Idle Loc. Bd.*, *infra*.
(10) See *ante*, p. 27, where the cases on this point are noted.
(11) As in *Jowett v. Idle Loc. Bd.*, *infra*.
(12) *Midland Ry. Co. v. Watton* (1886, C. A.), L. R. 17 Q. B. D. 30; 55 L. J. M. C. 99; 54 L. T. 482; 50 J. P. 164.
(13) *Mowbray v. Hicks*, L. R. 1893 A. C. at p. 300.
(14) *Maude v. Baidon Loc. Bd.* (1883), L. R. 10 Q. B. D. 394; 48 L. T. 874; 47 J. P. 644; doubted in *Fenwick v. Croydon R.S.A.*, *ante*, pp. 24, 289.
(15) *Reg. v. Burnup* (1886), 50 J. P. 598.
(16) *Portsmouth Cpn. v. Smith*, *infra*.
(17) See also *Richards v. Kessick*, *post*, p. 335.
(18) *Jowett v. Idle Loc. Bd.*, 57 L. T. 928; affirmed in C. A., 1888 W. N. 87; 36 W. R. 530.
(19) *Post*, Vol. II., p. 1620.
(20) *Portsmouth Cpn. v. Smith* (1885), L. R. 10 A. C. 364; 54 L. J. Q. B. 473; 53 L. T. 394; 49 J. P. 676.
(21) *Stretford U.D.C. v. Manchester South Junction and Altrincham Ry. Co.* (1903), 68 J. P. 59; 1 L. G. R. 683.

Sect. 150, n.
Road
unlawfully
made.

In a case under the Metropolitan Acts it was contended that a frontager on a new street was not liable for paving expenses, because the street had been made without the sanction of the London County Council under the London Building Act, 1894, having been first obtained; but the Divisional Court held that this did not relieve the frontager of liability, as the street was a street in fact.²²

Highways repairable by Inhabitants.

The words "repairable by the inhabitants at large" within brackets at the commencement of the present section were omitted from the original enactment in the Public Health Act, 1848,²³ but were supplied by an amending Act of 1852.²⁴

With regard to the circumstances under which the inhabitants at large are liable to repair a particular highway, see the Note to the preceding section, where the cases on the subject, including those which have arisen in connection with the present section, are collected.²⁵

With regard to streets partly repairable by the inhabitants at large, see the Note to the last clause of the section.²⁹

The burden of
proof.

Channell, J.,²⁶ and Jelf, J.,²⁷ have expressed the view that the burden lies with the local authority to show that a road, to which they are seeking to apply the present section or the Private Street Works Act, 1892, is not one repairable by them, though this has recently been doubted by Hamilton, L.J.²⁸

Repair of
cellar roofs
in streets.

With regard to the maintenance of the gratings, flags, etc., forming the roofs of cellars under the street, by or at the expense of the owners, see sect. 35 of the Public Health Acts Amendment Act, 1890.³⁰ See also sect. 26 of the present Act, and the Note to that section, as to vaults, arches, and cellars under streets.

Repair of
streets made
by council.

Urban district councils are authorised to make new streets,³¹ and it appears that such streets will necessarily be repairable by the inhabitants at large; for it was decided that they could not be dealt with under sect. 69 of the Public Health Act, 1848.³²

Repair of
occupation
roads under
local Acts

The expenses of repairing private or occupation roads, set out under Inclosure Acts, may be raised by a rate on the landowners, who are themselves to appoint a rating officer.³³

Under a local Act of 1838, requiring certain improvement commissioners to cause streets not being public or common highways which were at the passing of the Act fully built on, and all streets thereafter made, though not fully built on, to be paved, etc., at the expense of the frontagers, the occupier of a house in a street formed in about the year 1859, and ever since used by the public, was held liable to contribute in 1874 to the recent completing of the street, the words "not being public or common highways" applying only to the streets which had been fully built on at the passing of the Act.³⁴

A local Act was incorporated with a previous Act which enabled the local authority to cause streets not being highways repairable by the inhabitants at large to be sewered, etc., at the cost of the frontagers. The subsequent Act, which provided that "when the corporation cause any new sewer to be constructed in any street in which there is not a sewer, or in which the existing sewer is insufficient, they may charge the owners of the lands abutting upon such street with the payment of the expenses" (subject to a proviso for charging only part of the expenses in certain cases), was held to be applicable to streets which were highways repairable by the inhabitants at large, and not to be limited by the earlier enactment.³⁵

Satisfaction of Urban Authority.

Meaning of
paved.

By the interpretation clause of the Public Health Acts Amendment Act, 1890, which is in force without being expressly adopted, a street asphalted or paved

(22) *Camberwell B.C. v. Dixon*, L. R. 1910, 1 K. B. 424; 79 L. J. K. B. 318; 102 L. T. 33; 74 J. P. 77; 8 L. G. R. 238.

(23) 11 & 12 Vict. c. 63, s. 69.

(24) 15 & 16 Vict. c. 42, s. 13.

(25) *Ante*, p. 285.

(26) In *Rishton v. Haslingden Cpn.*, *post*, p. 317.

(27) In *Vyner v. Wirrall R.D.C.*, 73 J. P. at p. 243. See also *post*, p. 345 (6).

(28) In *Cababé v. Walton-on-Thames U.D.C.*, *ante*, p. 289.

(29) *Post*, p. 334.

(30) *Post*, Part I., Div. II.

(31) See s. 154, and Note, *post*.

(32) *Kingston-upon-Hull Loc. Bd. v. Jones* (1856), 1 H. & N. 489; 26 L. J. Ex. 33; 2 Jur. (N.S.) 1193. See also *post*, p. 363 (41).

(33) 11 & 12 Vict. c. 99, ss. 5-7. And see 3 & 4 Wm. IV. c. 35, as to the recovery of the rates. Further as to inclosure award roads, see *ante*, p. 289.

(34) *Birkenhead Improvement Comrs. v. Sansom* (1876), 34 L. T. 175; 40 J. P. 406.

(35) *Rochdale Cpn. v. Leach* (1909, C. A.), 101 L. T. 881; 74 J. P. 89; 8 L. G. R. 267. See also *Crump v. Chorley Cpn.*, *post*, Vol. II., p. 1620.

with wood, tar paving, or artificial stone, or other improved paving of any kind, is to be deemed "paved" within the meaning of the Public Health Acts; but is not to be deemed paved to the satisfaction of an urban authority unless paved with such kind as well as with such quality of paving as the authority consider suitable.³⁶

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The owners of certain land laid out plots for building, with roads, and engaged a contractor to make the roads to the satisfaction of the local board. The surveyor of the board did in fact approve of the roads, but he did not report the matter, and no final approval by the board was ever given; though the board, having a burial-ground near to the land, kept part of the roads in repair for some time. Afterwards the board called upon the owners to sewer the road, and on default of the owners, did the work themselves, and sought to recover the expenses. The court held that as they had never indicated their satisfaction, they were not estopped from recovering.³⁷ But where a local board agreed with the owner of a building estate that a new road should be made to the satisfaction of their surveyor and then be adopted by them, and the county court judge, having found as a fact that the board had treated the case as falling within sect. 146, refused to enforce payment of expenses subsequently incurred under the present section, although the requirements of sect. 152 had not been complied with, the court declined to interfere with his decision.³⁸

Satisfaction of urban authority.

In 1878 a local board made part of the causeway of a street, which was not repairable by the inhabitants at large, for and on behalf of and at the expense of certain adjoining owners, and gave those owners a copy of a resolution which they passed "that an indemnity be given to [the owners in question] against liability on account of further expenses that may be occasioned in connection with N. street." On the urban district council proceeding in 1901 to make up the street under the Private Street Works Act, 1892, it was held that the resolution did not amount to a bargain that there was to be an indemnity for all time, and therefore did not afford the owners or their successors in title a good objection to being called upon to pay their share of expenses incurred under that Act.³⁹

Under the Metropolis Management Amendment Act, 1862,⁴⁰ it was held that where the owner of houses in a "new street" had already constructed a sewer, which was satisfactory for its purpose, but was subsequently replaced by another sewer falling in the opposite direction and made by the district board for the benefit of the neighbourhood, he could not be required to pay any part of the cost of the substituted sewer.⁴¹

Satisfaction with sewerage.

This was followed by the Court of Appeal in a case arising under the present Act, in which the magistrates had found that the street in question had been sufficiently drained by the then owners, a land company, before the constitution of the local board in 1868. The board, in order to adapt the sewerage of the street to their general system, required the owners in the year 1884 to sewer the street in a different manner. It was held that the original sewer was not made for the profit of the company, but vested in the local board, that the expenses of altering the system ought to be borne by the board, and that the frontagers were not liable under the present section.⁴² *Per* Lord Esher, M.R.: "The moment this sewer vested in the respondents, it became their duty to see that it was sufficient for the requirements of the street and the inhabitants of the street, and if the respondents were not satisfied with the sewer they might at that time have exercised the powers given to them by sect. 150 of the Public Health Act. They must, of course, be allowed a reasonable time to make up their mind as to whether the sewer was sufficient; but if they did nothing or expressed no view on the subject within that reasonable time, it must, having regard to the circumstances and the provisions of the Act of Parliament, be taken as conclusive upon the respondents that they were satisfied with the sewer. Now it appears to me that if the respondents were once satisfied with the sewer, they could not afterwards take proceedings under sect. 150. The powers which are given by that section as to sewers must be exercised once for all, and must be

(36) See s. 11 (2), *post*, Part I., Div. II.

(37) *Smith v. Croydon Loc. Bd.* (1868), 32 J. P. 709.

(38) *Bromley Loc. Bd. v. Lansbury*, *Times*, 5th December, 1894.

(39) *Dodworth U.D.C. v. Ibbotson* (1903), 67 J. P. 132.

(40) 25 & 26 Vict. c. 102, ss. 44, 52, 112.

(41) *Fulham Dist. Bd. v. Goodwin* (1876, C. A.), L. R. 1 Ex. D. 400; 35 L. T. 907; 41 J. P. 134. See also *Camberwell Vestry v. Hunt* (1887), 56 L. J. M. C. 65; 52 J. P. 132.

(42) *Bonella v. Twickenham Loc. Bd.* (1887), L. R. 20 Q. B. D. 63; 57 L. J. M. C. 1; 58 L. T. 299.

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Satisfaction
with sewer-
ing—*cont.*

exercised at the time when it is open to the urban authority to declare that the street is not sewered to their satisfaction." In the case cited below,⁴³ A. L. Smith, J., held that a local authority's delay of 14 years did not amount to satisfaction with the existing sewer, because they had several times during that period complained of the absence of manholes and ventilators. In a subsequent case two roads had been laid out and sewers constructed in 1867 and 1868. A local board were constituted in 1873, and in 1881 called upon the frontagers to sewer, level, pave, and make good the roads. Chitty, J., having found upon the evidence that having regard to the character of the district, the nature of the ground, and the time and work that were necessary for properly sewerage and draining the roads, there had been no unreasonable delay on the part of the board in putting their powers in operation, and that they never were satisfied that the roads in question were properly sewered, etc., but had reasonable grounds for being dissatisfied, held that the apportioned expenses rightly included the cost of making the sewer; and the Court of Appeal declined to interfere with his decision.⁴⁴

A part of a street may be sewered to the satisfaction of a local authority within the meaning of the present section, although the sewer in the part in question has for the time being no outfall, but forms portion of a general scheme of sewerage which when completed will afford it an outfall. Thus, if the local authority by their proper officer inspect a sewer, which is in course of construction and is being laid by a private individual in accordance with plans submitted to and approved of by the local authority, and do not thereupon disapprove of it, they cannot afterwards call upon the frontagers to re-sewer the street if they find that the sewer so laid has become ruinous before it has been provided with an outfall and come into use.⁴⁵

A road was made on a building estate in about 1859, and a 12 in. pipe was laid along it at that time. The first houses built along the road, including the defendant's, were drained into cesspools; those built since about 1876 were drained into the pipe, which discharged into a culvert having its outfall into a river. A local board of health was constituted for an area comprising the road in 1878, and there was evidence that in 1882 their surveyor was aware of at least one connection of house drains with the pipe, and that in about 1893, the local authority, on complaint of the outfall into the river, proposed a scheme by which the drainage from the pipe would have been diverted from the river. In these circumstances Neville, J., held that the local authority must be taken to have been satisfied with the 12 in. pipe and that the sewerage of the street could not be carried out under the present section at the cost of the frontagers.⁴⁶

In 1881 an urban authority, who had at first intended to lay at their own expense a sewer for surface water, as well as one for sewage, in a street not repairable by the inhabitants, laid the latter sewer only, and the surface water continued to be carried away by open channels. In 1892 they were intending to lay a surface water sewer at the expense of the frontagers under the present section, but abandoned that intention on the frontagers undertaking to repair the street. In 1904 the council called upon the frontagers to lay a surface water sewer in the street and on their default executed the work and took proceedings to recover the expenses. It was held that there was evidence which justified the finding of the justices that the local authority had not been satisfied with the sewerage of the street, and the court declined to interfere with their decision and their order for payment of the expenses.⁴⁷

But the council may not lay, at the expense of the frontagers, a sewer which is larger than is necessary for the particular street.⁴⁸

Where an owner, in the exercise of his right of draining seven houses into a sewer, laid a drain for them under the adjoining footway, not at a sufficient depth to drain the street or other properties along it, and neither he nor the local authority intended the drain to be regarded or accepted as sewerage of that part of the street, the local authority were entitled to have that part sewered under

Temporary
sewerage.

(43) *Barrow-in-Furness Cpn. v. Dawson* (1891), 13 M. C. Assoc. Circular, 13.

(44) *Walthamstow Loc. Bd. v. Staines*, L. R. 1891, 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430.

(45) *Hornsey Loc. Bd. v. Davis*, L. R. 1893, 1 Q. B. 756; 62 L. J. Q. B. 427; 68 L. T. 503;

57 J. P. 612.

(46) *Wilmslow U.D.C. v. Sidebottom* (1906, Ch. D.), 70 J. P. 537; 5 L. G. R. 80.

(47) *Bloor v. Beckenham U.D.C.*, L. R. 1908, 2 K. B. 671; 77 L. J. K. B. 864; 98 L. T. 299; 72 J. P. 325; 6 L. G. R. 876.

(48) *Acton U.D.C. v. Watts*, *post*, p. 326.

the present section, although the drain was a "sewer" vested in them.⁴⁹ And in a later case *Kekewich, J.*, said that it would be wrong to say that a street is "sewered" when there is nothing more than a series of sewers draining some of the houses on one side in one direction, and some of the houses on the other side in another direction, and not forming parts of one system; and that in a case where a street is gradually growing, the time within which the local authority are to determine whether a street has been sufficiently sewered or not, must be an elastic one, depending upon the circumstances.⁵⁰ *Hawkins and Channell, JJ.*, considered that those cases referred only to a "growing street," and distinguished them in a case where there had been no change in the street for seventy years.⁵¹

The fact that the owner has obtained and enrolled a certificate under the Highway Act, 1835,⁵² does not render the road repairable by the inhabitants at large, if the road has not been paved, etc., to the satisfaction of the urban authority.⁵³

A distinction is drawn between the sewerage of the street and the paving and other works. The sewers with which the street is sewerage are vested in the district council; it is their duty to maintain such sewers, and they may alter the sewers as they think proper. But the paving and other works do not vest in them; they are under no obligation to repair such works when worn out or destroyed; and except under the present section or the Private Street Works Act, 1892, they have no power to repair or improve the works, unless and until the street has been duly rendered a highway repairable by the inhabitants at large.⁵⁴ As regards the sewerage, therefore, the council cannot, as the cases above cited show, recover from the frontagers expenses which have been necessitated by their own neglect to perform their duty or exercise their powers. But as regards the paving and other works, expenses which have been necessitated by the works having become worn out or destroyed are not due to any default on their part, and the fact that they were at some previous time satisfied with the works is not material. It has accordingly been held that the provisions of the present section (except as regards the sewerage of the street) may be applied to the same street more than once.

In 1887 certain streets were laid out in accordance with plans previously approved by the then rural sanitary authority (the plans not showing any metalling, as to which the defendant admitted his liability), but there was no evidence that the authority had approved of the work. In 1888 the area comprising the streets became an urban district, and in 1891, the paving and channelling being in a bad condition, the local board, who had not previously expressed any dissatisfaction, required the frontagers to metal, pave and channel the streets. In an action in the county court to enforce the charge on the premises under sect. 257 in respect of the cost of the work, the judgment was given for the local board as regards the metalling only. The board appealed, and their appeal was allowed. Lord Russell, C.J., said that there was nothing in the present section to show that the work must be done by the owners once for all, and that in his opinion so long as a street had not become repairable by the inhabitants at large, and was not paved and channelled to the reasonable satisfaction of the urban authority, they might call upon the frontagers to do what was necessary in those respects; but he added "if they [the urban authority] ought reasonably to be satisfied with the condition of a private street it is not enough, in order to justify them in proceeding . . . to say that they are dissatisfied."⁵⁵

Under the Metropolis Management Act, 1855, it was held that a local authority could not compel the owner of a mews to repave it with compressed asphalt or concrete, when it had been paved with macadam by his predecessor in title in compliance with a notice from the then local authority and to their satisfaction, but were only entitled to require him to keep the macadam in repair.⁵⁶

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Satisfaction with paving, &c.

Enforcement of section more than once.

(49) *Handsworth Loc. Bd. v. Taylor*, L. R. 1897, 2 Ch. 442, n.; 69 L. T. 798; 58 J. P. 9.

(50) *Handsworth U.D.C. v. Derrington*, L. R. 1897, 2 Ch. 438; 66 L. J. Ch. 691; 77 L. T. 73; 61 J. P. 518.

(51) *Rishton v. Haslingden Cpn.*, L. R. 1898, 1 Q. B. 294; 67 L. J. Q. B. 387; 77 L. T. 620; 62 J. P. 85.

(52) 5 & 6 Wm. IV. c. 50, s. 23.

(53) *Reg. v. Dukinfield*, post, p. 358 (16).

(54) See *Rex (O'Neill) v. Newell (No. 2)*, 1911 Ir. K. B. 573; 2 Glen's Loc. Gov. Case Law 110, where an auditor's surcharge of

expenditure on an undedicated road was upheld.

(55) *Barry and Cadoxton Loc. Bd. v. Parry*, L. R. 1895, 2 Q. B. 110; 64 L. J. Q. B. 512; 72 L. T. 692; 59 J. P. 421. See, also, as to "temporary" repairs by highway authorities, *Wilson v. Camberwell Vestry (Q. B. D.)*, L. R. 1892, 1 Q. B. 1; 61 L. J. M. C. 3; 65 L. T. 790; 56 J. P. 167.

(56) 18 & 19 Vict. c. 120, ss. 99-100; *Harrison v. Owner of New Street Mews*, L. R. 1906, 1 K. B. 703; 75 L. J. K. B. 510; 95 L. T. 57; 70 J. P. 355; 4 L. G. R. 703.

**Sect. 150, n.
Local Acts.**

A local Act enacted that the corporation of a municipal borough might at any time and from time to time order that, if in any street (whether or not a highway repairable by the inhabitants at large) there was not a properly paved asphalted or flagged footway on each side, the owners or occupiers of buildings or lands in the street should make a footway or pathway at their own expense along their respective frontages; and provided that in default the corporation might execute the work and recover the expenses from the frontagers. It was held by the Court of Appeal that though the owners or occupiers might under this enactment have been ordered to make a footway where no footway existed at all, they could not be required to make a new flagged footway in lieu of a previously existing asphalted and kerbed footway, which had been made by turnpike trustees and had subsequently become repairable by the corporation, but had been allowed by the corporation to fall into disrepair.⁵⁷

Notice to Pave, etc.

**Form of
notice.**

A form for the notice is given in Sched. IV. to the present Act. Under sect. 266, the notice may be either written or printed, or partly written and partly printed.

The notice "is a general one: it is a notice to all the owners collectively to make up the street generally. No one ever saw a notice under sect. 150 calling upon each owner to make up that part only which was opposite his own house."¹ But "it is not meant that each owner may be called upon to execute the whole."²

It is not absolutely necessary to insert the name of the person to whom the notice is addressed; for by the last clause of sect. 267 "any notice by this Act required to be given to the owner or occupier of any premises, may be addressed by the description of the 'owner' or 'occupier' of the premises (naming them) in respect of which the notice is given, without further name or description." It is desirable that the name of the person should be set out when it is known; but if there is any doubt a notice should be served in the manner provided by sect. 267, whether or not one is also served personally on the supposed owner. A notice addressed "To B. or other the owner, or other the occupier of certain premises fronting, adjoining, or abutting upon a certain street within the said borough known as Grass Land, Portland Road," and affixed to the premises, was held to have been sufficient.³

So also a notice under the present section was held to have been properly served on the owner of a narrow strip of land 1 foot broad and 190 feet long adjoining the street, by being fixed on a notice-board erected on the strip and addressed "To the owner of certain premises, being, etc.," where the owner's name and address were not known to the clerk, who drew and posted the notice, although they were known to the surveyor and assistant surveyor of the local authority.⁴

With regard to the meaning of the term "owner," see the interpretation clause, sect. 4, and the Note thereon.⁵

**Nuisance in
road.**

An attempt to render executors liable to make up a street under the nuisance clauses instead of under the present section failed because the executors were not "owners," as the road had been dedicated to the public.⁶

**Authentica-
tion of notice.**

The seal of the urban authority need not be affixed, but the signature of the "clerk, surveyor, or inspector of nuisances," will, according to sect. 266, be sufficient authentication: though, as the form given in the schedule is intended to be signed by the clerk, it would be as well that the clerk should always sign the notices under the present section. At all events the inspector of nuisances would not seem to be the proper officer to sign them. On this point, the following case may be noted:—Where a committee of a local board passed certain resolutions relating to the sewerage, levelling, etc., of certain streets, and the minutes of the committee were submitted for the approval of the local board, who by resolution approved of them, and directed the matters referred to to be carried out, and notices were thereupon served upon the various parties in the name of the board to do the works required; this was held to be sufficient, as the acts done were the acts

(57) *Lodge v. Huddersfield Cpn.*, L. R. 1898, 1 Q. B. 847; 67 L. J. Q. B. 568; 78 L. T. 422; 62 J. P. 387; affirmed in C. A., 62 J. P. 515.

(1) *Per Wills, J.*, in *Lancaster v. Barnes U.D.C.*, cited in Note to P.H. Act, 1890, s. 19, *post*, Part I., Div. II. For quotation, see L. R. 1898, 1 Q. B. at p. 858.

(2) *Per Grove, J.*, in *Simcox v. Handsworth*

Loc. Bd., *post*, pp. 320, 326. For quotation, see L. R. 10 Q. B. D. at p. 43.

(3) *Butler v. Gravesend U.S.A.* (1894), 58 J. P. 446.

(4) *Sharpley v. Bear* (1903), 67 J. P. 442. But see *Reg. v. Mead*, cited in Note to s. 267, *post*.

(5) *Ante*, p. 15.

(6) *Macey v. James' Executors*, *ante*, p. 16.

of the board, and the notices did not require to be under seal and under the hands of five of their body, in accordance with the provisions of the Public Health Act, 1848, relating to the authentication of documents.⁷

The notice will be bad if it does not sufficiently specify the works required to be done.⁸ But Lord Bramwell, in a case under the present section,⁹ recommended local authorities “ when they do give orders that work shall be done, not to prescribe the mode in which it shall be done, but to content themselves with saying that if done in a particular way it will be satisfactory to them.”

In a case, in which a local board were unable to recover from the adjoining owners the expenses of sewerage and other works in a private street, because the preliminary notices had not sufficiently specified the works, it was held that the board were nevertheless liable to their contractor, with whom they had stipulated that he should be paid when the money was collected from the owners, for they had impliedly undertaken that they were in a position to collect the money, and that they had done or would do all that was in their power to collect it.¹⁰

The notice may, however, specify the works by reference to other accessible documents. Thus, a notice informing the owners that the street was not “ sewered, levelled, etc.,” and intimating that in default the works would be executed by the local board, was held, under the Public Health Act, 1848, to be sufficient, although it did not specify the breadth, level, or any other particulars; for it contained the following note at the foot: “ Particulars of the necessary works may be obtained from the Borough Surveyor’s Office, No. 3, Town Hall ”— and plans and specifications were lodged at that office.¹¹ And now, it will be observed, the present section expressly provides that a reference in the notice to the deposited plans will suffice.

A notice referring to the present section, stating that unless its provisions were complied with, the works would be executed and the expenses recovered from the frontagers, but containing no reference to the plans which had in fact been deposited, was held by Neville, J., to be insufficient.¹²

Huddleston, B., and Manisty, J., differed on the question whether the deposit of plans was directory or not, the latter judge being of opinion that it was not merely directory.¹³

A notice required the owner to pave so much of the street as abutted on the premises, but the plans and sections deposited showed works to be done which would include part of the garden in front of the house as well as of the street. It was held that the notice was good *pro tanto*, and that the justices ought to enforce it by ordering payment for the work properly done.¹⁴

A mistake in a notice, which described the streets in question as “ back roads ” instead of “ cross roads,” was held not to invalidate the notice.¹⁵

In another case, however, the notice to execute the works, and the subsequent apportionment of the expenses, by mistake referred to the premises of the owner of two houses, of which the gardens adjoined the street in question, as “ the garden of R.,” instead of “ the gardens of R. and F.,” but the apportionment was based on the frontage of the two gardens. The owner disputed the apportionment, and on the matter being referred to arbitration, the award reduced the amount apportioned on him to an amount calculated on the frontage of “ the garden of R.” only. On a motion to set aside the award, it was held that the award was good, as the arbitrator could only determine the question of the frontage to which the notice related.¹⁶

The notice will be bad if it does not allow sufficient time for the work to be done by the persons on whom it is served,¹⁷ but, if a reasonable time

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Particulars of works.

Deposited plans.

Mistake in notice.

Time for works.

(7) 11 & 12 Vict. c. 63, s. 35. *Barnsley Loc. Bd. v. Sedgwick* (1867), L. R. 2 Q. B. 185; 8 B. & S. 202; 36 L. J. M. C. 65; 15 L. T. 569; 31 J. P. 165.

(8) *Parkinson v. Blackburn Cpn.* (1859), 33 L. T. Jo. 119.

(9) *Acton Loc. Bd. v. Lewsey*, post, p. 326. For quotation, see L. R. 11 A. C. at p. 96.

(10) *Worthington v. Sudlow* (1862), 2 B. & S. 508; 8 Jur. (N.S.) 668; 31 L. J. Q. B. 131; 6 L. T. 283; 26 J. P. 453.

(11) *Bayley v. Wilkinson* (1864), 16 C. B. (N.S.) 161; 33 L. J. M. C. 161; 10 L. T. 543; 10 Jur. (N.S.) 726.

(12) *Stourbridge U.D.C. v. Butler*, L. R. 1909, 1 Ch. 87; 78 L. J. Ch. 59; 99 L. T. 912; 73 J. P. 3; 7 L. G. R. 183.

(13) *Manchester Cpn. v. Hampson* (1887), 35 W. R. 334, 591 (C. A.).

(14) *Hall v. Potter* (1869), 39 L. J. M. C. 1; 21 L. T. 454; 34 J. P. 515; see also *Manchester Cpn. v. Hampson*, supra.

(15) *Blackburn Cpn. v. Sanderson* (C. A.), L. R. 1902, 1 K. B. 794; 71 L. J. K. B. 590; 86 L. T. 304; 66 J. P. 452.

(16) *Thomas v. Hendon R.D.C.* (1910, K. B. D.), 75 J. P. 161; 9 L. G. R. 234.

(17) *Bristol Cpn. v. Sinnott* (C. A.), L. R. 1918, 1 Ch. 62; 87 L. J. Ch. 30; 117 L. T. 644; 82 J. P. 9; 15 L. G. R. 871.

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is fixed, it is immaterial whether the time is fixed by the council or a committee.¹⁸

Service of notice.

The notice may be served personally or by post, or left at the residence of the person named in it; or, if it is addressed to "the owner" or "the occupier," it may be delivered to any one on the premises, or, if there is no one there, it may be affixed to the premises in a conspicuous place.¹⁹

It has been held that service of the notice on a person *de facto* receiving the rent, is a service on the owner.²⁰ So also the service of the notice upon a clerk at the office of the "owner," where the owner carried on his business, was held to be a sufficient service, and to be a service upon some "inmate of his place of abode" under sect. 150 of the Public Health Act, 1848, which was similar to sect. 267 of the present Act, except that the latter section is not confined to "inmates." *Per* Pollock, C.B., that section is in aid of the service of notices, and applies where the name of the owner or occupier is unknown, in which case it prescribes a particular mode of delivery.²¹

But where one owner out of six made default in executing works pursuant to a notice under the present section, the urban sanitary authority were held not to be bound, before executing the works, to give a fresh notice to the owner in default specifying the particular works which remained to be done.²²

Failure to serve notice.

If the notice be not given, the expenses cannot be recovered; for the owner has a right to contest his liability on the ground that the street is a highway repairable by the inhabitants at large.²³

Under a local Act containing provisions similar to those of the present section, a local authority made an order on the frontagers of a street to execute certain works, but neglected to serve the order on one of them until after they had commenced to execute the works, when they served him with a copy, and then allowed the prescribed interval to elapse before proceeding with the works. It was held that they could not recover any of the expenses from this frontager.²⁴

So also the expenses were irrecoverable when the notices had been served upon the wrong persons, namely, persons who had previously conveyed away their interest in the premises.²⁵

Waiver.

The Court of Appeal held that the want of service of the preliminary notice was not cured or waived by the owner having paid part of the instalments claimed in respect of the expenses and having taken a receipt for the payment from the local board, and that therefore the board could not enforce the charge on the premises in respect of the remaining instalments against the successor in title of such owner.²⁶

Estoppel.

An abortive appeal to the Local Government Board, based on the validity of the notice, was held not to estop the appellant from subsequently defending proceedings for the recovery of the expenses on the same ground.²⁷

At quarter sessions it was found as a fact that the appellant had induced the local authority to believe that he was the owner, as executor, of certain property abutting upon a street which was made up under the present section, and it was held at quarter sessions that he was estopped from denying ownership. But this decision was reversed on the ground that the essential elements of estoppel were wanting, there being no finding either that the appellant intended the local authority to believe that he was owner or that the local authority believed that he had that intention.²⁸ As to estoppel of the local authority, see the case cited below.²⁹

Withdrawal of notice.

The local authority may not withdraw a notice under the present section after

(18) *Macclesfield Cpn. v. King Edward VI. Grammar School Governors*, L. R. 1921, 2 Ch. 189; 90 L. J. Ch. 477; 126 L. T. 15.

(19) See s. 267, *post*; also *Butler v. Gravesend U.S.A.* and *Sharpley v. Bear*, *ante*, p. 318.

(20) *Peek v. Waterloo and Seaforth Loc. Bd.* (1863), 2 H. & C. 709; 33 L. J. M. C. 11; 9 L. T. 338; 9 Jur. (N.S.) 1344.

(21) *Mason v. Bibby* (1864), 2 H. & C. 881; 33 L. J. M. C. 105; 9 L. T. 692; *s.c. nom. The Local Board of Health [Waterloo with Seaforth] v. Bibby*, 10 Jur. (N.S.) 519.

(22) *Simcox v. Handsworth Loc. Bd.* (1881), L. R. 8 Q. B. D. 39; 51 L. J. Q. B. 168; 46 J. P. 260.

(23) *Jarrow Loc. Bd. v. Kennedy* (1870),

L. R. 6 Q. B. 128; 19 W. R. 275; 35 J. P. 248. See also *Stourbridge U.D.C. v. Butler*, *ante*, p. 319, and *Wirral R.D.C. v. Carter*, decided and noted under the Act of 1892, *post*, p. 340.

(24) *Leeds Cpn. v. Armitage*, 1899 Loc. Gov. Chron. 390; 43 Sol. J. 263; *Times*, Feb. 15th.

(25) *Wallsend Loc. Bd. v. Murphy* (1889), 61 L. T. 777.

(26) *Farnworth Loc. Bd. v. Compton* (1886), 34 W. R. 334.

(27) *Bristol Cpn. v. Sinnott*, *ante*, p. 319.

(28) *Pierson v. Altrincham U.D.C.* (1916), 86 L. J. K. B. 969; 116 L. T. 314; 81 J. P. 149; 15 L. G. R. 228.

(29) *Alloa B.C. v. Wilson*, *post*, p. 334 (40).

the expiration of the time therein specified for the execution of the works, if the frontagers proceed with reasonable speed to carry out the notice.³⁰

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Premises.

Premises which are “extra commercium,” so as to be incapable of being let at a rackrent, and therefore of having an “owner” within the meaning of the Act, from whom expenses under the present section could be recovered, are to be disregarded in apportioning the expenses. The decisions relating to premises “extra commercium,” namely, highways, railway bridge parapets, churches, public pleasure-grounds, etc., have been cited in the Note to sect. 4.³¹

Premises
extra com-
mercium.

Where the site of a retaining wall between a street, of which the level had been artificially raised, and a railway had been omitted from an apportionment of paving expenses under the Metropolitan Acts, the apportionment was held to be bad, the magistrate having found that the site and the wall were not incapable of commanding a rental. In this case it was suggested that if the wall had vested in the highway authority, the railway, although at a lower level than the street, would have been properly included in the apportionment.³²

A conservancy board, in whom was vested a strip of land about 26 feet wide, used as a retaining bank for their navigation cut, were held by the Court of Appeal to be liable to pay paving expenses in respect of a new street under the Metropolitan Act as owners of the strip of land, because they might have substituted a retaining wall for the bank and sold the remainder of the strip, and there was nothing to prevent them from letting the land or profitably using it for purposes ancillary to their undertaking, and it was, therefore, not incapable of being let at a rackrent.³³

The Crown, not being named in the present section, is not bound by its provisions, and is not liable to pay, in respect of property owned and occupied for the purposes of the Crown, any of the expenses of making up a street on which such property abuts. Land acquired and occupied by a volunteer corps for military purposes and vested in the commanding officer for the time being is land so owned and occupied for the purposes of the Crown.³⁴

Crown
premises.

Fronting, Adjoining, or Abutting on Street.

The district council have no power under the present section to apportion expenses of making up a street upon the owners of premises which are not situate within the district of the council, although such premises may front, adjoin, or abut on the street.¹

Premises
without the
district.

The fact that no part of the street itself belongs to the owner of the adjoining premises is immaterial.²

Ownership of
street.

With reference to a covenant in a lease of the ground floor of one of a large block of houses belonging to the same lessor, that the lessor would not permit any of his tenants of his “adjoining premises,” or of other parts of the house in question, to carry on a certain business on such premises, Cozens-Hardy, J., adopting the view expressed by Parke, J.,³ with reference to the terms of an indictment, that “ground cannot be properly said to adjoin a house, unless it is absolutely contiguous, without anything between them,” held that the expression “adjoining premises” did not include the whole block of houses, but only the house on each side of the premises demised.⁴ But No. 6 in a terrace of six shops

Meaning of
“adjoining”
and
“abutting.”

(30) *Denman v. Finchley U.D.C.*, *post*, p. 326. On this point, see *per* Joyce, J., 10 L. G. R. at p. 700.

(31) *Ante*, p. 15. See also *post*, p. 324.

(32) *Scott v. Investors' Property Cpn.* (1904), 68 J. P. 352, *n*.

(33) *Hackney Cpn. v. Lee Conservancy Bd.*, L. R. 1904, 2 K. B. 541; 73 L. J. K. B. 766; 91 L. T. 13; 68 J. P. 485; 2 L. G. R. 1144.

(34) *Hornsey U.D.C. v. Hennell*, and other cases, cited in Note to s. 327, *post*.

(1) *Hornsey Cpn. v. Birkbeck Land Soc.*, L. R. 1906, 1 K. B. 521; 75 L. J. K. B. 348; 94 L. T. 700; 70 J. P. 140; 4 L. G. R. 581. See also the *Shoreditch* and *Bishop Auckland Cases*, *post*, p. 340, where the boundary between the districts ran down the middle of the street. In the *Hornsey Case* the boundary ran along the road side of one of the footpaths, and the frontagers on the side of that footpath were held not liable to contribute towards the cost of making up the carriageway.

(2) *West Hartlepool Cpn. v. Robinson* (1897), 77 L. T. 387; 46 W. R. 218; 62 J. P. 35.

(3) In *Rex v. Hodges* (1829), Moody & Mal. at p. 343.

(4) *Vale & Sons v. Moorgate Street and Broad Street Buildings, Ltd.* (1899), 80 L. T. 487. See also *Ind Coope & Co. v. Hamblin* (1900, C. A.), 84 L. T. 168; and *Wellington Cpn. v. Lower Hutt Cpn.*, L. R. 1904 A. C. 773; 73 L. J. P. C. 80; 91 L. T. 539. In the last-cited case (which was distinguished in *In re Whiteley; Bishop of London v. A.G. and Whiteley*, L. R. 1910, 1 Ch. 600; 79 L. J. Ch. 405; 102 L. T. 313) the term “adjacent” was distinguished from “adjoining.”

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Meaning of
"adjoining"
and
"abutting"
—continued.

was held to "adjoin" No. 4 for the purpose of a similar covenant, though No. 5 intervened.⁵

And an advertisement hoarding erected in the centre of the bank on which a hedge about 4 feet 6 inches thick was growing was held not to "abut on" a street, as charged in an information preferred under a local Act prohibiting the erection of hoardings "in or abutting on or adjoining any street" without the consent of the district council.⁶ This case was, however, distinguished in one in which the information, preferred under another local Act couched in the same terms, charged certain advertising contractors with erecting a hoarding "in or adjoining or abutting on" a street, such hoarding not being securely erected to the satisfaction of the local authority. In this case the hoarding was set back ten feet from the footway of the street, but the ground in front of it was open to the street, so that persons could pass over it.⁷ Following this case, the Court held that the existence of a space of six or seven inches in width and an open iron fence between a hoarding and the edge of the highway did not prevent the justices from considering whether the hoarding was "in or abutting on or adjoining" a street within the meaning of a local Act prohibiting the erection of such hoardings without the consent of the local authority; and *per* Bray, J., the justices could not properly have come to any other conclusion than that the hoarding was "in the street."⁸

Building land separated from a watercourse by a strip of ground about six feet wide, and belonging to a different owner, was held not to "abut" on the watercourse within the meaning of a local Act, which authorised the local authority to require such watercourse to be filled up or covered over before buildings were erected on the land.⁹

A railway and canal company whose premises abutted on a street, but with a fence between them and the street, were held liable to be charged.¹⁰

Where the Private Street Works Act, 1892,¹¹ has been adopted in lieu of sects. 150-152 of the present Act, railway and canal premises, having no direct communication with a street not in existence at the passing of the Act, are not chargeable with any of the cost of making up the street, but their share falls on the other frontagers, though in the event of the company subsequently making a communication with the street they are to pay their share, and it is to be divided among the frontagers who paid it in the first instance.

Under the Manchester General Improvement Act, 1851,¹² which enacts that the expenses incurred by the town council in sewerage and flagging a street shall be borne by the owners, "according to the extent of their respective houses and grounds lying alongside or adjoining to the said street," it was held that the owner of ground at the end of a street forming a *cul-de-sac* was liable to pay an apportioned share of the expenses, although a wall divided his property entirely from the street.¹³

A was the owner of three houses fronting a street called York Place, and adjoining or abutting at the rear upon a footpath at the end of a street called St. Julian Street, which formed a *cul-de-sac*. The ground at the back of these houses was five feet above the level of St. Julian Street, and the wall, which was the property of A, was about twelve feet high on the outside. There was no access from the premises of A to St. Julian Street. Nevertheless, it was held that A's premises "*adjoined or abutted on*" that street within the meaning of the Act, and consequently that he was chargeable with his proportion of the expenses of paving, etc., that street under the present section.¹⁴

Again, where a small stream ran between one side of a street and the adjoining

(5) *Cave v. Horsell* (C. A.), L. R. 1912, 3 K. B. 533; 81 L. J. K. B. 981; 107 L. T. 186; distinguished in *Derby Motor Cab Co. v. Crompton and Evans Union Bank* (1913, Eve, J.), 57 Sol. J. & W. R. 701; 29 T. L. R. 673.

(6) *Barnett v. Covell* (1903), 90 L. T. 29; 68 J. P. 93; 2 L. G. R. 215.

(7) *Rockleys, Ltd. v. Pritchard* (1909, K. B. D.), 101 L. T. 575; 74 J. P. 11; 7 L. G. R. 1069.

(8) *Stockport Cpn. v. Rollinson* (1910), 102 L. T. 567; 74 J. P. 236; 8 L. G. R. 609.

(9) *A.G. (Tottenham U.D.C.) v. Rowley* (1910, Ch. D.), 75 J. P. 81; 9 L. G. R. 121. See also *Rex v. South Eastern Ry. Co.* (1910,

C. A.), 74 J. P. 137; 8 L. G. R. 401; 54 Sol. J. & W. R. 233.

(10) *Reg. v. Newport Loc. Bd.* (1863), 32 L. J. M. C. 97; 3 B. & S. 341; 9 Jur. (N.S.) 746. See also *Elsdon v. Hampstead B.C.*, cited on another point, *post*, p. 330; and the sequel, *Hampstead B.C. v. Western* (1907, Darling, J.), 71 J. P. 565.

(11) See s. 22, *post*, p. 353.

(12) 14 & 15 Vict. c. cxix. s. 17.

(13) *Manchester Cpn. v. Chapman* (1868), 37 L. J. M. C. 173; 18 L. T. 640; 32 J. P. 582.

(14) *Newport U.S.A. v. Graham* (1882), L. R. 9 Q. B. D. 183; 47 L. T. 98; 47 J. P. 133. And see *Paddington Vestry v. Bramwell* (1880), 44 J. P. 815.

premises, which were connected with it by two bridges, the owners of the premises were held liable to pay their share of the expenses of paving the street.¹⁵ Sect. 150, n.

So also the owner of premises adjoining, but having no access to a *cul-de-sac* passage, which was used by the occupiers of five other sets of premises having access to it, and was in fact open to the public, though it did not appear that it had been permanently dedicated to the use of the public as a highway, was held liable to pay his proportion of similar expenses.¹⁶

A different result was arrived at where the premises of the person charged were separated from the street by a wall five feet high, belonging, together with the land on which it stood, to another person. There was no direct access from the premises to the street, but in order to reach it persons had to pass for a short distance down a public footpath or other intervening land; and it was held that the premises were not "fronting, adjoining, or abutting on" the street.¹⁷ In this case, however, Bowen, L.J.,¹⁸ expressed the opinion that the word "adjoin" was "a larger word" than "front" or "abut," and said that "a substantial access and advantage which the houses enjoy from that portion of the street which is to be paved, coupled with close proximity, may bring the case within the word 'adjoin,' though there is no actual touch."

In another case a person was owner of a strip of land four inches wide and 265 feet in length, upon which a fence was erected between a new street and the adjoining lands. He kept up the fence under a covenant, the ownership and occupation of the strip being retained by him, but there was no other land belonging to him upon the same side of the road. It was held that he was in the beneficial occupation of the strip, and was the owner within the definition of owner in the Metropolis Management Acts, and that he was therefore liable to bear a proportion of the expenses of paving the road as the owner of land *abutting on* a new street.¹⁹ This was followed in a case under the Private Street Works Act, 1892, where the strip was only one inch wide.²⁰

By a local paving, etc., Act, a rate was to be made on every tenement "*within the said street.*" A yard, with houses, etc., round it, was situated at the back of other houses which fronted the street in question. This yard communicated with the street by a covered gateway, but no part of it had ever been paved or repaired by the local commissioners, nor had the commissioners at any time exercised within the yard any of the powers conferred on them by the Act. It was held that the occupiers of the yard and houses therein were liable to be rated in respect of the paving and repairing of the street: the premises being for that purpose "*within the street,*" inasmuch as they had a frontage on the street, and their sole communication was with it.²¹

Houses
within street.

By the Metropolis Management Acts, ²² the costs of paving a new street under the compulsory powers of the Acts are payable by the owners of the houses "*forming*" the street and of the land "*bounding or abutting on*" such street. A house in a yard, to which the only access was by a private passage leading into the street, was held to be one of the houses "*forming the street*" within the meaning of the Metropolitan Acts. *Per Cockburn, C.J.*, "access to the premises is the foundation for the liability."²³

Houses form-
ing street.

And where a railway ran in a cutting adjoining a new street which a vestry in the metropolis were about to pave, and the railway was separated from the street by a wall, through which there was no communication between the street and the railway, it was held that within the meaning of the same Acts the railway "*bounded*" the street.²⁴

Land bound-
ing street.

(15) *Wakefield Loc. Bd. v. Lee* (1876), L. R. 1 Ex. D. 336; 35 L. T. 481; 40 J. P. 372.

(16) *Walthamstow U.D.C. v. Sandell* (1904), 68 J. P. 509; 2 L. G. R. 835. With regard to the evidence necessary to prove dedication of a *cul de sac*, see *A.G. v. Chandos Land Soc.* (1910, Ch. D.), 74 J. P. 401; *Josselsohn v. Weiler* (1911, K. B. D.), 75 J. P. 513; 9 L. G. R. 1132; *London C.C. v. Hughes* (1911, K. B. D.), 104 L. T. 685; 75 J. P. 239; 9 L. G. R. 291; *A.G. (Hastie) v. Godstone R.D.C.* (1912, Ch. D.), 76 J. P. 188; *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.* (C. A.), L. R. 1916, 1 Ch. 31.

(17) *Lightbound v. Higher Bebington Loc. Bd.* (1885), L. R. 16 Q. B. D. 577; 55 L. J. M. C. 94; 53 L. T. 812.

(18) L. R. 16 Q. B. D. at pp. 584, 585.

(19) *Williams v. Wandsworth Bd. of Works* (1884), L. R. 13 Q. B. D. 211; 53 L. J. M. C. 187; 48 J. P. 439.

(20) *Skipton U.D.C. v. Kendall's Trustees* (1912, Skipton P.S.), Loc. Gov. Chron. 1230; 76 J. P. Jo. 617.

(21) *Baddeley v. Gingell* (1847), 1 Ex. 319; 17 L. J. Ex. 63; 11 J. P. 838.

(22) 18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77.

(23) *London School Bd. v. Islington Vestry* (1875), L. R. 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. 504; 40 J. P. 310. See also *Dodd v. St. Pancras Vestry* (1869), 34 J. P. 517; *Oxford, Ld. v. London C.C.*, post, p. 369 (46).

(24) *London and North Western Ry. Co. v. St. Pancras Vestry* (1868), 17 L. T. 654.

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Land
bounding
street—*cont.*

Strips of land, belonging to a railway company, abutting upon a street and kept and used for the sole purpose of repairing the arches of the railway viaduct, were chargeable with the costs of paving the street under the Metropolitan Acts, as was also land used only as a buttress for the railway embankment, and to allow for slippings from it.²⁵

But in a case in which a line of railway was situate in a deep cutting at a place where a road was carried over on a bridge from one boundary of the line to another, supported on stone piers erected on the slope of the cutting, it was held that the line and the slopes of the cutting did not “bound or abut on” the road within the meaning of the same Acts.²⁶

And in a subsequent case a railway line ran in a deep cutting, and a highway was carried over it by a bridge built by the railway company under statutory powers and in pursuance of the Railways Clauses Consolidation Act, 1845.²⁷ The parapets of the bridge consisted of two walls resting upon arches which had their foundations (outside the lines of the roadway) in the railway company’s land. The walls were not used by the company otherwise than as fences for the bridge. The district board of works having paved the highway, which was admitted to be a new street within the meaning of the Metropolitan Acts, the House of Lords decided that, assuming the fence-walls to be the railway company’s land, the company were not “owners of land bounding or abutting on” the highway, and were not liable as owners of the fence-walls to contribute to the expenses of paving the street. It was held also, by Lords Blackburn and Watson, that the railway line and slopes being much below the level of the highway, the company were not in respect of such lines and slopes “owners of land bounding or abutting on” the highway, and were not liable to contribute as owners of the line and slopes.²⁸ But, in a case under a Scottish local paving Act,²⁹ a railway company were held to be frontagers by reason of their ownership of the parapets of a railway bridge on the street.

Works in
street.

“The tramway company are not frontagers. Their lines are in the street.”³⁰ The owners of gas mains were also held not to be owners of property “abutting” on a street.³¹

Levelling.

Meaning of
levelling.

The district council have power only to require a street to be levelled with reference to any want of equality or want of uniformity in the street itself. They have no power to require the level of a street to be raised or lowered so as to bring it into uniformity with the adjacent streets. *Per* Cockburn, C.J., “under the words of [sect. 69 of the Public Health Act, 1848], the board has no power to require the appellant to raise the footpath to the level of the adjoining streets. The object was to make each street uniform, and it must be looked at as one isolated street so far as this question is concerned. If there are inequalities in it, there is power to make it level. It may be that it would be a convenience for the neighbourhood if this street was made of the same level as those near it, but there is no power to throw the expenses of doing so upon the owners.”¹

Where the council have adopted the Private Street Works Act, 1892, in lieu of the present section, they may cause the level of the street to be altered so as to bring it into conformity with any other street.²

Purpose of
levelling.

With reference to a provision in a local Act substantially the same as sect. 51 of the Towns Improvement Clauses Act, 1847,³ the Court of Queen’s Bench expressed their opinion that the Act would not justify the lowering the level of a street for a purpose unconnected with paving or repairing the pavement.⁴

With regard to damage caused by alteration in the level of a street, see the Note to sect. 149.⁵

(25) *Higgins v. Harding* (1872), L. R. 8 Q. B. 7; 42 L. J. M. C. 31; 27 L. T. 483; 37 J. P. 677.

(26) *London, Brighton, and South Coast Ry. Co. v. Camberwell Vestry* (1879), L. R. 4 Ex. D. 239; 48 L. J. M. C. 184; 41 L. T. 162.

(27) See ss. 46–51, *post*, Vol. II., p. 1605.

(28) *Great Eastern Ry. Co. v. Hackney Bd. of Works* (1883), L. R. 8 A. C. 687; 52 L. J. M. C. 105; 49 L. T. 509; 48 J. P. 52.

(29) *Cameron v. Caledonian Ry. Co.* (1904), 6 F. 763.

(30) *Per* Bigham, J., in *Standring v.*

Bexhill Cpn., *post*, p. 346. For quotation, see 73 J. P. at p. 242, col. i.

(31) *Melbourne Bd. of Works v. Metropolitan Gas Co.*, L. R. 1905 A. C. 595; 74 L. J. P. C. 120; 93 L. T. 114.

(1) *Caley (or Cary) v. Kingston-upon-Hull Loc. Bd.* (1864), 5 B. & S. 815; 34 L. J. M. C. 7; 11 L. T. 339; 11 Jur. (N.S.) 171.

(2) See s. 9, *post*, p. 346.

(3) 10 & 11 Vict. c. 34, s. 51.

(4) *Brown v. Clegg* (1851), 16 Q. B. 681.

(5) *Ante*, p. 302.

Paving.

Sect. 150, n.
Meaning of
paved.

By sect. 11 (1) of the Public Health Acts Amendment Act, 1890,⁶ "A street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts. Provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street."

In a case arising under the provisions of the Metropolitan Acts relating to the paving (but not the sewerage) of new streets ("paving" being defined as applying to and including the formation of the roadway or footway of any street),⁷ Lord Alverstone, C.J., said that "putting in channels or shaped stone, or shaped wood, it may be, or making channels by the side of the road,"⁸ was "clearly a part of the paving," but doubted whether "the making of improved drainage to take away water which will require to be taken away more rapidly when the road had been paved" was of necessity either "paving" or "forming" the road.⁹

Channelling.

Meaning of
channelling.

In a case in which private street improvement works, including the making of a channel or gutter and placing over it iron plates to facilitate the passage of carriages across the footway, had been executed at the expense of the adjoining owners under the provision in the Public Health Act, 1848, corresponding to the present section, and the plaintiff, a foot-passenger who caught her foot in the space between two of such plates and was injured, claimed damages against the owner for the time being of the premises opposite one of those plates, it was held by the Court of Appeal that the plate was part of the street which had become vested in the urban district council, and that the defendant was not liable.¹⁰ *Per* Farwell, L.J.: "I think that the word 'channel' in sect. 69 of the Public Health Act, 1848, is not confined to an open channel, but includes a covered one, or culvert, as well, and the top may be of any material."

Lighting.

Means of
lighting.

Under the present section, only the "means of lighting" are to be provided at the expense of the owners. This may possibly include a gas main along the streets, as well as the lamps and service pipes leading to them, but not the supply of gas for them.

Under sect. 161 the urban authority may provide lamps, lamp-posts, and other materials and apparatus, and procure a supply of gas for lighting the streets in their district.

Estimate.

Condition
precedent.

The provision of the present section as to deposit of an estimate was not in the repealed Sanitary Acts. Formerly it had been held that, though, before contracting for the execution of any works, the local board were required to obtain from their surveyor an estimate of the expense of executing the work, as well as of the expense of keeping it in repair, this did not apply to a contract for work done to streets which were not highways; and therefore the local board could have enforced payment of the expenses from the owners of such streets, notwithstanding the absence of the estimate and report of their surveyor,¹¹ and although an estimate is now required to be made and deposited in such a case, the deposit of the estimate may not be a condition precedent to the recovery of the expenses.¹²

Execution of Works.

Works by
frontagers.

Though the usual practice is for the frontagers to allow the local authority to do the work on their default, frontagers not infrequently prefer to do the work themselves.¹³ In any case they must be given an opportunity of doing so, otherwise the expenses will not be recoverable.¹⁴

(6) *Post*, Part I., Div. II. The provision is of general application, and needs no "adoption" by the authority.

(7) 18 & 19 Vict. c. 120, s. 105; 25 & 26 Vict. c. 102, s. 77. *Wandsworth B.C. v. Golds*, L. R. 1911, 1 K. B. 60; 80 L. J. K. B. 126; 103 L. T. 568; 74 J. P. 464; 8 L. G. R. 1102.

(8) See 74 J. P. at p. 467, col. i.

(9) *Ibid.* at p. 468, col. i.

(10) *Jones v. Rew* (1910), 79 L. J. K. B.

1030; 103 L. T. 165; 74 J. P. 321; 8 L. G. R. 881.

(11) *Cunningham v. Wolverhampton Loc. Bd.* (1857), 7 E. & B. 107; 26 L. J. M. C. 33; 3 Jur. (N.S.) 385; 21 J. P. 262.

(12) See *Shanklin Loc. Bd. v. Millar*, *post*, p. 329.

(13) See, e.g., *Simcox v. Handsworth Loc. Bd.*, *post*, p. 326 (16), and *post*, p. 330 (6).

(14) *Leeds Cpn. v. Armitage*, *ante*, p. 320.

Sect. 150, n.
Supervision
fee.

Owners in
default.

Entry on
street.

Deviation
from notice.

Widening
carriage-
way.

Connection
with sewer.

Negligence.

Where the frontagers do execute the work themselves, the local authority may not charge a "supervision" fee.¹⁵

In a case in which it was contended that the present section contemplated that all the work should be done either by the local authority or the frontagers, and not partly by the one and partly by the other, Grove, J., said: "The proper construction to be put on the words 'owners in default' must be that each owner respectively is to perform the part of the work which is proper to himself."¹⁶

The statutory notice requiring the owner or occupier of the premises adjoining the street to execute the works impliedly authorises him to enter upon the street for that purpose, although the ownership of the soil of the street may be in some other person. This was so held by Stirling, J., in a case arising under a local Act which contained provisions substantially the same as those of the present section.¹⁷

The omission to follow strictly the terms of their own notice does not prevent the urban sanitary authority from recovering the expenses from the owners: for instance, when the authority have omitted part of the work required by the notice on finding that it would cause unnecessary expense.¹⁸ And it was held by Kekewich, J., that although they departed substantially from the works specified in the notice, as by making the sewer larger than was necessary for the purposes of the street itself in order to accommodate another part of their district, they might still recover the expenses, provided that they did not charge the frontagers more than the cost which would have been expended on the works required for the purposes of the street itself and specified in the original notices.¹⁹

The Court of Appeal held that a local authority had no power, when making up a street under the present section, to make the carriage-way broader, by taking into it a strip of the footway, than it had previously been: their predecessors, before the extension of their district, having approved of plans showing the carriage-way and footways of the respective widths at which the landowner had afterwards made them, and the landowner being taken to have dedicated the strip of ground above mentioned to the use of the public for foot-passengers only.²⁰

In November, 1911, a local authority served a notice, under the present section, requiring a frontager on road A to make up the road and connect the drains from the gullies to the existing surface-water sewer in the street within six weeks. The frontager informed the local authority that, as his contractor was then engaged in making up road B, which could only be reached through road A, he would wait till the works in road B were finished before he commenced making up road A. In March, 1912, the works in road B were finished, and the works in road A were then commenced; but the local authority refused to assist by supplying levels, etc., unless the frontager agreed (*inter alia*) to pay them a supervision fee, which he refused to do. In May, 1912, the works in road A were ready for the connections to be made to the sewer. The local authority refused to allow this to be done on the ground that the works had not been completed within the six weeks specified in the notice of November, 1911. The frontager then made the connections without the local authority's consent. The local authority promptly broke the connections. The frontager then brought an action for an injunction and damages. An arrangement was made whereby the connections were allowed pending the decision of the court as to the rights of the parties. It was held that the frontager had *bonâ fide* endeavoured to comply with the notice; that there had been no unreasonable delay on his part; that he was entitled to have the connections made; and that the defendants must pay costs.²¹

Where a local authority execute private street works negligently, and a passenger is injured, the frontagers are under no liability.²²

(15) *Denman v. Finchley U.D.C.*, *post*, p. 327. On this point see *per* Joyce, J., 10 L. G. R. at p. 701.

(16) *Simcox v. Handsworth Loc. Bd.*, *ante*, p. 320. On this point, see 46 J. P. at p. 261, col. iii.

(17) *West Hartlepool Cpn. v. Robinson*, (1897), 61 J. P. at p. 201. Affirmed in C. A., see *ante*, p. 321.

(18) *Acton Loc. Bd. v. Lewsey* (1886), L. R. 11 A. C. 93; 55 L. J. Q. B. 404; 54 L. T. 657; 50 J. P. 708. *Kershaw v. Sheffield Cpn.* (1887), 51 J. P. 759.

(19) *Acton U.D.C. v. Watts* (1903), 67 J. P. 400; 1 L. G. R. 594.

(20) *Robertson v. Bristol Cpn.*, L. R. 1900, 2 Q. B. 198; 69 L. J. Q. B. 590; 82 L. T. 516; 64 J. P. 389, applied to the paving of new streets under the Metropolitan Acts in *Wandsworth B.C. v. Golds*, *ante*, p. 325. See also *Rowley's Case*, *ante*, p. 301.

(21) *Denman v. Finchley U.D.C.* (1912, Ch. D.), 76 J. P. 405; 10 L. G. R. 697.

(22) *Horridge v. Makinson* (1915, K. B. D.), 84 L. J. K. B. 1294; 113 L. T. 498; 79 J. P. 484; 13 L. G. R. 868.

Where works were executed by a local board, under sect. 69 of the Public Health Act, 1848, and bricks of a particular kind were used in the construction of the works, of which bricks the surveyor of the local board was the patentee, and upon the manufacture and sale of which he received a commission under a licence granted to the manufacturers, it was held that that constituted no valid objection to an order being made by justices to enforce payment of the apportioned costs of the works from an adjoining owner, as there was no illegal bargain or contract within the meaning of sect. 38 of the Act, which corresponded to sect. 193 of the present Act.²²

Sect. 150, n.
Surveyor
interested in
material
used.

Where sect. 28 of the Public Health Acts Amendment Act, 1907,²³ is in force, the council may use or remove old materials existing in the street, subject to paying the owners compensation, if the owners do not remove them on notice.

Old
materials.

Incidental Works and Expenses.

The present Act contains no express provision for the execution of works incidental to making up the street or for the recovery of incidental expenses, such as is contained in the Private Street Works Act, 1892,²⁴ and in the Metropolis Management Act, 1862.²⁵

Incidental
costs.

Under the last-mentioned Act, the expenses of collecting the apportioned amounts, of making the survey and plans, of obtaining the names of owners, and of filling up, printing, and serving notices were held to be incidental charges recoverable from the owners, although the local authority had a clerk and surveyor, and payments were requested to be made at their office.²⁶

And even under the present section Chitty, J., held that extras, which were not in the contractor's contract and specification, the legal expenses of the contract, and a commission of 4 per centum for establishment expenses, were incidental expenses reasonably incurred and properly included in the expenses recoverable under the section.²⁷

The Local Government Board expressed the opinion that the expenses of printing and advertising, after the frontagers have made default, and also the wages of the clerk of the works specially employed to supervise the execution of the works, are properly chargeable to the frontagers, together with the cost incurred in raising the loan for the execution of the works, though there is no authority for making a percentage charge to cover the cost of printing, advertising, and supervision.

Under the Metropolitan Act, the expenses recoverable include the cost of paving at the points of intersection of streets; and it was held that they included the cost of paving a crossing wholly on the soil of an old street, into which the new street ran, although the new street was not continued on the opposite side of the old street.²⁸

Apportionment of Expenses.

"The surveyor is to apportion the sum which has been expended as between different owners; in other words, he is to say . . . when a sum has been expended, 'I am to determine what is the fair proportion as between different owners that each of them is to pay—one is to pay one-fifth, another one-thirtieth, another one-hundredth.' That is the proportion, and he is to determine that, and that only."²⁹ An arbitrator, therefore, to whom a disputed apportionment has been referred under the present section, cannot inquire into the items making up the surveyor's account: he can only deal with the apportionment as a whole among the frontagers, the account being conclusive.³⁰

Meaning of
apportion.

Where one person owns several premises, the surveyor must make a separate apportionment in respect of each.³¹

It is to be observed that, under the present section, the preliminary notices are to be served, and the expenses are consequently to be apportioned, upon the owners

Apportion-
ment on part
of street.

(22) *Wednesbury Loc. Bd. v. Stevenson* (1863), 28 J. P. 261.

(23) *Post*, Part I., Div. III.

(24) See s. 9, *post*, p. 346.

(25) 25 & 26 Vict. c. 102, s. 77.

(26) *Poplar Bd. of Works v. Love* (1874), 29 L. T. 915; 35 J. P. 246.

(27) *Walthamstow Loc. Bd. v. Staines*, L. R. 1891, 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430.

(28) *Bridgett v. Wandsworth B.C.* (1905), 93 L. T. 519; 69 J. P. 394; 3 L. G. R. 1186.

(29) *Per Brett, L.J.*, in *Reg. (Penarth Loc. Bd.) v. Local Government Bd.* (1882), L. R. 10 Q. B. D. 309, at p. 323; 52 L. J. M. C. 4; 48 L. T. 173; 47 J. P. 228.

(30) *Re Cawston and Bromley U.D.C.* (1900), 64 J. P. 760.

(31) *Croydon R.D.C. v. Betts*, cited in Note to s. 257, *post*.

Sect. 150, n.
Apportion-
ment on part
of street—
continued.

of the premises fronting, adjoining, or abutting on *such parts of the street as may require to be sewered, paved, etc.*³²; while under the Metropolis Management Acts,³³ although the term "street" is defined as including "any highway, etc., and a part of any such highway, etc.," the expenses are to be apportioned upon and recovered from the owners of the houses forming *the street*, or of the land bounding or abutting on it.

Under the Metropolitan Acts a board of works repaired a street, dividing it into sections, and making a separate estimate for each section. They then apportioned the expense of each section on the owners of land abutting thereon. This course was held not to be warranted by the statute, as the expenses of the whole of the repairs ought to have been distributed among the owners of the lands abutting on the whole street.³⁴ And where a metropolitan vestry resolved to pave a new street on one side only, it was held by the Court of Appeal that they had no power to throw the entire expense on the owners of land adjoining the side which was paved, but that the cost of such paving must be apportioned among the owners of the land and houses adjoining the street on both sides, Jessel, M.R., saying that "part of a street," in the ordinary sense of the expression, was a part cut off transversely.³⁵ So also under the Metropolis Management Act, 1862, Amendment Act, 1890,³⁶ the expense of flagging a footway on one side of a street is to be borne by the owners of the houses and land on both sides of the section of the street in which the footway is situate.³⁷ Where, however, a new street had been paved under the Metropolis Management Act, 1855, at the sole cost (through some oversight or ignorance) of the owners on the north side, and some years afterwards the street was widened by a strip of ground on the south side being thrown into it, it was held that none of the cost of paving this added strip could be imposed upon the owners on the north side.³⁸ This was approved by the Court of Appeal in a case in which the cost of making up a strip of ground twenty-five feet wide added to an old street sixteen feet wide in the metropolis to widen it on one side was held to be recoverable from the frontagers on that side.³⁹

With reference to the present section, Grove, J., said that he did not think the word "parts" could be taken to mean transverse sections of a street, but rather the local parts to which the repairs were done. And where an urban sanitary authority had made up the footway on the north side of a street, and the expenses had been apportioned on the owners of the premises on that side only, the apportionment was held to have been made correctly.⁴⁰

But where a local board had resolved to make up the whole breadth of a street under the Private Streets Works Act, 1892, and only to make a footway on one side, they were held to have been wrong in apportioning so much of the expenses as represented the cost of making up the footway on the owners of the premises on that side only.⁴¹

Void appor-
tionment.

If the first apportionment is found to be bad, a second may be made.⁴² Thus, an apportionment was made and signed by the person who was surveyor of the local board at the time when the works were commenced. The surveyor was superseded by another person, on the incorporation of a new borough, including the district of the board, before the works were completed. The apportionment was by inadvertence signed by the first-mentioned person, and on the mistake being discovered a second apportionment signed by the new surveyor was served. It was held that the limitation of time for further proceedings ran from the service of the latter apportionment, and not from that of the former, which was a nullity.⁴³ An apportionment which included expenses of works done in an adjoining street

(32) See also s. 211 (4), and Note, *post*, with regard to the division of streets into parts.

(33) 18 & 19 Vict. c. 120, s. 105; 25 & 26 Vict. c. 102, s. 77.

(34) *Whitchurch v. Fulham Bd. of Works* (1866), L. R. 1 Q. B. 223; 35 L. J. M. C. 145; 13 L. T. 631; 12 Jur. (N.S.) 353; 30 J. P. 229; 7 B. & S. 212.

(35) *Mile End Old Town Vestry v. White-chapel Guardians* (1876), L. R. 1 Q. B. D. 680; 46 L. J. M. C. 138; 35 L. T. 354; 41 J. P. 20. This case came before the Queen's Bench on demurrer to the reply, an action having been brought to recover the expenses under 25 & 26 Vict. c. 102, s. 77.

(36) 53 & 54 Vict. c. 54, s. 1.

(37) *Paddington Vestry v. North Metro-*

politan Ry. Co., L. R. 1894, 1 Q. B. 633; 63 L. J. Q. B. 316; 58 J. P. 413.

(38) *White v. Fulham Vestry* (1896), 74 L. T. 425; 60 J. P. 327.

(39) *Property Exchange, Ltd. v. Wandsworth Dist. Bd. of Works*, L. R. 1902, 2 K. B. 61; 71 L. J. K. B. 515; 86 L. T. 481; 66 J. P. 435.

(40) *Wakefield U.S.A. v. Mander* (1880), L. R. 5 C. P. D. 248; 28 W. R. 922; 44 J. P. 522.

(41) *Clacton Loc. Bd. v. Young*, L. R. 1895, 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 59 J. P. 581.

(42) *Manchester Cpn. v. Hampson*, *post*, p. 379 (48).

(43) *Sykes v. Huddersfield Cpn.* (1871), 35 J. P. 614.

was treated ("by the justices in their capacity as arbitrators" ⁴⁴) as a nullity and not enforceable, and not one in which there was merely a mistake in the charges included.⁴⁵ It has, however, since been decided that, where an apportionment, including works in two streets, is not disputed within the three months, the amount is recoverable. In the action in which it was so decided, it was also held that the apportionment could not be treated as a nullity, because, in the opinion of the county court judge, reasonable opportunities were not afforded of inspecting the deposited plans and estimate before the expenses were incurred, the deposit not being a condition precedent to the recovery of the expenses.⁴⁶ Under the Metropolitan Acts a local authority can, even after a summons for the recovery of the apportioned expenses has been issued, withdraw it, and rescind their original resolution to pave the street, pass another resolution, and make a fresh apportionment.⁴⁷

Sect. 150, n.

On proceedings being taken to recover the expenses of sewerage and other works under the present section, the defendant contended that the sewer was not one for which he could be made liable; that the road was a highway repairable by the inhabitants at large; and that it was not a street within the Act. The justices dismissed the summons, but it does not appear upon what ground they dismissed it. A fresh apportionment was then made, the cost of the sewerage being deducted, and it was held that such apportionment was valid.⁴⁸

The notice of apportionment (which is to be given "by the local authority or their surveyor" ⁴⁹) may be in the following form:—

Notice of apportionment.

"To ——. " WHEREAS the — Urban District Council, by a notice in writing dated the — day of —, 19—, required the respective owners [or occupiers] of the premises fronting, adjoining, or abutting upon [certain parts of] the street called —, which is within their district, and is not a highway repairable by the inhabitants at large, to sewer, etc. [as may be] the said street within the time and in the manner specified in the said notice, and according to the plans and sections deposited in the office of the said Council. AND WHEREAS, the said notice not having been complied with within the time limited by such notice, the said Council have executed the works mentioned or referred to therein. AND WHEREAS the expenses incurred by the said Council in executing the said works amount to the sum of — pounds — shillings and — pence.

" THEREFORE TAKE NOTICE that I, the undersigned, being the Surveyor of the said Council, in pursuance of the one hundred and fiftieth section of the Public Health Act, 1875, have apportioned and do hereby apportion the sum of — pounds — shillings and — pence, as the proportion of the said sum of — pounds — shillings and — pence, to be paid by you as the owner of —, fronting, adjoining, or abutting upon the said street, such apportionment being according to the frontage of your said premises. AND FURTHER TAKE NOTICE that the aforesaid apportionment will be binding and conclusive upon you, unless, within three months from the day of the service of this notice upon you, you shall by written notice to the said Council dispute the same.

" Dated, etc., " —, Surveyor of the above-named Council."

Dispute as to apportionment.

If within three months from the time at which notice is given to the owner by the council, or their surveyor, of the amount of the proportion as settled by the surveyor to be due, the owner does not by written notice dispute the same, he will be concluded by the apportionment,⁵⁰ and cannot object to any excess on proceedings being taken for recovery of his share of the expenses.⁵¹ There is no appeal against an apportionment under the Metropolitan Acts, where the local authority have acted *bonâ fide* and within their jurisdiction,⁵² though the court will make a

(44) *Per* Charles, J., in *Derby Cpn. v. Grudgings*, *infra*.
(45) *Cook v. Ipswich Loc. Bd.* (1871), L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. 579; 35 J. P. 565.
(46) *Shanklin Loc. Bd. v. Millar* (1880), L. R. 5 C. P. D. 272; 49 L. J. C. P. 512; 42 L. T. 738; 44 J. P. 635.
(47) *Bishop v. Wandsworth Dist. Bd.* (1900), 69 L. J. Q. B. 632; 82 L. T. 766; 64 J. P. 630.
(48) *Manchester Cpn. v. Hampson* (1886), 35 W. R. 334; 3 T. L. R. 466. In C. A. new trial was ordered on ground that there was

evidence that street was repairable by inhabitants at large, see (1887), 35 W. R. 591; 3 T. L. R. 468, col. i.
(49) See s. 257, para. 2, *post*.
(50) See s. 257, *post*, and *Hesketh v. Atherton Loc. Bd.*, *post*, p. 332.
(51) *Midland Ry. Co. v. Watton* (1886), *post*, p. 332. See also *Derby Cpn. v. Grudgings*, L. R. 1894, 2 Q. B. 495; 63 L. J. M. C. 170; 72 L. T. 594; 58 J. P. 685.
(52) *Nesbitt or Nisbet v. Greenwich Bd. of Works* (1875), L. R. 10 Q. B. 465; 44 L. J. M. C. 119; 32 L. T. 762; *Metropolitan Ry. Co. v. Fulham Vestry*, L. R. 1895, 2 Q. B.

Sect. 150, n.
Dispute as
to apportion-
ment—cont.

declaration of the invalidity of an apportionment under those Acts if owners of premises, who ought to have been charged with a share of the expenses, have been omitted.⁵² Under the present section, if notice of objection to the apportionment be duly given, there may be an appeal to arbitration, and under sect. 268 an appeal to the Minister of Health. With regard to the settlement of the apportionment by arbitration, see sect. 180, and the Note to that section. The arbitrator only has jurisdiction to deal with the apportionment of the amount between the different owners, and is not entitled to inquire whether the gross amount of the expenditure was reasonable or necessary.⁵³

A frontager gave notice disputing an apportionment on the ground that part of the charge was in respect of something which was not a street. The local authority gave notice to the frontager that they had appointed an arbitrator to settle the disputed apportionment. Within the fourteen days after the giving of that notice the frontager withdrew his notice on the ground that his objection was one of law. The arbitrator made an award deciding the legal point in favour of the local authority. The award was quashed on the ground that the notice of dispute had been validly withdrawn, and *per* Buckley, L.J.,⁵⁴ that "the limits of the authority of the surveyor are the limits of the authority of the arbitrator, and the arbitrator had nothing to do except upon questions of measurement and frontage and dimensions, and so on."⁵⁵

The arbitrator may state a special case for the opinion of the court on points of law arising before him⁵⁶; and, *per* Kekewich, J., where an apportionment under the present section is disputed and referred to arbitration, an objection to the right of the council to charge the objector with any of the expenses on the ground that they did not serve the notice to do the works on all the adjoining owners, may be raised before the arbitrator, and, if not so raised, cannot be raised subsequently when proceedings are taken to enforce payment.⁵⁷

If some of the owners dispute the apportionment and go to arbitration on it, while others do not, and the result of the arbitration is to reduce the amounts charged against the first-mentioned owners, the council cannot increase by a corresponding amount the sums to be paid by those owners who were not parties to the arbitration.⁵⁸

Demand for
payment.

This notice is not a demand for payment of the apportioned share of the expenses, but another notice demanding payment must be given after the expiration of the three months during which the owner may dispute the apportionment.⁵⁹

Recovery of Expenses.

Procedure.

The relation of debtor and creditor does not arise between the owner and the council, and the mode of recovering the expenses prescribed by sect. 257 must be adopted.¹ They can be recovered in one sum by summary proceedings from the owners in default, that is, from the persons who were the owners of the adjoining premises at the time when the works were completed.² If, however, they are declared private improvement expenses, they may be levied as a rate on the occupiers, who may deduct part of the amounts paid by them from their rents³; and so also if the expenses are made payable by instalments.⁴

Limitation.
of time.

Six months only are allowed for recovery of the expenses by summary proceedings; and this limitation runs from the date of the demand of payment, which must be given in addition to the notice of apportionment,⁵ although the notice of apportionment may have concluded with a demand of payment of the amount apportioned.⁶ In the last case the six months were reckoned from a second notice of demand, which was served after the expiration of the three months. It is no objection to the validity of the summons that it was issued more than a year after the

443; 65 L. J. Q. B. 29; 73 L. T. 330; 59 J. P. 679; *Davis v. Greenwich Dist. Bd.* (1895), 59 J. P. 517.

(52) *Elsdon v. Hampstead B.C.*, L. R. 1905, 2 Ch. 633; 75 L. J. Ch. 27; 93 L. T. 335; 69 J. P. 434; 3 L. G. R. 1199. See also *Scott v. Investors' Property Cpn.*, ante, p. 321.

(53) *Bayley v. Wilkinson*, ante, p. 319.

(54) 13 L. G. R. at p. 240.

(55) *Stoker v. Morpeth Cpn.*, L. R. 1915, 2 K. B. 511; 84 L. J. K. B. 1169; 112 L. T. 759; 79 J. P. 205; 13 L. G. R. 233.

(56) See Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 7 (b), 19.

(57) *Handsworth U.D.C. v. Derrington*, ante, p. 317.

(58) *Tunbridge Wells Loc. Bd. v. Akroyd*

(1880), L. R. 5 Ex. D. 199; 49 L. J. Ex. 403; 42 L. T. 640; 44 J. P. 504.

(59) See *Greece v. Hunt*; *Simcox v. Handsworth*, infra.

(1) See that section and Note, post.

(2) *Reg. (Hinton) v. Swindon New Town Loc. Bd.* (1880), L. R. 4 Q. B. D. 305; 48 L. J. M. C. 119; 40 L. T. 424; 44 J. P. 505.

(3) See ss. 213—215, post.

(4) See s. 257, post.

(5) *Greece v. Hunt* (1877), L. R. 2 Q. B. D. 389; 46 L. J. M. C. 202; 36 L. T. 404; 41 J. P. 356.

(6) *Simcox v. Handsworth Loc. Bd.* (1881), L. R. 8 Q. B. D. 39; 51 L. J. Q. B. 168; 46 J. P. 260.

complaint,⁷ and it is no objection to the proceedings that the summons was not served within the six months.⁸ Sect. 150, n.

Some local Acts give a right of action, and then the time limit is six years from the demand.⁹

Under the Metropolis Management Acts, which provide for the recovery of paving expenses "from the present or any future owner," such expenses were held to be recoverable from the person who was owner in 1885, although a demand for the same expenses had been made in 1872 upon the then owners, and in 1884 an order for payment had actually been made by a court of summary jurisdiction against a subsequent owner.¹⁰

If the council elect to treat the costs as a debt payable in one sum, and allow the time for recovery by summary proceedings to go by, they cannot afterwards treat them as private improvement expenses¹¹; and if they elect to levy a private improvement rate on the occupier, they cannot afterwards proceed summarily against the owner.¹²

Option as to procedure.

In one case the urban authority stated in the notice requiring the owners to do the works that they would treat the expenses incurred by them in sewerage, paving, etc., as private improvement expenses; and though they never actually declared them to be such expenses, they were held to be bound by their election, and could not afterwards recover the amount by summary proceedings.¹³

A local Act authorised a corporation to recover paving expenses as damages from the owners by proceedings before the justices, and also incorporated sect. 149 of the Towns Improvement Clauses Act, 1847,¹⁴ which gives an option of recovering the expenses by action of debt. It was held that the latter Act was "expressly varied and excepted" by the special Act, and that therefore the corporation had not the option of enforcing an unliquidated claim for expenses by an action at law.¹⁵

Discretion as to works.

Under the Metropolis Management Amendment Act, 1890,¹⁶ which allows the local authority to execute "any necessary works of repair" upon a carriage road, without prejudice to their power to recover from the frontagers the cost of paving it as a new street, it was held that it was for the authority to decide as to the necessity for the works, and that they were not bound to prove such necessity on proceeding to recover the expenses.¹⁷

Jurisdiction of justices.

If the owner has not given notice to dispute the apportionment, it becomes binding at the expiration of the three months limited by sect. 257, and summary proceedings for the recovery of the amount may then be taken. In such summary proceedings the owner cannot set up as a defence that he has been charged in respect of a greater extent of frontage than he possesses.¹⁸

Where a magistrate, after hearing evidence, dismissed a complaint for recovery of expenses of paving a new street under the Metropolis Management Act, 1855, on the ground that the street was a public highway before the passing of the Act, it was held, on a motion calling on him to show cause why he should not hear and adjudicate, that he had done so, and that the court could not interfere. Erle, J., however, dissented on the ground that the magistrate's decision was on a fact going to his jurisdiction, and therefore that the court could review it.¹⁹

It is no defence to proceedings for recovery of the expenses that the work was done by a contractor without a contract under seal.²⁰

An action was brought in the Lancaster Chancery Court by an owner on behalf of himself and all other the owners of property fronting a road, claiming (*inter alia*) a declaration that the corporation were not entitled to recover any charges for the execution of works on the road, and an injunction to restrain them from proceeding to recover such charges. The Vice-Chancellor declined to grant an

(7) *Simcox v. Handsworth Loc. Bd.*, ante, p. 330.

(8) *Bonella v. Twickenham Loc. Bd.*, ante, p. 315.

(9) See, e.g., *Bolton*, 1872 (35 & 36 Vict. c. lxxviii), s. 117; 1877 (40 & 41 Vict. c. clxxxviii), s. 113; *Bolton Cpn. v. Scott* (1913, C. A.), 108 L. T. 406; 77 J. P. 193; 11 L. G. R. 352.

(10) *Wortley v. Islington Vestry* (1886), 51 J. P. 166.

(11) *Wilson v. Bolton Cpn.* (1871), L. R. 7 Q. B. 105; 41 L. J. M. C. 4; 25 L. T. 597; 36 J. P. 405.

(12) *Eddleston v. Francis* (1860), 7 C. B. (N.S.) 568; 3 L. T. 270.

(13) *Gould v. Bacup Loc. Bd.* (1881), 50

L. J. M. C. 44; 44 L. T. 103; 45 J. P. 325.

(14) 10 & 11 Vict. c. 34, s. 149.

(15) *Blackburn Cpn. v. Parkinson* (1858), 1 E. & E. 71; 28 L. J. M. C. 1; 5 Jur. (N.S.) 572; 23 J. P. 262.

(16) 53 & 54 Vict. c. 66, s. 3.

(17) *Stroud v. Wandsworth Dist. Bd.*, L. R. 1894, 2 Q. B. 1; 63 L. J. M. C. 88; 70 L. T. 190; 58 J. P. 652.

(18) *Midland Ry. Co. v. Watton*, post, p. 332. See also *Handsworth U.D.C. v. Derrington*, ante, p. 317.

(19) *Reg. v. Dayman* (1857), 26 L. J. M. C. 128; 7 E. & B. 672; 3 Jur. (N.S.) 744; 22 J. P. 39.

(20) *Bournemouth Comrs. v. Watts*, post, p. 459 (44).

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injunction pending the trial of the action; and the plaintiff gave notice of appeal from this decision, and applied to the court in London *ex parte* for an injunction to restrain the corporation from proceeding with the summonses pending the hearing of the appeal. The court, however, refused the application, holding that no case of irremediable damage had been shown. The justices would act either with jurisdiction or without jurisdiction. If they acted without jurisdiction, their order would not bind anyone, and the remedy by prohibition would be open to the plaintiff.²¹

Question
whether
street is re-
pairable by
inhabitants.

An owner received notice to level and pave part of a street under the Public Health Act, 1848,²² and also under a provision in the Public Works (Manufacturing Districts) Act, 1863,²³ which declared that, on the owner's default of giving notice of objection, it should "not be competent for such person to question the validity of any rate or charge made by the local board or local authority for defraying or securing the expenses incurred by them in executing such works, except on the ground that the same have not been executed in conformity with the plan, section, specification, or estimates thereof." The owner had not before the time limited for executing the works objected, and it was held that he could not afterwards set up the objection that the street was a highway repairable by the inhabitants.²⁴ So also where the Private Street Works Act, 1892, has been adopted, this objection must be made in the first instance.²⁵

But under the repealed Sanitary Acts it was held that the question whether the street was a highway repairable by the inhabitants at large could be raised by a frontager when summary proceedings were taken to compel him to pay his share of the expenses.²⁶ And under the present Act the court directed a police magistrate to state a case for the opinion of the court on the question whether there was evidence that a certain road was a street within the meaning of the present section; and the case having been stated, the Divisional Court and the Court of Appeal both dealt with the question.²⁷ In another case heard shortly afterwards it was contended that the existence of a right of appeal to the Local Government Board under sect. 268 of the present Act prevented the justices from dealing with the question, but the Divisional Court overruled the contention.²⁸

Where an appeal to the Local Government Board under sect. 268, in relation to expenses incurred under the present section, did not raise the question whether the street that had been made up was a highway repairable by the inhabitants at large, the owner was held to be at liberty to raise the question before the justices when proceedings were subsequently taken to recover the amount of the expenses.²⁹

Lord Halsbury, L.C.,³⁰ said that probably there must be some method of removing the order (*viz.* the notice served under the present section on the owners) if made without jurisdiction; but he remarked that the justices, on a summons to enforce payment of expenses under the section, had no jurisdiction to determine whether or not the street in question was a highway repairable by the inhabitants at large. This remark, however (like those of Lord Davey in the same case), may only have had reference to the matter then in dispute, namely, the question whether the justices could on one summons so decide as between the parties that the street was a highway repairable by the inhabitants at large, as to prevent the fact from being disputed on a subsequent summons for other expenses incurred in respect of the same street.

Appeal to
Minister of
Health.

The justices are not empowered, either as arbitrators or as justices enforcing payment, to inquire into the question whether the amount charged as having been expended generally, has been in point of fact expended, or whether the authority have in mistake charged sums which they ought not to charge in estimating expenses which they say they have incurred. Their duty in this respect is simply ministerial and not judicial, the remedy of a person aggrieved being by

(21) *Austerberry v. Oldham Cpn.*, *Times*, Feb. 9, 1884. Further, as to this action, see *ante*, p. 285 (3), and *post*, p. 361 (22).

(22) 11 & 12 Vict. c. 63, s. 69.

(23) 26 & 27 Vict. c. 70, s. 10 (3).

(24) *Reg. v. Livesey* (1870), 22 L. T. 470; 34 J. P. 645.

(25) See s. 8 (2), *post*, p. 344.

(26) *Hesketh v. Atherton Loc. Bd.* (1873), L. R. 9 Q. B. 4; 43 L. J. M. C. 37; 29 L. T. 530; 38 J. P. 149. See also *Jarrow Loc. Bd. v. Kennedy*, *ante*, p. 320; *Reg. v.*

Hutchings, *post*, p. 333.

(27) *Midland Ry. Co. v. Watton* (1886), L. R. 17 Q. B. D. 30; 55 L. J. M. C. 99; 54 L. T. 482; 50 J. P. 405.

(28) *Eccles v. Wirral R.S.A.* (1886), L. R. 17 Q. B. D. 107; 55 L. J. M. C. 106; 50 J. P. 596.

(29) *Seabrooke v. Grays Thurrock Loc. Bd.*, 1891 Loc. Gov. Chron. 931. See also *Bristol Cpn. v. Sinnott*, *ante*, p. 319 (17).

(30) In *Wakefield Cpn. v. Cooke*, *post*, p. 333.

addressing a memorial to the Minister of Health.³¹ Nor is it a defence that the works were unnecessary or the expenses excessive, these matters only affording ground for appeal to the Minister of Health under sect. 268.³² And on a case stated by an arbitrator appointed to decide on a disputed apportionment, Channell, J., expressed the opinion that the question whether the street has been sewered to the satisfaction of the council can only be raised by appeal to the Minister of Health under sect. 268.³³ It is otherwise under the Metropolis Management Acts, under which a *mandamus* was granted requiring a magistrate to hear and determine a summons for the expenses of paving a new street on the ground that he had rejected evidence that the expenses claimed included expenses which had not in fact been incurred at all, and some which had not been incurred for paving.³⁴

Upon the hearing of a complaint preferred before a police magistrate by the urban sanitary authority of the district to recover the amount apportioned on a frontage, the frontager objected that the plans referred to in the notice to execute the works showed that part of the work in respect of which the expenses were incurred was executed upon land belonging to private owners. The magistrate found as a fact that the land did not belong to private owners, but formed part of the street when the notice was given, and made an order for payment of the amount apportioned. Upon an application for a writ of *certiorari*, upon affidavits which satisfied the court that the magistrate's finding was contrary to the fact, it was held, nevertheless, that the magistrate had jurisdiction to entertain the complaint and make the order, and therefore that the frontager was not entitled to a writ of *certiorari*, but that his proper remedy was to appeal to the Local Government Board under sect. 268 within twenty-one days after service of the notice of demand for payment of the apportioned sum.³⁵

Where the justices had dismissed a summons for the recovery of expenses of sewerage and other works under the present section, and it did not appear on what ground they did so, the court held that a fresh apportionment of a different amount was valid, and that the amount of it could be recovered, the matter not being *res judicata*.³⁶

A summons, taken out in 1874 by a local board for the recovery of expenses of sewerage a street from an adjoining owner, was dismissed by the justices on the ground that the street was a highway repairable by the inhabitants at large. In 1879 the board took out another summons against the same owner for recovery of expenses of paving the same street, and an order for payment was made by a stipendiary magistrate. On the matter coming before the Court of Appeal it was held that the justices had no jurisdiction on the first summons to adjudicate directly and immediately between the parties that the street was a highway repairable by the inhabitants at large, this being at most a matter incidentally cognisable by them; and that therefore the adjudication in the first proceedings did not estop the board from recovering the expenses claimed in the second proceedings, although as Lord Selborne, L.C., said, quoting De Grey, C.J.³⁷: "The judgment of a court of concurrent or of exclusive jurisdiction, directly upon the point, is conclusive upon the same matter between the same parties coming incidentally in question in another court for a different purpose; but neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognisable, nor of any matter to be inferred by argument from the judgment." ³⁸

This case was distinguished by the House of Lords in one which arose under a local Act containing similar provisions to those in the Private Street Works Act, 1892, for the preliminary determination of objections by justices, including the objection that the street is a highway repairable by the inhabitants at large.³⁹

A barricade was erected across a private street by the adjoining owners to prevent

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Appeal to
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Health—*cont.*

Res judicata

Estoppel.

(31) *Cook v. Ipswich Loc. Bd.* (1871), L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. 579; 35 J. P. 565.

(32) See *Reg. v. Local Government Bd.*, ante, p. 327.

(33) *Re Hanwell U.D.C. and Smith* (1904), 68 J. P. 496; 2 L. G. R. 1350.

(34) *Reg. v. Marsham*, L. R. 1892, 1 Q. B. 371; 61 L. J. M. C. 52; 65 L. T. 778; 56 J. P. 164.

(35) *Wake v. Sheffield Cpn.* (1883, C. A.), L. R. 12 Q. B. D. 142; s.c. *nom. Reg. v. Sheffield Recorder*, 53 L. J. M. C. 1; 50 L. T. 76; 48 J. P. 197.

(36) *Manchester Cpn. v. Hampson*, ante, p. 329.

(37) In the *Duchess of Kingston's Case*, 2 Smith's Leading Cases, 732.

(38) *Reg. v. Hutchings* (1881), L. R. 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. 364; 45 J. P. 504. And see *Heath v. Weaverham Overseers*, L. R. 1894, 2 Q. B. 108; 63 L. J. M. C. 187; 70 L. T. 729; 58 J. P. 557; *North Eastern Ry. Co. v. Dalton Overseers*, L. R. 1898, 2 Q. B. 66; 67 L. J. Q. B. 715; 78 L. T. 524; *Balby U.D.C. v. Millard*, post, p. 396 (59).

(39) *Wakefield Cpn. v. Cooke*, post, p. 346.

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its use by the public as a thoroughfare. In 1892 the local authority asked the adjoining owners to remove the barricade. They expressed their willingness to do so if the local authority would undertake not to call upon them to make up the street "in any other way than at present, so long as we keep it in proper repair." The undertaking was not given, and the barricade was removed by the local authority without the consent of the adjoining owners. Between then and 1911 the adjoining owners kept the road in repair. In 1911 the local authority sought to have the street made up at the cost of the frontagers. It was held that they were not estopped (in Scotland called "barred by their actings") from doing so.⁴⁰

Expenses
wrongly
charged on
rates.

Where the expenses of paving a new street in the metropolis had been improperly charged by a district board upon the general rates of their district, the board were ordered, upon an information in the name of the Attorney General, to restore the amount expended to those rates, although their auditor had passed the items, and to levy such amount from the adjoining owners under the Metropolitan Acts.⁴¹

Streets partly repairable by Inhabitants.

The last clause of the present section was not contained in the corresponding section of the Public Health Act, 1848, but was added by the Local Government Act, 1858.¹ Under the original enactment in the Act of 1848 it was held that a local board of health were not authorised by the enactment to make new streets or to deal with streets repairable or partly repairable by the inhabitants at large, but only with streets in no part so repairable.² The present Act, however, enables the urban authority to call upon the adjoining owners to make up the whole of a street, if part of it is not repairable by the inhabitants at large, although the remainder may consist of an ancient footpath, or may be otherwise repairable by the inhabitants at large. Thus a lane, 40 feet wide, along which the only public right was a right of footway, "confined," as the court held, "to a small thread," was a street to which the present section was applicable.³

In a case in which the carriage-way of a street was repairable by the inhabitants at large but the footway was not, the last clause of the present section does not appear to have been noticed, and the case was decided on other grounds.⁴

Widened
road.

Lord Alverstone, C.J., appears to have considered that a strip of land thrown into a street repairable by the inhabitants at large by the adjoining owner, subject to a reserved right to interrupt the use of it by the public by placing articles of furniture on it, became vested in the urban district council by virtue of sect. 149.⁵ But Warrington, J., differing from this assumption on the ground that it was inconsistent with the decision of the Court of Appeal,⁶ held that a pavement made between the boundary of an old highway repairable by the inhabitants at large and a new hotel which was set back from the road, was not vested in the urban district council so as to enable them to erect electric lighting standards on it, and was not itself repairable by the inhabitants at large although it had been dedicated to the use of the public; and in the Court of Appeal, which affirmed the judgment, the pavement was treated as not being so repairable or vested.⁷

An old road, repairable by the inhabitants at large, was widened by the adjoining landowner, and houses were built along it. The urban authority made up the road so widened under the present section, and were held entitled to recover the expenses by virtue of the last clause of the section.⁸

An agreement, between an urban authority and the owners of the land adjoining a narrow highway repairable by the inhabitants at large, was made in settlement of disputes as to the extent of the rights of the public over the highway. In accordance with the terms of the agreement, the owners widened the lane to a

(40) *Alloa B.C. v. Wilson*, 1913 S. C. (S.) 6; 50 Sc. L. R. 34; 4 Glen's Loc. Gov. Case Law 83. See also, as to the principle of estoppel, *per* Lord Russell, C.J., in *Crosse v. Wandsworth Dist. Bd. of Works* (1898), 62 J. P. at p. 808, col. iii.; and *cf.* *Edmonton U.D.C. v. Oliver*, *post*, p. 344 (47), where the alleged estoppel consisted of claiming and taking money in respect of "extraordinary traffic," and the *Canterbury Case*, *post*, p. 482 (22).

(41) *A.G. v. Wandsworth Dist. Bd.* (1877), L. R. 6 Ch. D. 539; 46 L. J. Ch. 771; *Dryden v. Putney Overseers*, *post*, p. 376 (6).

(1) 21 & 22 Vict. c. 98, s. 38.

(2) *Kingston-upon-Hull Loc. Bd. v. Jones*,

ante, p. 314.

(3) *Montagu v. Goole Loc. Bd.* (1888), 52 J. P. 84, n.

(4) *Derby Cpn. v. Grudgings*, L. R. 1894, 2 Q. B. 496; 63 L. J. M. C. 170; 72 L. T. 594; 58 J. P. 685.

(5) *Escott v. Newport Cpn.*, *ante*, p. 296.

(6) In *Property Exchange, Ltd. v. Wandsworth Dist. Bd.*, *ante*, p. 328.

(7) *Andrews v. Abertillery U.D.C.*, L. R. 1911, 2 Ch. 398; 80 L. J. Ch. 724; 105 L. T. 81; 75 J. P. 449; 9 L. G. R. 1009. See also *ante*, p. 295 (41), as to this case.

(8) *Evans v. Newport U.S.A.* (1889), L. R. 24 Q. B. D. 264; 59 L. J. M. C. 8; 61 L. T. 684; 54 J. P. 374.

greater extent than was required for new streets by the byelaws in force at the date of the agreement, as portions of the adjoining land were from time to time laid out for building purposes. The Court of Appeal held that the status of the strips of land so thrown into the highway, was as regards repair intended to be the same as that of the old portion of the highway, and that the last clause of the present section was therefore not applicable to it.⁹

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The filling up of a ditch at the side of a highway repairable by the inhabitants at large was held not to amount to a widening of the original highway, so as to render the whole width, including the site of the ditch, partly repairable by the inhabitants within the last clause of the present section: the court refusing to interfere with the finding that the ditch had formed part of the original highway, on the ground that there was no rule of law preventing the site of a ditch being part of the highway. Kennedy, J., in delivering the judgment of the Divisional Court, which was confirmed by the Court of Appeal, said "it appears to us that the whole of a space including a ditch may be dedicated to the public as a highway, the ditch being treated as an obstruction or excavation, subject to which, so long as the obstruction or excavation continues to exist, the highway is dedicated, but the surface of which, if by natural or other causes the ditch is filled or silted up wholly or partially, thereupon becomes wholly or *pro tanto* land which must be treated as part of the ordinary highway."¹⁰

Roadside ditches.

The site, however, of an unenclosed ditch, by the side of a highway or roadside waste, is not necessarily part of the highway or waste. It is a question of fact in each case whether or not it is the private property of the adjoining owner or may be enclosed by him.¹¹

The owners of building land threw a strip of ground along the boundary of the district in which such land was situate, into a highway repairable by the inhabitants at large, which was wholly situate in the adjoining district. It was held that the local board of the first-mentioned district were entitled to deal with the strip of ground as a "street" under the present section. *Per* Wills, J., "This piece of land was up to the time of building private property; the fact of the owners having thrown it into the public road does not make it repairable by the inhabitants at large, but makes it a road not repairable by the inhabitants at large."¹²

Street on boundary of district.

A road, along which the boundary between a portion of the county of London (formerly, the metropolis) and the county of Middlesex ran, was found as a fact to have become a "street" in the ordinary sense of the term by the erection of buildings along it before the passing of the Metropolis Management Act, 1855. And although nearly all of those buildings were on the Middlesex side of the road, it was held by the Court of Appeal that the part of the road which was in the county of London could not be treated as being by itself a "new street" for the purpose of being sewered at the expense of the owners of premises adjoining that side¹³ when more or less continuous buildings were erected along that side.¹⁴

Compensation for Injury.

Sect. 308 provides for payment of compensation to every person who sustains damage by reason of the exercise of the powers of the local authority; and although a person may be bound to pay his proportion of the cost of works executed under the present section, yet he may be entitled to compensation if he suffers special damage by reason of those works for the benefit of his neighbours, as for instance by the level of the street in front of his premises being altered.¹⁵

Injury from execution of works.

Covenants in Leases.

The decisions upon the application of various covenants in leases (for the payment of all charges, etc., in respect of the premises leased) to charges arising under the present section, are cited in the Note to sect. 257, *post*.

Landlord and tenant.

(9) *Portsmouth Cpn. v. Hall* (1907, C. A.), 98 L. T. 513; 71 J. P. 564; 6 L. G. R. 16.

(10) *Chorley Cpn. v. Nightingale*, L. R. 1906, 2 K. B. 612; 75 L. J. K. B. 793; 70 J. P. 500; 4 L. G. R. 1066; affirmed in C. A., L. R. 1907, 2 K. B. 637; 76 L. J. K. B. 1003; 97 L. T. 465; 71 J. P. 441; 5 L. G. R. 1114.

(11) See *Field v. Thorne* (1869), 20 L. T. 563; 33 J. P. 727; *Chippendale v. Pontefract R.D.C.* (1907, Pontefract C.C.), 71 J. P. 231; *Walmsley v. Featherstone U.D.C.* (1909, Ch. D.), *ante*, p. 130.

(12) *Richards v. Kessick* (1888), 57 L. J. M. C. 48; 59 L. T. 318. Approved by C. A. in *Property Exchange, Ltd. v. Wandsworth Dist. Bd.*, *ante*, p. 328. See particularly *per* Romer, L.J., L. R. 1902, 2 K. B. at p. 70.

(13) Under 18 & 19 Vict. c. 120, s. 52.

(14) *Clerkenwell Vestry v. Edmondson & Son*, L. R. 1902, 1 K. B. 336; 71 L. J. K. B. 198; 86 L. T. 137; 66 J. P. 324.

(15) See *Reg. v. Wallasey Loc. Bd.* and other cases cited in Note to s. 308 (under heading "Exercise of Powers of the Act.")

Sect. 150, n.	<p><i>The Private Street Works Act, 1892.</i></p> <p>This Act has been printed in the present Note in order that the two Codes of private street works provisions, and the cases dealing with them, may be close together.</p> <p>The sections of the Act of 1892 have been printed in italics for the sake of prominence. The marginal notes to the sections will be found in the footnotes unabbreviated.</p>
Section 1.	<p>Sect. 1 of the Private Street Works Act, 1892,¹ provides as follows:—“<i>This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England; and this Act and the Public Health Acts may be cited together as the Public Health Acts.</i>”²</p>
Adoption.	<p>This Act, which is entitled “an Act to amend the Public Health Acts in relation to Private Street Improvement Expenses,” and was passed on the 28th June, 1892, may be adopted by any urban district council in substitution (see sect. 25 of Act of 1892) for sects. 150-152 of the present Act, and (if Part III. of the Public Health Amendment Act, 1890, has already been adopted by them) for sect. 41 of that Act.³ See also sect. 19 of the adoptive Act of 1907.⁴ As to the adoption of the Act of 1892 in rural districts, see sect. 4 of the Act of 1892, <i>post</i>, and sect. 25 (5)-(7) of the Local Government Act, 1894.⁵</p> <p>When once the Act of 1892 has been adopted in an urban district, its adoption cannot be rescinded, though some urban authorities have obtained local Acts declaring it no longer in force. But in rural districts, having regard to the practice of the Local Government Board in not putting the Act in force throughout such a district, but only with regard to particular streets (see the Note to sect. 4), it would appear that rural authorities can, with the necessary sanction, proceed under either Code at their pleasure and from time to time.</p>
Differences between the two Codes.	<p>The following are the main differences between the Act of 1892 and sect. 150 of the Public Health Act, 1875:—</p>
Objections.	<p>Under the Act of 1875, the district council must run the risk of the owners of the premises adjoining the street raising objections which may be fatal to their power of recovering the whole or part of the expenses incurred in the execution of the works, or which may necessitate a fresh apportionment being made upon some or all of the owners, after the expenses have been actually incurred and apportioned; but if they proceed under the Act of 1892, the opportunity of taking the objections specified in sect. 7 (which include most of the objections of the character above mentioned which could be taken) is to be afforded to the owners before the expense of executing the works has been incurred; and if the objections are not taken then, the council may proceed with the work without the risk of such objections being subsequently taken with success.</p> <p>Again, under the Act of 1875, objections to the apportionment of the expenses are to be determined by arbitration unless the amount in dispute is less than £20; but under the new procedure they are to be determined by a court of summary jurisdiction without regard to the amount in dispute, and objections that the proposed works are insufficient or unreasonable, or the expenses excessive, are to be determined in the same manner instead of by the Minister of Health.</p>
Adoption of maintenance of street.	<p>The Act of 1892 follows the Act of 1890 in providing for the adoption of the maintenance of the street by the council in cases where some and not all of the works (namely, sewerage, levelling, paving, metalling, flagging, channelling, making good, and providing with means of lighting) have been executed; but it allows the council to adopt the maintenance of the street, and, if it is not already public, to make it a highway, without regard to the wishes of the owners; and on the other hand obliges them to adopt it if a majority of the owners so require.</p>
Street partly repairable by inhabitants.	<p>The last clause of sect. 150 of the Act of 1875, allowing the urban district council to make up the whole street where part of it is already a highway repairable by the inhabitants at large, is not inserted in the Act of 1892; and one of the objections that may be taken by the owners before the works are executed is that the street or part of a street in question is in part such a highway.</p>
Apportionment.	<p>In apportioning expenses under the Act of 1892, the council are not tied to frontage as the basis of the apportionment; but may, if they think just, take into</p>

(1) 55 & 56 Vict. c. 57, s. 1. Marginal Note: “Short title, construction, and extent.”

(2) As to the construction of Acts “as one,” see the Note *ante*, p. 3; as to “England,” see the Note *ante*, p. 4; and as to

the “Public Health Acts,” see the Note *ante*, p. 2. See also *Pearce’s Case*, *post*, p. 346 (11).

(3) *Post*, Part I., Div. II.

(4) *Post*, Part I., Div. III.

(5) *Post*, Vol. II., p. 2039.

consideration the greater or less degree of benefit derived by any premises from the works, and the amount and value of any work already done by any owners or occupiers.

The shares of the expenses which railway or canal companies would have had to pay, under the Act of 1875, in respect of premises having no direct communication with the street, are by the Act of 1892 thrown upon the other owners of premises adjoining the street unless and until a communication with the street is made from the railway or canal premises. The council may, however, in any case, if they think fit, charge any part of the cost of works under the Act upon the rates of their district.

Expenses under the Act of 1892 are recoverable by action of debt in the county court, although they amount to £50 or more, or in the High Court of Justice, as well as in a court of summary jurisdiction, or as charges on the premises.⁵

By sect. 2 of the Act of 1892,⁶ “ *This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act.*”

By sect. 3 of the Act of 1892,⁷ “ *The following provisions shall have effect with regard to the adoption of this Act by urban authorities :*

“ (1.) *The adoption shall be by a resolution passed at a meeting of the urban authority; and one calendar month at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it if it is either—*

“ (a.) *Given in the mode in which notices to attend meetings of the authority are usually given; or*

“ (b.) *Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid registered letter, addressed to the member at his usual or last known place of abode in England.*

“ (2.) *Such resolution shall be published by advertisement in some one or more newspaper circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation this Act shall extend to that district.*

“ (3.) *A copy of the resolution shall be sent to the [Minister of Health].*

“ (4.) *A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.*”

The Local Government Board pointed out that the “ month ” mentioned in subsect. (2) of the above section is a *calendar* month⁸; and that if the date, fixed by a resolution for the adoption of the Act to become effective, is less than one calendar month from the date on which the resolution is passed, it will be necessary for the proceedings for adoption to be begun afresh.

By sect. 4 of the Act of 1892,⁹ “ *The [Minister of Health] may declare that the provisions contained in this Act shall be in force in any rural sanitary district, or any part thereof, and may invest a rural sanitary authority with the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875.*”

The Minister of Health, and not the Minister of Transport,¹⁰ may invest a

Sect. 150, n.

P.S.W. Act, 1892, s. 1—*continued.*

Railways and canals.

Recovery of expenses.

Section 2.

Section 3.

Date for Act to come into force.

Section 4.

Urban powers.

(5) See ss. 13, 14, *post*, pp. 349, 350.

(6) 55 & 56 Vict. c. 57, s. 2. Marginal Note: “ Adoption of Act.”

(7) *Ibid.* s. 3. Marginal Note: “ Adoption of Act by urban authorities.”

(8) See Interpretation Act, 1889, s. 3, *post*,

Vol. II., p. 1963.

(9) 55 & 56 Vict. c. 57, s. 4. Marginal Note: “ [Minister of Health] may extend Act to rural districts.”

(10) Information supplied by M. H. to Clerk to Newmarket R.D.C., Aug. 15, 1922.

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P.S.W. Act,
1892, s. 4—
continued.

rural district council with the urban powers of the Act with respect to a specified street; but the fact that they have done so will not preclude the adjoining owners from disputing their liability under the Act on the ground that the street is a highway repairable by the inhabitants at large, or that the Act is otherwise inapplicable to it.¹¹

An order was made by the Local Government Board declaring the Act of 1892 to be in force (except as regards sewerage) in certain contributory places in a rural district, "so far as regards the streets and parts of streets hereinafter described," and investing the rural district council with urban powers under the Act as regards such streets and parts of streets. The description of the streets included the following: "In the contributory place of Saughall Massey . . . Long Rake from its junction with [a specified main road] to a point 250 yards or thereabouts from its junction with " another main road. A provisional apportionment was confirmed by justices on the hearing of objections under sects. 7 and 8, but amended on appeal to quarter sessions by excluding a footway at the side of the street "Long Rake." The objector then for the first time became aware of the terms of the order of the Local Government Board, and succeeded in getting the orders of the justices and quarter sessions quashed by *certiorari* on the ground that one-half, at any rate, of the breadth of the street was not in the contributory place of Saughall Massey, but in an adjoining township not mentioned in the order of the Board.¹²

It was the practice of the Local Government Board to limit the operation of any order which they issued conferring on a rural district council the powers of the Act of 1892 to those particular streets or parts of streets which required making up, and were already provided with sewers; and the Board abstained from conferring on a rural district council such of the powers of the Act as relate to the sewerage of streets at the expense of the frontagers, because they were of opinion that, as the duty of providing sufficient sewers for effectually draining the rural district is imposed by the Legislature upon the district council themselves, the cost of all works necessary for this purpose should be met by the district council.

Section 5.

By sect. 5 of the Act of 1892,¹³ "In this Act, if not inconsistent with the context,—

"The expression 'urban authority' means an urban sanitary authority under the Public Health Acts.

"The expressions 'urban sanitary district' and 'rural sanitary district' mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts, and 'district' means the district of an urban sanitary authority or of a rural sanitary authority, as the case may require.

"The expressions 'surveyor,' 'lands,' 'premises,' 'owner,' 'drain,' 'sewer,' have respectively the same meaning as in the Public Health Acts.

"The expression 'street' means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large.

"Words referring to 'paving, metalling, and flagging' shall be construed as including macadamising, asphaltting, gravelling, kerbing, and every method of making a carriageway or footway."

Street.

With regard to the meaning of the term "street," see the Note to the definition in sect. 4 of the Public Health Act, 1875.¹⁴

An old forest path in front of a terrace of houses and under the jurisdiction of the Epping Forest Conservators was held to be a street within the Act of 1892.¹⁵

Footway.

A passage about eight feet wide, between the backs of two rows of houses which fronted parallel streets, had become a highway for foot-passengers before 1836, and was therefore repairable by the inhabitants at large as such a highway. It was held by the Divisional Court that, as it was a footway repairable by the inhabitants at large, it was not a "street" within the meaning of the Act of 1892, and that the local authority could not sewer it at the cost of the adjoining owners.¹⁶

Meaning of
"part of
street."

In November, 1908, the appellants sent in plans for the erection of a new shop

(11) See *Fenwick v. Croydon Rural Sanitary Authority*, cited in Note to s. 276, *post*; *Rex v. Cheshire JJ.*, *infra*.

(12) *Rex (Vyner) v. Cheshire JJ.* (1909), 101 L. T. 683; 73 J. P. 499; 7 L. G. R. 1138.

(13) 55 & 56 Vict. c. 57, s. 5. Marginal Note: "Interpretation."

(14) *Ante*, p. 23. See also *ante*, p. 312.

(15) *Woodford U.D.C. v. Henwood*, *post*, p. 345.

(16) *Rishton v. Haslingden Cpn.*, L. R. 1898, 1 Q. B. 294; 67 L. J. Q. B. 387; 77 L. T. 620; 62 J. P. 85. See also *Folkestone Cpn. v. Brockman*, *ante*, p. 291.

at the corner of a main road and a side road. The plan showed the side wall of the new shop in line with the front main walls of the nearest houses further down the side road, and the space between the site of the old garden wall and the side wall of the new shop was coloured green and edged with a dotted line. Immediately after the old wall was pulled down five large stone pillars were erected at intervals along its site. The shop was erected with windows facing the strip. Part of the strip was asphalted in the same way as the asphalt footpath in the main road. The public passed and repassed along the strip without hindrance. In April, 1911, the respondents served upon the appellants and other owners of premises abutting on the side road notices of their intention to make up the whole street, including the strip, under the Act of 1892. Upon receipt of this notice, the appellants placed wooden bars between the stone pillars, and gave notice, under sect. 7, objecting to the proposed works upon the strip. On two previous occasions the local authority had purchased strips of land from the appellant's predecessors in title for widening the main road and for rounding off the corner into the side road, and the appellants thought that if the respondents wanted the strip for widening the side road they would ask for it and pay for it. It was contended for the respondents (a) that the question whether the strip was or was not part of the street in April, 1911, was one of fact for the justices, and that there was ample evidence to support their finding that it was then part of the street; (b) that it was not necessary to prove "dedication" or that there had been a "laying out" of a "new street," but that in any case the posts indicated an intention to dedicate for foot traffic, and setting back the boundary fence and asphaltting a portion of the strip amounted to such laying out; (c) that the placing of the bars between the posts had been done too late, as notices under the Act had been served; (d) that the real test was user for traffic, and this fact had been found in the respondents' favour; and (e) that the shop windows facing the strip had invited the public on to the strip. It was contended for the appellants (a) that this was an act of confiscation of private property by the local authority; (b) that there was no evidence of any intention to part with the property in the strip without payment, which had been given without question twice before; (c) that there was no right to remove the posts and make up the strip as part of the street without the consent of the appellants, the colouring on the plan obviously meaning that the strip was reserved, and the immediate erection of posts on the site of the garden wall confirming this; (d) that the placing of the bars across the posts was not too late, as owners were not bound to make up their minds whether they would dedicate in such a hurry; and (e) that the case was like the shop-window embayment cases, in which it had been held that such places were not part of the streets which they adjoined. The appeal was dismissed with costs.¹⁷

Sect. 150, n.
P.S.W. Act,
1892, s. 5—
continued.

Wood-paving was considered by Jessel, M.R., not to be "paving" within the meaning of sect. 152 of the Act of 1875¹⁸; but the meaning of "paved" in that Act has since been extended by sect. 11 (2) of the Public Health Acts Amendment Act, 1890,¹⁹ so as to include wood-paving, etc.

Paving.

By sect. 6 of the Act of 1892,²⁰ "(1.) *Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street.*

Section 6.

"(2.) *The surveyor shall prepare, as respects each street or part of a street,—*

"(a.) *A specification of the private street works referred to in the resolution, with plans and sections (if applicable);*

(17) *Bell & Sons v. Great Crosby U.D.C.* (1912, K. B. D.), 108 L. T. 455; 77 J. P. 37; 10 L. G. R. 1007. See also, as to "parts" of streets, *Alderson's Case*, post, p. 340. As to shop window embayments, see *Piggott v. Goldstraw* (1901), 84 L. T. 94; 65 J. P. 259; 19 Cox C. C. 621.

(18) *A.G. v. Bidder*, post, p. 357.

(19) *Post*, Part I., Div. II. This section occurs in Part I., the non-adoptive part of the Act of 1890.

(20) 55 & 56 Vict. c. 57, s. 6: Marginal Note: "Private street works."

Sect. 150, n.
P.S.W. Act,
1892, s. 6—
continued.

“(b.) An estimate of the probable expenses of the works;

“(c.) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act.

“Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to this Act, and shall be submitted to the urban authority, who may by resolution approve the same respectively with or without modification or addition as they think fit.

“(3.) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the Schedule to this Act, and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication. During one month from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the urban authority offices, and shall be open to inspection at all reasonable times.”

Private street
works.

The urban district council are not required to include in their resolution all the several classes of “private street works,” although some of them may not have been executed in the street; but they may select such classes of work as they consider to be necessary at the time. The resolution may apply to several different streets or parts of streets; but the council are not authorised to add together the expenses incurred and apportion them as though they were all incurred in relation to one street, for there must be a separate provisional apportionment for each street or part of a street. With regard to the basis of the apportionment, see sect. 10. The words “or part of a street” are applicable where the boundary between two districts runs down the middle of a street.²¹

Discretion of
local
authority.

In a case where frontagers sought unsuccessfully to compel a local authority to make up a street under the Act of 1892, after they had been served with a notice under sect. 19 of the Public Health Act of 1907 requiring “urgent repairs,”²² Lord Alverstone, C.J., said: “In all the steps, or a good many of the steps which follow proceedings under the Act of 1892, the local authorities certainly have a discretion. They have a discretion in the first instance when they think the streets are not sewered, levelled, paved, metalled, flagged, channelled, and so on; they have a discretion when difficulties are raised on objection to the apportionment, and they have even a final discretion by being able to ask the magistrates themselves to quash in whole, if they think right, the resolution, plans, and so on. In this case, of course, there were difficult questions raised; there was a question about the part of the road being repairable by the inhabitants at large; there was a question about the works being excessive, and there was a question, of course, about no proper notice having been given to the frontagers. It is for that reason that I think that, in the present state of matters, it would be wrong, indeed, to grant a *mandamus*.” Pickford, J., gave this as an additional reason for discharging the rule *nisi*: “There is some force in what the urban district council say, that if they make up this road it may be very much destroyed by building operations, and they may have to do it again.”

Notice to
owners.

Service of notice of the provisional apportionment upon the owner is a condition precedent to the recovery of the amount finally apportioned upon him. Where, therefore, a notice under this section had been addressed to certain persons who were described in the provisional apportionment as the “owners or reputed owners” of the premises, but were not the real owners, and the real owner was not discovered until the final apportionment had been made and served, it was held, affirming the decision of the county court judge in an action for recovery of the amount, to be insufficient for the council to amend the latter apportionment, and then serve notice of it on the real owner.²³ So also the charge on the premises under sect. 13 was held to be unenforceable where the notices were served upon the mortgagor of the premises, and not upon the mortgagee, who was in possession.²⁴

Service of
notices.

(21) See *per* Ivory, J., in *Alderson v. Bishop Auckland U.D.C.*, 10 L. G. R. at p. 727. Further as to this case, see *post*, p. 342. And see also *Shoreditch B.C. v. Wakeham* (1904, N. London P. Ct.), 69 J. P. 239, and the *Hornsey Case*, *ante*, p. 321 (1).

(22) *Rex v. Epsom U.D.C.*, cited in Note to P. H. Am. Act, 1907, s. 19, *post*, Part I.,

Div. III. For quotation in text, see 10 L. G. R. at p. 616.

(23) *Wirral R.D.C. v. Carter*, L. R. 1908, 1 K. B. 646; 72 L. J. K. B. 332; 89 L. T. 171; 67 J. P. 31; 1 L. G. R. 206. Further as to this case, see *post*, p. 354.

(24) *Maguire v. Leigh-on-Sea U.D.C.*, *post*, p. 350.

sect. 267 of the Act of 1875, although they may not actually reach the owner, and although his address may be well known to the council.²⁵

Under the corresponding Scottish enactments²⁶ a local authority were held entitled to remove from a street being made up by them certain railway lines, which were found to be an obstruction.²⁷

By sect. 7 of the Act of 1892,²⁸ "During the said month any owner of any premises shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the works may, by written notice served on the urban authority, object to the proposals of the urban authority on any of the following grounds; (that is to say) :—

"(a.) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act;

"(b.) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large;

"(c.) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate;

"(d.) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive;

"(e.) That any premises ought to be excluded from or inserted in the provisional apportionment;

"(f.) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises.

"For the purposes of this Act joint tenants or tenants in common may object through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common."

If the objections mentioned in the above section are not taken within the time limited by the section, they cannot be taken at any subsequent stage of the proceedings: see sect. 8 (2). Even if the person charged as owner is not the "owner," he may not dispute his liability subsequently if no objection has been made in time.²⁹

An agreement, made between the corporation of Folkestone and the South Eastern Railway Company and others interested in the lands through which certain partially completed roads had been made, provided that the roads should, as from the 1st January, 1880, be dedicated to the public and accepted by the corporation as public highways repairable by the inhabitants at large, and should be maintained accordingly by the corporation, who were to be at liberty to plant trees and erect seats in them. It also provided that the corporation should retain the power of requiring the adjoining owners to complete the sewerage and making up of the roads (except as regards metalling already carried out) under sect. 150 of the Public Health Act, 1875, or the provisions of a Local Improvement Act. The corporation subsequently adopted the Act of 1892, and proceeded to put it in force with respect to one of the roads in question. Some of the frontagers objected, under the above section, that the road was a highway repairable by the inhabitants at large, and their objection was allowed by the justices; and, on a case stated by them, the Divisional Court upheld their decision on the ground that the road had become a highway repairable by the inhabitants at large, and the corporation could not rely on the reservation of powers by the agreement, to which these frontagers were not parties.³⁰ Another frontager did not give any notice of objection under the above section, and the corporation obtained judgment against him in the county court for the amount of his apportioned share of the expenses incurred by them in making up the road. In this case, in which no reference

Sect. 150, n.

P.S.W. Act,
1892, s. 6—
continued.

Section 7.

Objections.

(25) *Woodford U.D.C. v. Henwood*, *post*, p. 345.

(26) B. P. (Sc.) Acts, 1892 (55 & 56 Vict. c. 55), s. 4 (31), 1903 (3 Edw. VII. c. 33), s. 104 (2) (d).

(27) *Glasgow and South Western Ry. Co. v. Ayr B.C.*, L. R. 1912 A. C. 520; 1912 S. C. (H. L.) 87; 50 Sc. L. R. 9; 4 Glen's Loc. Gov. Case Law 84. Further as to the removal of obstructions to highways, see the cases cited *post*, Vol. II., p. 2045.

(28) 55 & 56 Vict. c. 57, s. 7. Marginal Note: "Objections to proposed works."

(29) *Wallasey U.D.C. v. Walker & Co.*, *post*, p. 345. But see *Southend Cpn. v. Scrutton* (Southend Borough Sessions), 1905 Loc. Gov. Chron. 1021; and *Maguire v. Leigh-on-Sea U.D.C.*, *post*, p. 350.

(30) *Folkestone Cpn. v. Marsh* (1905, K. B. D.), 94 L. T. 511; 70 J. P. 113; 4 L. G. R. 382. See also *ante*, p. 278, as to this case.

Sect. 150, n.
P.S.W. Act,
1892, s. 7—
continued.

Street not
within the
Act.

Works
unreasonable.

to the previous decision appears to have been made, the Divisional Court dismissed an appeal against the judgment of the county court judge. Phillimore, J., did not consider that the agreement rendered the road repairable by the inhabitants at large, but only gave the corporation the right to plant trees and erect seats, and the public the use of the road, in consideration of the corporation repairing the road until it should become necessary to make it up as a street; and he and Walton, J., both expressed the opinion that, if it had intended to exclude the operation of the Act of 1892, it would have been *ultra vires*.³¹

As to the expression "street," see sect. 5 of the Act of 1892 and Note; and as to the expression "highways repairable by the inhabitants at large," see the Note to sect. 149 of the Act of 1875.³²

On an objection framed under clause (a) of the above section, namely, that the alleged street was not a street within the meaning of the Act, the Divisional Court held that it was open to the objector to prove that the street was a highway repairable by the inhabitants at large, although he had not expressly made an objection in the terms of clause (b).³³

On an objection that the portion of a road, of which the whole width, except the footpath on the east side, was included in a provisional apportionment under the present Act, was in whole or in part a highway repairable by the inhabitants at large, the justices found that the portion of road in question formed a street or part of a street within the meaning of the Act, but that the whole width of it was a highway repairable by the inhabitants at large. An ancient public footpath, so repairable, had been diverted by an order of quarter sessions made under sect. 91 of the Highway Act, 1835, in 1868, "so as to run along" the above-mentioned portion of road, and one of the reasons which the order gave for the diversion was that the new way would be open and ready for persons travelling with carts and carriages; and the new way was duly completed and used by the public for vehicular as well as foot traffic. On the other hand, the deposited plan referred to in the order bore a note stating that the proposed diversion of footpath was coloured red, and a strip on the east side of the new road was so coloured. The Divisional Court, on a case stated, held that the justices were justified in finding, but were not bound to find, that the whole width of the road had become repairable by the inhabitants at large by virtue of sect. 92 of the Act of 1835.³⁴

The court of summary jurisdiction were held by the Court of Appeal to have power, under the similar provisions of a local Act, to take into consideration the existing state of the drainage of the houses in the street, when determining an objection taken on the ground that the proposed work is itself unreasonable. In that case the drainage of the houses in the street had been provided for; the rain-water might have been properly provided for by means of channels, and the only matter requiring a sewer was the sink water.³⁵ A court of summary jurisdiction was held not to have been justified in holding that certain proposed works were insufficient and unreasonable where the ground of the decision was that the proposals of the urban authority did not include widening the street.³⁶

A frontager contended that certain works were unreasonable because (1) the street in question was only a "back street," and it was unreasonable to make frontagers pay for works in respect of such a street which were only needed for a "front street"; and (2) that he had already made up as a front street a road parallel to the street in question, and he ought not to be compelled to pay for making up another front street. It was found by the justices at quarter sessions, overruling the justices at petty sessions, that the works were not unreasonable, and held that this was a finding of fact with which the High Court could not interfere, as there was evidence upon which it could be based.³⁷

A memorial, alleging, amongst other things which were not the subject for objection under the above section, that the proposed works were unreasonable and unnecessary, and concluding with an expression of the hope that inquiry as to the needs and desires of the inhabitants of the road in question and the neighbouring

(31) *Folkestone Cpn. v. Rook* (1907, K. B. D.), 71 J. P. 550; 6 L. G. R. 69. See also *Porthcawl U.D.C. v. Brogden*, post, p. 345.

(32) *Ante*, p. 285.

(33) *Carey v. Bexhill Cpn.*, L. R. 1904, 1 K. B. 142; 73 L. J. K. B. 74; 90 L. T. 58; 68 J. P. 78; 2 L. G. R. 367.

(34) 5 & 6 Wm. IV. c. 50, ss. 91, 92; *Kingston-upon-Thames Cpn. v. Baverstock* (1909, K. B. D.), 100 L. T. 935; 73 J. P. 378;

7 L. G. R. 831.

(35) *Sheffield Cpn. v. Anderson or Alexander* (1894), 64 L. J. M. C. 44; 72 L. T. 242.

(36) *Mansfield Cpn. v. Butterworth*, L. R. 1898, 2 Q. B. 274; 67 L. J. Q. B. 709; 78 L. T. 527; 62 J. P. 500.

(37) *Bishop Auckland U.D.C. v. Alderson*, L. R. 1913, 2 K. B. 324; 82 L. J. K. B. 737; 76 J. P. 347; 10 L. G. R. at p. 727. See also *ante*, p. 340.

district might be made before further steps were taken to carry out the works, was held by the Court of Appeal not to have been such an "objection" as the council were bound to submit to the justices under the next section. And Mathew, L.J., intimated that he saw no reason why, upon an objection under the above section, the council should not upon public notice abandon their scheme, and commence *de novo*; and further, that if the original objector did not object to the scheme when modified by the council, but treated it as a new proceeding, he could not afterwards take exception to the scheme being so treated by the council.³⁸

In 1878 a local board made up part of the causeway of a street for and at the expense of the then adjoining owners, and gave them a copy of a resolution which they passed that an indemnity should be given to those owners against liability on account of further expenses that might be occasioned in connection with the street; and in 1901 the urban district council published a resolution under sect. 6 of the Act of 1892 to make up the street. One of the above-mentioned owners and the successor in title of another objected, under clause (e) of the above section, that their premises ought to be excluded from the provisional apportionment, on the ground that they were indemnified by the first-mentioned resolution from payment of expenses in connection with the proposed works. On a special case stated by the justices who heard the objection, the Divisional Court held that the resolution did not amount to a bargain that there was to be an indemnity for all time, and did not afford a good objection to the inclusion of the objectors in the apportionment.³⁹

In 1804, an award under an Inclosure Act of 1800 set out various public and private carriage roads and public footpaths, including a private carriage road 16 feet in width, between certain termini, and across certain fields, and a public footpath between the same termini, and across the same fields. The award map, and an old map in Robinson's History of Edmonton, showed the footpath by a dotted line. At one end of the awarded road there were a dozen very old buildings, near them some cottages erected about 1850, and, further along, several small houses erected between 1860 and 1880. Before 1879 the road opposite these houses was about 16 feet wide, being slightly wider in some parts than others. In 1879 the road was widened on the west side, as to part of its length, by the throwing in of a strip about 15 feet in width. This strip was coloured pink on the plan used in court. In October, 1898, the council instructed their engineer to write to a company that was developing an estate in the neighbourhood, and using the road for the carting of building materials, calling their attention to the extraordinary traffic which they were taking down the road and asking them to make some arrangement for meeting the extra expense to which the council would be put. In January, 1900, the council accepted £20 "towards the cost of making good the road." In November, 1898, the council resolved that the engineer "do improve the present condition of the roads and footpaths if possible, and that kerbs or posts be placed along the edge of the footpaths to prevent carts being driven thereon." In December, 1900, a committee recommended the council to "authorise gravel being put down in this street as far as they have authorised it being done." In September, 1912, the engineer reported as follows to the committee: "Since 1804, a portion of the road has been repaired and kept in order by the council, and the whole of the road as far as houses extend has been scavenged by the council." Evidence of workmen and residents in the neighbourhood was called on behalf of the objectors as to the placing of materials at various times on any parts of the road that needed repair. According to old inhabitants, the whole of the old portion of the road (which was coloured yellow and blue on the plan) had always been used by the public on foot without interruption. In 1913, the local authority proposed to make up, under the Act of 1892, a short length of this portion. They omitted from the expenses apportioned upon the frontagers the cost of paving as a footpath a strip about four feet wide (coloured blue on the plan) on the east side of the road. It was contended for the council (1) That the strip added in 1879 was a private street and not repairable by the inhabitants at large,⁴⁰ and (2) that all that was so repairable was the strip coloured blue.⁴¹ It was contended for the objectors (1) That the whole of the old portion of the road (blue and yellow) had been used by the public on foot without interruption as long as living witnesses could remember, that the award specified no width for the public footway which it set out on the same site as the private

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P.S.W. Act,
1892, s. 7—
*continued.*Withdrawal
of scheme.Premises to
be excluded.

(38) *Southampton Cpn. v. Lord* (1903), 67 J. P. 189; 1 L. G. R. 324.

(39) *Dodworth U.D.C. v. Ibbotson* (1903), 67 J. P. 132.

(40) Citing *Richards v. Keswick*, *ante*, p. 335.

(41) Citing *Ford v. Harrow U.D.C.*, *post*, Vol. II., p. 2043.

Sect. 150, n.
P.S.W. Act,
1892, s. 7—
continued.

carriage road, and that it must therefore be presumed, either that the awarded public footpath was originally, and had ever since remained, of the same width as the private carriage road, or that the owner of the soil had, at some time before 1836, dedicated the full width to foot traffic.⁴² In either case the old portion was a highway for footpassengers before 1836, and consequently repairable by the inhabitants at large as a footpath, and so not a street within the Act of 1892.⁴³ (2) That claiming and taking money in respect of damage done to the road by extraordinary traffic estopped the council from denying that it was repairable by them, for sect. 23 of the Highways and Locomotives Amendment Act, 1878, which was the only justification for such a claim, related solely to repairable highways. (3) That repairs to the road from time to time by the highway authority, though not conclusive, afforded strong evidence of the public liability.⁴⁴ (4) That the admittedly repairable (blue) portion intervened between the street which was to be made up and the premises on the east side of the road. These premises therefore did not abut upon such street, and their owners could not be charged with any of the expenses.⁴⁵ (5) That the strip (pink) which was thrown into the road in 1879 was given up in pursuance of an understanding between the council and the owners, when the building plans were passed, that the owners were not to be called upon to pay for its being made up. This understanding was equivalent to an agreement under sect. 146 of the Public Health Act, 1875, and made the strip repairable by the inhabitants at large.⁴⁶ The justices amended the apportionment (1) by excluding all expenses to be incurred in respect of the yellow as well as the blue; (2) by excluding all the frontagers on both sides except those abutting on the pink; and (3) by charging these frontagers with the cost of making up that strip alone.⁴⁷

Apportion-
ment.

With regard to the considerations on which the apportionment is to be based, see sect. 10 of the Act of 1892, *post*.

Section 8.

By sect. 8 of the Act of 1892,⁴⁸ “(1.) *The urban authority at any time after the expiration of the said month may apply to a court of summary jurisdiction to appoint a time for determining the matter of all objections made as in this Act mentioned, and shall publish a notice of the time and place appointed, and copies of such notice shall be served upon the objectors; and at the time and place so appointed any such court may proceed to hear and determine the matter of all such objections in the same manner as nearly as may be, and with the same powers and subject to the same provisions with respect to stating a case, as if the urban authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable. The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority. The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given.*

(2.) No objection which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever.

(3.) The costs of any proceedings before a court of summary jurisdiction in relation to objections under this Act shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or any part of such costs ordered to be paid by an objector or objectors shall be paid in the first instance by the urban authority, and charged as part of the expenses of the works on the premises of the objector or objectors in such proportions as may appear just.”

Objections.

The objections which can only be taken before the works are executed are specified in the preceding section. Certain other objections can only be taken within the time limited by sect. 12 (2), after the completion of the works.

A terrace of houses fronted an old path or road in Epping Forest, and the urban district council, within whose jurisdiction the path was situate, obtained the consent of the conservators under the Epping Forest Act, 1878,¹ to the path being made up as a street by the council on the understanding that it should be maintained at their expense. The council then proceeded to make up the path under the Act of 1892,

(42) Citing *A.G. v. Watford R.D.C.*, *ante*, p. 289.

(43) Citing *Folkestone Cpn. v. Brockman*, *ante*, p. 291.

(44) Citing *Eyre v. New Forest Highway Bd.* (1892), 56 J. P. 517.

(45) Citing *Property Exchange, Ltd. v. Wandsworth Bd. of Works*, *ante*, p. 328.

(46) Citing *Bromley Loc. Bd. v. Lansbury*,

ante, p. 315.

(47) *Edmonton U.D.C. v. Oliver* (1913, *Edmonton P. Ct.*), 77 J. P. Jo. 268; *Loc. Gov. Chron.* 537. See also *Cababé's Case*, *ante*, p. 289.

(48) 55 & 56 Vict. c. 57, s. 8. Marginal Note: “Hearing and determination of objections.”

(1) 41 & 42 Vict. c. ccxiii.

no objection having been made by the owner of the adjoining premises under sect. 7 or sect. 12. On proceedings being taken to recover the expenses, the justices refused to make an order for payment on the ground that the works had been executed under the arrangement with the conservators and not under the Act of 1892, that the land on which they were executed being vested in the conservators under the Epping Forest Act, 1878, could not be a street within the Act of 1892, and that as the owner's address was well known to the council, the statutory notices, which never reached him, were not properly served by being affixed to the premises or delivered to persons on them in the manner mentioned in sect. 267 of the Public Health Act, 1875. The Divisional Court, however, held that the service of the notices was sufficient, that the works had been executed under the Act of 1892, and that as the owner had not raised the question whether the path was a "street" within the Act by objecting in accordance with sect. 7, the order for payment ought to be made.²

Under a local Act containing provisions similar to those of the Act of 1892, Bray, J., held that an objection by a firm of estate agents that they were not "owners" of premises adjoining the street in question because the boundary wall belonged to other owners, could not be taken in an action to recover private street improvement expenses, the defendants having made no objection to the provisional apportionment.³ So also an objection by an owner that the apportionment included a sum representing the cost of a sewer previously laid by his predecessor in title under an agreement with the district council, was disallowed for the same reason.⁴ And even though a local authority have covenanted in a conveyance not to charge the vendor with private street works expenses, this will afford no defence in the absence of an objection under sect. 7.⁵

At the hearing of an objection that the street is a highway repairable by the inhabitants at large, the onus of proving that it is not such a street is on the council.⁶

On an appeal to quarter sessions against the decision of a court of summary jurisdiction on an objection that the street in question was not a "street" within the meaning of the present Act, but was a highway repairable by the inhabitants at large, the sessions stated a case for the opinion of the High Court on the question of the admissibility in evidence of maps made before the date of the Highway Act, 1835, and so recognised and used since that date as to amount to declarations of deceased persons, who had competent knowledge of the facts, as to the existence of the highway before the same date. The court held that the maps were admissible, but as fresh evidence on the subject, consisting of a Turnpike Act, referring to deposited plans and a book of reference, had been discovered since the hearing at the sessions, the court remitted the case for the consideration of such further evidence.⁷

On the hearing of an objection by one owner that part of the street in question is repairable by the inhabitants at large, and the remainder only is a private street, the justices may determine that the latter part only shall be made up, and may amend the plans, etc., accordingly (the resolution in the case in which the question arose not requiring amendment), and they need not direct fresh notices to be served on the other owners.⁸ Moreover, their jurisdiction is not confined to the correction of the subject-matter of a particular objection, but they may correct other mistakes, which are proved to have been made in the provisional apportionment, but have not been made the subject of objection under sect. 7,⁹ and they may adjourn the hearing from time to time for mistakes (as to owners, etc.), to be cleared up.

The determination of a court of summary jurisdiction that a street is a highway

Sect. 150, n.
P.S.W. Act,
1892, s. 8—
continued.

Burden of
proof.

Evidence of
maps.

Amendment
of plans, &c.

Res judicata.

(2) *Woodford U.D.C. v. Henwood* (1899), 64 J. P. 148.

(3) *Wallasey U.D.C. v. Walker & Co.* (1906), 70 J. P. 199; 4 L. G. R. 1042.

(4) *Teddington U.D.C. v. Vile* (1906, K. B. D.), 70 J. P. 381; 4 L. G. R. 782.

(5) *Porthcawl U.D.C. v. Brogden*, L. R. 1917, 1 Ch. 534; 86 L. J. Ch. 893; 116 L. T. 405; 81 J. P. 137; 15 L. G. R. 601. The ground stated in the text was the second, the first being that, on the construction of the covenant, the exemption did not apply to the street in question.

(6) See *per* Channell, J., in *Rishton v. Haslingden Cpn.*, *ante*, p. 338, L. R. 1898, 1 Q. B. at p. 301; and *per* Jelf, J., in *Vyner v. Wirral R.D.C.*, *infra*, 7 L. G. R. at p. 633;

but see *per* Avory, J., in *Cababé v. Walton-upon-Thames U.D.C.* (1912, K. B. D.), 10 L. G. R. at p. 663; and *per* Hamilton, L.J., in the same case (1912, C. A.), 11 L. G. R. at p. 222; afterwards affirmed in H. L.—see *ante*, p. 289, where this point was not dealt with.

(7) *Vyner v. Wirral R.D.C.* (1909, K. B. D.), 73 J. P. 242; 7 L. G. R. 628. See also *Fowke v. Berrington*, L. R. 1914, 2 Ch. 308; 83 L. J. Ch. 820; 111 L. T. 440, and cases there cited.

(8) *Twickenham U.D.C. v. Munton*, L. R. 1899, 2 Ch. 603; 68 L. J. Ch. 601; 81 L. T. 136; 63 J. P. 23.

(9) *Hall v. Bolsover U.D.C.* (1909, K. B. D.), 100 L. T. 372; 73 J. P. 140; 7 L. G. R. 403.

Sect. 150, n.
P.S.W. Act,
1892, s. 8—
continued.

Appeal.

Section 9.

Incidental
works.

Commission.

Contingen-
cies.

Section 10.

repairable by the inhabitants at large, upon an objection to that effect being heard before them, is a judgment *in rem* and is conclusive as to the status of the street; so that in any subsequent proceedings under the above and two preceding sections, the question whether such street is a highway repairable by the inhabitants at large is *res judicata*.¹⁰

An appeal lies to quarter sessions under sect. 269 of the Act of 1875 against an order of justices determining an objection under the present section.¹¹

By sect. 9 of the Act of 1892,¹² “(1.) *The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively.*

(2.) *The urban authority in any estimate of the expenses of private street works may include a commission not exceeding five pounds per centum (in addition to the estimated actual cost) in respect of surveys, superintendence, and notices, and such commission when received shall be carried to the credit of the district fund.*

Under the Act of 1875 the street can only be levelled as regards inequalities existing in the street itself.¹³

It is usual to charge the owners under the above-mentioned section with a similar commission or percentage to cover establishment expenses and sundry other expenses for work done by officers of the district council, who are paid by salaries including their remuneration for work done by them in connection with private street works; for the council might, instead of requiring those officers to do the work, employ other persons for the purpose, and in that case the cost would evidently be part of the expenses of executing the works, and would therefore be recoverable from the owners. It is, however, to be observed that such cost would not necessarily be the same as the proportion of the officers' annual salaries attributable to their work in connection with private streets.

The commission chargeable under sub-sect. (2) of the above section should not be paid over to the officers who have performed the work;¹⁴ but the council may award to those officers extra remuneration by increasing their salaries. The Local Government Board, however, pointed out that in such cases the period for which the increase is awarded must be prospective, that is, the increase must not commence sooner than the date of resolution of the council awarding it.

An addition of 10 per cent. for contingencies may be made to the estimate, Lord Alverstone, C.J., remarking that he believed it to be “absolutely impossible to estimate this kind of work within 10 per cent.,” as the contractor might for instance come across bad ground or difficulties from underground water, or re-arrangement of gas and water mains.¹⁵

By sect. 10 of the Act of 1892,¹⁶ “*In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; (that is to say),*

(a.) *The greater or less degree of benefit to be derived by any premises from such works;*

(b.) *The amount and value of any work already done by the owners or occupiers of any such premises.*

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.”

(10) *Wakefield Cpn. v. Cooke*, L. R. 1904 A. C. 31; 73 L. J. K. B. 88; 89 L. T. 707; 68 J. P. 225; 2 L. G. R. 270.

(11) *Pearce v. Maidenhead Cpn.*, L. R. 1907, 2 K. B. 96; 76 L. J. K. B. 591; 96 L. T. 639; 71 J. P. 230; 5 L. G. R. 622.

(12) 55 & 56 Vict. c. 57, s. 9. Marginal Note: “Incidental works.”

(13) See *Caley or Cary v. Kingston-upon-Hull Loc. Bd.*, ante, p. 324.

(14) See s. 193, post.

(15) *Standring v. Bexhill Cpn.* (1909, K. B. D.), 73 J. P. 241; 7 L. G. R. 670.

(16) 55 & 56 Vict. c. 57, s. 10. Marginal Note: “Apportionment of expenses.”

Where one owner has more than one property in a street, the expenses must be apportioned separately in respect of each property.¹⁷

Where the district council have determined to make up the whole breadth of the street, but only to make a footway on one side, they must, in the absence of any resolution under the above section, apportion the cost of the footway as well as that of the carriage-way on the adjoining premises on both sides, and where a street had a footpath on the north side only, and houses on that side only, an apportionment of the expenses of making up the footpath upon the owners of the premises on that side, and the expenses of making up the rest of the street upon the owners on both sides, was held to have been wrong, as the footpath could not be treated separately from the rest of the street.¹⁸

The last clause of the above section allows the council to adopt the principle of the Metropolitan Acts, which throw the expenses on the owners of houses and land "forming" the street, and were held to allow such expenses to be recovered from the owners of premises in a yard off the street.¹⁹

An objection that the apportionment is incorrect in respect to the degree of benefit to be derived cannot be made under sect. 7 so as to give the justices jurisdiction to deal with it under the following section, unless the council have in pursuance of the above section resolved that in settling the apportionment regard be had to such degree of benefit. And where justices did, upon such an objection, reduce the frontager's actual frontage by the length of the frontage of his garden, because the house fronted another street, though the garden wall as well as the flank wall of the house abutted on the street in question, and it was found that the council had not passed the necessary resolution, the court, on a case stated, remitted the case to the justices holding that the objector's only remedy was to appeal to the Local Government Board.²⁰

There have been several decisions as to the meaning of the expression "court, passage, or otherwise." Thus, certain premises did not front adjoin or abut on the street in question, but had access from it in one case by two partly made roads, and in the other by an unmade road, belonging respectively to the owners of the premises to which they give access. The justices allowed the objections, but the court, being of opinion that although the word "otherwise" did not limit the means of access to something *ejusdem generis* with a "court" or of the narrow width of a "passage," yet if the means of access consisted of existing streets, or partly formed streets or "streets in the making" on land laid out for building, which incidentally afforded access to the premises from the street in question, the premises ought not to be included in the apportionment, remitted the matter for reconsideration by the justices. The question whether the owners could have been included as owners of premises abutting or adjoining by virtue of their ownership of the partly made and unmade streets was held not to be open to the urban district council on the case stated by the justices, as the owners had not been treated as adjoining owners in the apportionment.²¹

Notices were served requiring the making up of a cul de sac, which was not a highway, for a distance of 460 feet from the point where it entered a highway. At the end of the cul de sac, and 516 yards beyond the proposed works, was a farm to which the only means of access was the cul de sac. It was held that access along the excluded portion of the cul de sac was not access through a court, passage, "or otherwise."²²

Between two blocks, each of ten houses, ran a cross road connecting the street upon which the houses fronted and a lane which ran along the backs of the houses and to which all the houses had access. It was held that this lane was not a "passage" through which access was obtained to the cross road, so as to enable the local authority to charge the owners of the eighteen houses which did not adjoin the cross road with a proportion of the cost of making up that cross road.²³ *Per Lord Trevethin, C.J.* : "We are not prepared to hold, as suggested, that a

Sect. 150, n.

P.S.W. Act,
1892, s. 10—
—continued.Several
properties.Cost of
footway on
one side
of street.Degree of
benefit.Access
through
court, &c.

(17) *Croydon R.D.C. v. Betts*, cited with other cases relating to "charges" on premises in the Note to s. 257, *post*.

(18) *Clacton or Great Clacton Loc. Bd. v. Young*, L. R. 1895, 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 59 J. P. 581; *Wakefield Loc. Bd. v. Mander*, *ante*, p. 328, distinguished.

(19) *London School Bd. v. Islington Vestry*, *ante*, p. 323.

(20) *Bridgwater Cpn. v. Stone* (1908, K. B. D.), 99 L. T. 806; 72 J. P. 487;

6 L. G. R. 1171.

(21) *Newquay U.D.C. v. Rikeard and Hawke*, L. R. 1911, 2 K. B. 846; 80 L. J. K. B. 1164; 105 L. T. 519; 75 J. P. 382; 9 L. G. R. 1042.

(22) *Chatterton v. Glanford Brigg R.D.C.*, L. R. 1915, 3 K. B. 707; 84 L. J. K. B. 1865; 113 L. T. 746; 79 J. P. 441; 13 L. G. R. 1352.

(23) *Oakley v. Merthyr Tydfil Cpn.*, L. R. 1922, 1 K. B. 409; 91 L. J. K. B. 345; 126 L. T. 320; 86 J. P. 1; 19 L. G. R. 767.

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P.S.W. Act,
1892, s. 10—
continued.

Validity of
resolution.

Railway and
canal
premises.

Premises
extra
commercium.

Section 11.

Section 12.

* *Sic.*

passage to be within the Act must be the only means of approaching the street to be made up, but we are of opinion that it means something in the nature of a feeder of the street." ²⁴

The first resolution to make up a street under this Act contained a direction that, "in settling the apportionment of the expenses among the several owners of the houses and lands *fronting adjoining or abutting on*" the street, regard should be had to the degree of benefit to be derived from the works. The surveyor's apportionment included premises which did not front adjoin or abut on the street on the ground that they obtained access to the street through a passage, and this apportionment was approved by the local authority. It was held that it was to be assumed from the approval of the apportionment that the local authority thought it just to include the premises, and that both resolutions were valid, though Lord Trevethin, C.J., said: "We think it would be more in conformity with the provisions of the Act that the resolution should state expressly that the council 'think it just to include' such houses." ²⁵

Lands belonging to a railway or canal company, and used by them as part of their undertakings, which have no direct communication with the street, are not to be charged until they have such communication; and in the meantime the owners of the other premises in the street must advance the money for the company's share of the expenses under sect. 22, unless the council think fit to pay it out of the rates under sect. 15.

The Divisional Court has held that even though adjoining premises are *extra commercium*, so that a share of private improvement expenses cannot be recovered from the persons in whom they are vested, the premises must nevertheless be inserted in the apportionment. The court did not, however, decide whether in these circumstances a share of the expenses is to be apportioned on the premises, as though the premises were not *extra commercium*, and is then to be treated as irrecoverable, so as to throw the amount of such share on the ratepayers at large, or whether the apportionment on the premises is to be "nil," so as to throw upon the owners of the other premises in the street the amount which would have been apportioned on the premises in question if they had not been exempt. ²⁶

By sect. 11 of the Act of 1892, ²⁷ "The urban authority may from time to time amend the specifications, plans, and sections (if any), estimates, and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the Schedule to this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment, and if made shall be dealt with and determined in like manner as objections to the original estimate and apportionment."

By sect. 12 of the Act of 1892, ²⁸ "(1.) When any private street works have been completed, and the expenses thereof ascertained, the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be), and such final apportionment shall be conclusive for all purposes; and notice of such final apportionment shall be served upon the owners of the premises affected thereby; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power * to declare any such expenses to be payable by instalments.

(2.) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them:—

(a.) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.

(b.) That the final apportionment has not been made in accordance with this section.

(24) L. R. 1922, 1 K. B. at p. 421.

(25) *Oakley v. Merthyr Tydfil Cpn.*, ante, p. 347.

(26) *Herne Bay U.D.C. v. Payne & Wood or Farley*, L. R. 1907, 2 K. B. 130; 76 L. J. K. B. 685; 96 L. T. 666; 71 J. P. 282;

5 L. G. R. 631.

(27) 55 & 56 Vict. c. 57, s. 11. Marginal Note: "Amendment of plan, etc."

(28) *Ibid.*, s. 12. Marginal Note: "Final apportionment and recovery of expenses."

(c.) *That there has been an unreasonable departure from the specification, plans, and sections.*

(3.) *Objections under this section shall be determined in the same manner as objections to the provisional apportionment."*

With regard to the recovery of private improvement expenses and the power to declare them to be payable by instalments, see sect. 257 of the Act of 1875.

With regard to the hearing of objections, see sect. 8 of the Act of 1892.

By sect. 13 of the Act of 1892,²⁹ "(1.) *Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing [and Law of Property] Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.*

(2.) *The urban authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority."*

The Court of Appeal have decided that the charge on the premises under the Act of 1892 takes effect as from the date of the completion of the works. They therefore held that, where premises were sold by the owner free from incumbrances, after the completion of works in the adjoining street, but before the final apportionment of the expenses of the works had been made, the vendor was bound to indemnify the purchaser against the sum finally apportioned in respect of the premises:³⁰ also that where premises were leased, between the completion of the works and the making of the final apportionment, subject to a covenant by the tenant to pay present and future outgoings, the tenant was not liable to repay the amount apportioned on and paid to the urban district council by the landlord.³¹

Under the Act of 1892, it will be unnecessary for the urban district council to bring an action in the Chancery Division or in the county court to obtain a declaration of the charge on the premises, and an order directing the premises to be sold, etc., but they may do so if they like.³²

A frontager, after an unsuccessful objection to a final apportionment, defended a summons in the Chancery Division under the above section (asking for (a) a declaration of charge, (b) an enquiry as to incumbrances, (c) an order for the sale of the premises, and (d) a receiver) on the grounds (1) that the power of sale under the Conveyancing Act only arose on the expiration of three months, and the service of the demand was not three months before action; (2) that 5 per cent. had been demanded instead of 4 per cent.; (3) that the sum was apportioned on the defendant's whole property, and not upon his houses individually; and (4) that the action should have been brought in the county court. It was held, as to (1) that "you might just as well say a mortgagee could not institute foreclosure proceedings for three months after demanding his money"; as to (2) that "the Public Health Act, 1875 [sect. 257] says 'not exceeding 5 per cent.'"; as to (3) that the summons had been properly amended so as to correct this defect in form; and as to (4) that "the action would have been brought to a determination much more cheaply and quickly in chambers than if it had been brought in the county court. It was only adjourned into court owing to the persistent opposition of the defendant." The defendant was accordingly ordered to pay the full amount and costs.³³

A local authority commenced an action in the Chancery Division for a declaration

Sect. 150, n.

P.S.W. Act,
1892, s. 12—
continued.

Recovery of
expenses.

Objections.

Section 13.

Date of
charge.

Enforcement
of charge.

Removal to
county court.

(29) 55 & 56 Vict. c. 57, s. 13. Marginal Note: "Charge on premises."

(30) *Stock v. Meakin*, L. R. 1900, 1 Ch. 683; 69 L. J. Ch. 401; 82 L. T. 248.

(31) *Surtees v. Woodhouse*, L. R. 1903, 1 K. B. 396; 72 L. J. K. B. 302; 88 L. T. 407; 67 J. P. 232; 1 L. G. R. 227.

(32) *West Ham Cpn. v. Sharp*, cited in Note to s. 257, *post*. In this case the time for recovery of the expenses summarily had

expired. *Porthcawl U.D.C. v. Brogden*, *ante*, p. 345. In the latter case the matter was raised by originating summons. In *Tottenham U.D.C. v. Smith*, *Times*, March 6th, 1897, Romer, J., appointed a receiver.

(33) *Pontypridd U.D.C. v. Jones* (1911, Swinfen Eady, J.), 75 J. P. 345; 2 Glen's Loc. Gov. Case Law 135. But see *Croydon Cpn. v. Betts*, *ante*, p. 347.

Sect. 150, n.
P.S.W. Act,
1892, s. 13—
continued.

Mortgagees.

Registration
of charge.

Tenant for
life.

Section 14.

Limitation
of time.

of charge in respect of private street works. The defendant pleaded that the street was a highway repairable by the inhabitants at large, and applied, under sect. 69 of the County Courts Act, 1888,³⁴ for the transfer of the action to the county court on the ground that the question to be tried was purely one of fact, and could be tried at less expense in that court. It was contended by the local authority that, as about twenty witnesses would have to be called, and the court would have to hear lengthy arguments as to the application of the law to the facts found, the county court ought not to be troubled with a case to the detriment of waiting suitors in that court. The application was refused.³⁵

With regard to the powers of mortgagees under the Act of 1881, of which the short title is now "The Conveyancing Act, 1881,"³⁶ see sects. 18 to 24 of that Act,³⁷ and sects. 3 to 5 of the Conveyancing Act, 1911.^{37a} A mortgagee is not to exercise his power of sale under that Act "unless and until—(i.) notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or (ii.) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or (iii.) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon."³⁸

A mortgagee entitled to appoint a receiver under the power in that behalf conferred by that Act is not to appoint one until he has become entitled to exercise the power of sale conferred by the Act.³⁹ The power to lease is only given by the Act to mortgagees *in possession*.⁴⁰

Where all notices under the Act had been served upon a mortgagor, the local authority not being aware of any mortgage, the mortgagee in possession was granted a declaration that the authority were not entitled to sell the land under the above section, an application for adjournment for fresh evidence being refused as the local authority could not allege that they had posted notices on the land itself or that the mortgagee was not in fact receiving the rack rent.⁴¹

The charge on the premises does not require registration under the Land Charges Registration and Searches Act, 1888.⁴² As to the registration of "local land charges," see the Law of Property Act, 1922.⁴³

Neville, J., considered that a tenant for life who had paid off a charge on the premises under the above section was entitled to the benefit of the charge and could raise money to pay it off under the Settled Land Act, 1890.⁴⁴

By sect. 14 of the Act of 1892,⁴⁵ "*The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof.*"

A local Act gave the corporation of a borough power to recover the expenses of making up streets, which were not repairable by the inhabitants at large, by summary proceedings, "or, if the corporation think fit, in the superior courts or any court of competent jurisdiction." The Court of Appeal held that the six months' limitation did not apply to an action in the High Court for the recovery of such expenses. This decision appears to be applicable to the above section; for all the members of the court expressed the opinion that there was nothing in the enactment referred to which required the court to hold that, because the summary remedy was barred by a six months' limitation, proceedings in the superior court

(34) 51 & 52 Vict. c. 43, s. 69.

(35) *Reading Cpn. v. Fewster*, 55 Sol. J. & W. R. 125; 130 L. T. Jo. 127; 1 Glen's Loc. Gov. Case Law 54.

(36) See 1 & 2 Geo. V. c. 37, s. 16 (4).

(37) 44 & 45 Vict. c. 41, ss. 18-24.

(37a) 1 & 2 Geo. V. c. 37, ss. 3-5.

(38) 44 & 45 Vict. c. 41, s. 20.

(39) *Ibid.*, s. 24 (1).

(40) *Ibid.*, s. 18 (2).

(41) *Maguire v. Leigh-on-Sea U.D.C.* (1906, Ch. D.), 95 L. T. 319; 70 J. P. 479; 4 L. G. R. 979.

(42) 51 & 52 Vict. c. 51. See *Reg. v. Vice-Registrar of Office of Land Registry or Holt* (1889), L. R. 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. 117; 54 J. P. 120.

(43) *Post*, Vol. II., p. 2357.

(44) 53 & 54 Vict. c. 69, s. 11; *In re Pizzi; Scrivener v. Aldridge*, L. R. 1907, 1 Ch. 67. See also the Note on this case in the Note to s. 257, *post*.

(45) 55 & 56 Vict. c. 57, s. 14. Marginal Note: "Recovery of expenses summarily or by action." Cf. s. 261 of Act of 1875, *post*.

were also barred; though they also referred to other provisions of the local Act as supporting the view which they took, particularly a provision that the expenses might be recovered from a succeeding owner in a summary manner within six months of his succession, and after that period by action at law, provided that no debt should be recovered from any such owner after the expiration of six years from the completion of the works.¹

Objections which can be raised in the manner provided by sect. 7 or sect. 12 (2) cannot be raised as a defence to proceedings for recovery of the expenses.

On summary proceedings being taken to recover the amount of a final apportionment under the Act of 1892, an owner objected that the works had not been completed in accordance with the specification, and proposed to cross-examine the surveyor of the council and to call evidence to show that the works had been only partially completed. The justices refused to admit such evidence, and were upheld by the court on the ground that the objection ought to have been raised by notice under sect. 12, or if not, that it amounted in the circumstances of the case to a complaint that the surveyor had been guilty of negligence or improper conduct, which would not have afforded an answer to the claim of the council.² In this case it was assumed that there was no appeal to the Local Government Board under sect. 268 of the Act of 1875; but the incorporation of the Public Health Acts by sect. 1 of the Act of 1892 was not noticed.

By sect. 15 of the Act of 1892,³ “*The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable.*”

With regard to the general expenses of urban district councils, see sect. 207 *post*.

By sect. 16 of the Act of 1892,⁴ “*The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, shall not be liable to any expenses of private street works as the owner of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process, but the proportion of expenses in respect of which an exemption is allowed under this section shall be borne and paid by the urban authority.*”

With regard to exemptions from poor rates, see the Note to sect. 151.⁵ That section only exempts an incumbent or minister, while the above section extends to the trustee of the place of worship. The above section applies to places of worship “for the time being” exempt from poor rates; but sect. 151 only applies to those “now” (that is, at the passing of the Act of 1875) exempt from such rates. The words “or occupier” are also omitted from the above section after “owner.”

A building which had never been rated to the poor rate, and had originally been a Wesleyan chapel, but for the last five years had been used for certain secular purposes as well as for religious services, was held not to be exempt, under the above section, from private street works expenses.⁶

By sect. 17 of the Act of 1892,⁷ “*All owners of buildings or lands, being persons who under the Lands Clauses Acts are empowered to sell and convey or release lands, may charge such buildings or lands with such sum as may be necessary to defray the whole or any part of any expenses which the owners of or any persons in respect of such buildings or lands for the time being are liable to pay under this Act and the expenses of making such charge, and for securing the repayment of such sum with interest may mortgage such buildings or lands to any person advancing such sum, but so that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within twenty years.*”

Sect. 150, n.
P.S.W. Act,
1892, s. 14—
continued.

Defence.

Section 15.

Expenses.

Section 16.

Exemption of
churches, &c.

Section 17.

(1) *Blackburn Cpn. v. Sanderson*, L. R. 1902, 1 K. B. 794; 71 L. J. K. B. 590; 86 L. T. 304; 66 J. P. 452.

(2) *Hayles v. Sandown U.D.C.*, L. R. 1903, 1 K. B. 169; 72 L. J. K. B. 48; 88 L. T. 61; 67 J. P. 177; 1 L. G. R. 187.

(3) 55 & 56 Vict. c. 57, s. 15. Marginal Note: “Contribution by urban authority to expenses.”

(4) 55 & 56 Vict. c. 57, s. 16. Marginal

Note: “Exemption from expenses of incumbent of church.”

(5) *Post*, p. 355.

(6) *Walton le Dale U.D.C. v. Greenwood* (1911, K. B. D.), 105 L. T. 547; 75 J. P. 541; 9 L. G. R. 1148.

(7) 55 & 56 Vict. c. 57, s. 17. Marginal Note: “Power for limited owners to borrow for expenses.”

Sect. 150, n.
P.S.W. Act,
1892, s. 17—
continued.

Limited
owners.

Section 18.

Borrowing
powers.

Rural district
councils.

Application
for sanction
to loan.

Section 19.

Adoption of
maintenance.

The persons empowered to sell lands under the Lands Clauses Consolidation Act, 1845, are specified in sect. 7 of that Act.⁸

With regard to other expenses which may be charged on lands by limited owners, see sect. 31 of the Public Health Act, 1875, and the Note to that section.

This section is intended to meet the case where a tenant for life or other limited owner wanted to raise money to pay a charge which he was not willing to pay out of his own pocket, not to deprive him of the charge which he would have had by virtue of sect. 13 where he chose to pay the money himself.⁹

By sect. 18 of the Act of 1892,¹⁰ "*The urban authority may from time to time, with the sanction of the [Minister of Health], borrow, on the security of the district fund and general district rates or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable, moneys for the purpose of temporarily providing for expenses of private street works, and the powers of the urban authority to borrow under the Public Health Acts shall be available as if the execution of private street works under this Act were one of the purposes of the Public Health Act, 1875.*"

With regard to the borrowing powers of district councils, see sects. 233-243, *post*.

Where this Act has been put in force in a rural district by an order of the Local Government Board or Minister of Health, under sect. 4, and the Board or Minister have declared the expenses incurred by the rural district council to be special expenses, any loan which may be raised for the purpose of temporarily providing for such expenses will be charged on the rates of the contributory place, and not on the common fund of the district.

According to the practice of the Local Government Board, where application is made to the Minister of Health by an urban district council for sanction to a loan for carrying out works under the Act of 1892, all proceedings required by the Act to be taken prior to the execution of the proposed works should be taken before application is made for the Minister's sanction to the loan. When this has been done, the Minister should be furnished with a copy of the resolution of the council authorising the application for sanction to the loan, a copy of the resolution under sect. 6 (1), a copy of the resolution, specification, plans, sections, and estimates under sect. 6 (2), a summary of the provisional apportionments, and financial information as to the assessable value and existing debt of the district in a form supplied by the Minister on application. Forms for estimates are also supplied by the Minister. The Minister should at the same time be informed of the dates upon which, in pursuance of sect. 6 (3), the resolution was first published and copies were served on the owners of the premises concerned. If during a month from the date of the first publication any objections have been made by any owner or owners under sect. 7, the Minister should be informed how the objections have been dealt with, and should be furnished with particulars of any amendment of the scheme which may have been made under sect. 8 (1) or sect. 11.

By sect. 19 of the Act of 1892,¹¹ "*Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.*"

The proprietors of the street are not enabled to prevent the maintenance of the street being undertaken by the urban district council as they are under sect. 152 of the Act of 1875. On the other hand, the urban district council can adopt its maintenance under the above section where all the different classes of work comprised in the term "private street works" have not been executed in the street.¹² It is, however, necessary that some of such works should have been executed.

Under the following section, the adjoining owners may compel the urban district council to adopt the maintenance of the street, if they are in a position to show that all the different classes of work have been done to the satisfaction of the council.

(8) *Post*, Vol. II., p. 1567.
(9) *Per* Neville, J., in *Re Pizzi; Scrivener v. Aldridge*, *ante*, p. 350.
(10) 55 & 56 Vict. c. 57, s. 18. Marginal Note: "Power for urban authority to borrow

for private street works."

(11) 55 & 56 Vict. c. 57, s. 19. Marginal Note: "Adoption of private streets."
(12) See *A.G. v. Bidder*, *post*, p. 357.

By sect. 20 of the Act of 1892,¹³ "If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large."¹⁴

By sect. 21 of the Act of 1892,¹⁵ "(1.) The urban authority shall keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of this Act relating to private street works.

"(2.) All moneys recovered by the urban authority under this Act in respect of street works shall be applied in repayment of moneys borrowed for the purpose of executing private street works, or if there is no such loan outstanding then in such manner as may be directed by the [Minister of Health]."

By sect. 22 of the Act of 1892,¹⁶ "No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal, or siding, station, towing path, or works, and shall have no direct communication with such street; and the expenses incurred by the urban authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor; and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the urban authority the expenses which, but for the foregoing provision, such company would in the first instance have been liable to pay, and the urban authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive. This section shall not apply to any street existing at the date of the adoption of this Act."

Railway and canal premises are liable to have the expenses of works executed under sect. 150 of the Act of 1875, apportioned on them, unless the street is carried across the railway or canal by a bridge: see the Note to that section.¹⁷

These premises are not dealt with in the manner in which churches or other places of worship are dealt with by sect. 16. The share of expenses in the case of a church or place of worship is to be borne by the district generally; but in the case of a railway or canal running either along or across the street and having no direct communication with it, the share is thrown by the above section on the other owners in the street. The surveyor is not required to apportion the company's share on the other owners according to the principles laid down in sect. 10; and when a communication is subsequently made between the premises in question and the street, and the company pay their share, he is not even required to divide the money among the then owners (if this is the meaning of "the owners for the time being included in the apportionment") in the proportions in which it was paid by them or their respective predecessors in title.

The Divisional Court held that the fact that land of a railway company abutting on the street is not for the moment physically used for the purposes of the line of railway, siding, station or works, does not prevent them from being exempt from contribution to private street works expenses under the above section, provided that they show that the land will in the future be used solely for those purposes.¹⁸ In a subsequent case, on the other hand, in which it was not shown that the land would be so used, although it was possible that it might at some future time be

Sect. 150, n.
P.S.W. Act,
1892, s. 20.

Section 21.

Section 22.

Railways and
canals.

Land used as
part of
railway.

(13) 55 & 56 Vict. c. 57, s. 20. Marginal Note: "On street being paved, etc., urban authority to declare same public highway."

(14) As to the adoption of the maintenance of the street, see the Note to the preceding section.

(15) 55 & 56 Vict. c. 57, s. 21. Marginal Note: "Separate accounts of expenses of works."

(16) 55 & 56 Vict. c. 57, s. 22. Marginal Note: "Railways and canals abutting but not communicating with streets not to be chargeable with private street expenses."

(17) *Ante*, pp. 323, 333.

(18) *Rex (Mein) v. Jones and Barry U.D.C.* (1907, K. B. D.), 96 L. T. 723; 71 J. P. 326; 5 L. G. R. 722.

Sect. 150, n.
P.S.W. Act,
1892, s. 22—
continued.

Section 23.

Expenses.

Section 24.

Section 25.

Work in
progress.

Section 26.

Thames Con-
servancy Act.
Schedule.

so used, Phillimore, J., having decided that land used for the deposit of ashes from a railway company's engine house was not used "solely as a part of the line of railway or sidings" within a local enactment similar to the above section, held that the railway company were not exempt from contribution.¹⁹

By sect. 23 of the Act of 1892,²⁰ "All expenses incurred or payable by an urban authority and a rural sanitary authority respectively in the execution of this Act, and not otherwise provided for, may be charged and defrayed as part of the expenses incurred by them respectively in the execution of the Public Health Acts."

With regard to the expenses of urban district councils, see sect. 207; and with regard to those of rural district councils, sects. 229 and 230, and the Notes to those sections, *post*. In the case of a rural district council, the Minister of Health may declare the expenses to be special expenses chargeable on the contributory place in which the street is situate.

By sect. 24 of the Act of 1892,²¹ "All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed."

This provision is subject to the following section, which prevents a district council that has once adopted this Act from putting in force the provisions of sect. 150 of the Act of 1875. Several earlier local Acts contained similar provisions to those of the Act of 1892.

By sect. 25 of the Act of 1892,²² "Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force."

Although this section prevents a fresh notice from being given under sect. 150 of the Act of 1875 after the adoption of the Act of 1892, a district council were entitled to complete work, which the owners had been required to execute by a notice served upon them under that section, and to recover the expenses under the Act of 1875, without taking any steps under the Act of 1892.²³

By sect. 26 of the Act of 1892,²⁴ "This Act shall not extend to prejudice or derogate from the estates, rights, and privileges of the conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames."

The Acts relating to the Conservancy of the River Thames were consolidated by the Thames Conservancy Act, 1894.²⁵

The Schedule (which is enacted by sects. 6 and 11) to the Act of 1892 is divided into two Parts.²⁶ Part I. is headed "Private Street Works," and contains the following "Particulars to be stated in specifications, plans and sections, estimates, and provisional apportionments" :—

"Specifications.—These shall describe generally the works and things to be done, and in the case of structural works shall specify as far as may be the foundation, form, material, and dimensions thereof.

"Plans and Sections.—These shall show the constructive character of the works, and the connections (if any) with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as shall be indicated on the plans and sections respectively.

"Estimates.—These shall show the particulars of the probable cost of the whole works, including the commission provided for by this Act.

"Provisional Apportionments.—These shall state the amounts charged on the respective premises and the names of the respective owners, or reputed owners,²⁷ and shall also state whether the apportionment is made according to the frontage

(19) *Carlisle Cpn. v. Saul's Executors* (1907), 97 L. T. 514; 71 J. P. 502; 5 L. G. R. 1128.

(20) 55 & 56 Vict. c. 57, s. 23. Marginal Note: "Expenses of local authority."

(21) 55 & 56 Vict. c. 57, s. 24. Marginal Note: "Powers of Act cumulative."

(22) 55 & 56 Vict. c. 57, s. 25. Marginal Note: "Certain sections of Public Health Acts not to apply."

(23) *Heston and Isleworth U.D.C. v. Grout*, L. R. 1897, 2 Ch. 306; 66 L. J. Ch. 647; 77 L. T. 118.

(24) 55 & 56 Vict. c. 57, s. 26. Marginal Note: "For protection of conservators of

the River Thames."

(25) Now repealed by Port of London (Consolidation) Act, 1920 (10 & 11 Geo. V. c. clxxiii). As to earlier Act, see *post*, Vol. II., p. 1754.

(26) 55 & 56 Vict. c. 57, Sched.

(27) Channell, J., in *Wirrall v. Carter*, *ante*, p. 340, said, with reference to "reputed owner" in this Schedule: "It must mean the person whom the local authority really believes to be the owner, and a person who has been the owner, and whom the local authority has dealt with as such, is certainly a reputed owner."

of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based."

Sect. 150, n.
P.S.W. Act,
1892, Sched.
—continued.

Part II. is headed "Publication of Notice," and provides as follows :—
"Any resolution, notice, or other document required by this Act to be published in the manner prescribed by this schedule shall be published once in each of two successive weeks in some local newspaper circulating within the district, and shall be publicly posted in or near the street to which it relates once at least in each of three successive weeks." 28

Sect. 151. The incumbent or minister of any church chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church chapel or place or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church chapel or other place, or on such churchyard or burial ground, or to subject the same to distress execution or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

Exemption from expenses under last section of incumbent of church, etc.
L.G., s. 38.

Note.

The above exemption applies only to incumbents or ministers, and only when the churches, etc., are "now by law exempt from rates for the relief of the poor."

Exemption of churches, etc.

Churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, are exempted from poor rates by the Poor Rate Exemption Act, 1833.¹

With regard to the meaning of "owner" as applied to a church or chapel, see the Note to sect. 4.²

Meaning of owner.

The trustees of a chapel, of which one floor was used for secular purposes, derived no profit from the building, but were held to be owners of the chapel, and not to be exempt under the present section from liability to contribute to street improvement expenses under sect. 150.³

The Private Street Works Act, 1892,⁴ however, which may be adopted in lieu of this and the next preceding and following sections, contains an enactment exempting trustees of places of worship, as well as incumbents and ministers.

The effect of the last part of the present section is to throw upon the general rates, and not upon the other owners in the street, so much of the expenses as would otherwise be apportioned to the incumbent or minister.

Expenses chargeable on rates.

Sect. 152. When any street within any urban district not being a highway repairable by the inhabitants at large has been sewered levelled paved flagged metalled channelled and made good and provided with proper means of lighting to the satisfaction of the urban authority, such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the urban authority.

Power to declare private streets when sewered, etc., to be highways.
P.H., s. 70.
L.G., s. 42.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.

(28) In *Cran v. Watt* (1901), 3 S. C. (5th Series) 787, it was held that notices in a daily newspaper on Friday and the following Wednesday had been inserted "for two successive weeks."

(1) See ss. 1 and 2, quoted in Note to s. 211,

post.

(2) *Ante*, p. 16.

(3) *Hornsey Loc. Bd. v. Brewis* (1890), 60 L. J. M. C. 48; s.c. *nom. Brewis v. Hornsey Loc. Bd.*, 64 L. T. 288; 55 J. P. 389.

(4) See s. 16, *ante*, p. 351.

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Note.

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Highways
repairable by
inhabitants.

Adoption of Maintenance of Street.
With regard to the highways which are repairable by the inhabitants at large, see the Note to sect. 149.¹

If a road has been dedicated to the use of the public and has been used by the public accordingly, but the necessary steps have not been taken to make it repairable by the inhabitants at large, it is still a highway in other respects, and an action is maintainable for obstructing it to the plaintiff's damage.²

A highway cannot be created by statute unless the provisions of the statute creating it are strictly followed.

This was laid down with reference to a road set out in the year 1808 by inclosure commissioners, who had never completely carried out the procedure prescribed by the Inclosure Act with reference to the setting out of public highways, and who could have had no other powers in connection with the roads than those which they derived from the statute.³

Agreement
to adopt
maintenance.

A local authority were held not to be entitled to enter into an agreement with an adjoining local authority that they would "dedicate" ⁴ or take over a road under the above provisions so as to bind their successors and deprive them of the right to exercise their discretion in the matter.⁵

Trusts for
maintenance.

A trust to apply a certain sum out of the income of a trust fund to the repair of a road was not brought to an end by the road having come in part under the control of a county council and in part under the control of a district council; but it was held that the money should be paid to the councils.⁶

This was followed by Warrington, J., with reference to a bridge, to which part of the revenues of a charity founded in 1576 were applicable. The bridge had been made repairable by the county by an Act of 1605, which did not refer to the charity; and, under Navigation Acts of 1846 and 1881, part of the bridge was converted into a drawbridge and subsequently into a swing bridge by the Navigation Commissioners, and that part was made repairable by the commissioners. Without deciding any question of apportionment between the county council and the commissioners, the learned Judge held that the above-mentioned part of the revenues of the charity remained applicable to the repair of the whole of the bridge.⁷

Tar paving,
etc.

Meaning of "paved."

By a clause of the Public Health Acts Amendment Act, 1890,⁸ which is in force without adoption, a street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind is now to be deemed to have been "paved" within the meaning of the present Act; but it is not to be deemed to be paved "to satisfaction of the urban authority," unless it is paved with such kind as well as with such quality of paving as they consider suitable for the street. Before that enactment was passed, Jessel, M.R., had expressed the opinion that "kerbed" might answer "paved" in the present section, but not "flagged," which meant flagged with flag stones, and that if a builder chose to make wooden pavements it would not be within the Act.⁹

Street partially paved, etc.

Street not
flagged.

The intention of the present section was thus explained by Jessel, M.R.: "In the first place, it is plain that the public are to be considered. The expense of future repair would be much greater when the road was not properly formed than when it was properly formed. That is one thing, and the next thing to be con-

(1) *Ante*, p. 285.

(2) *Roberts v. Hunt* (1850), 15 Q. B. 17.

(3) *Cubitt v. Maxse* (1873), L. R. 8 C. P. 704; 42 L. J. C. P. 278; 29 L. T. 244. In *Snushall v. Kaikoura C.C.* (1923, P. C.), at present not reported, but see "Addenda," *ante*, a road only existing on plans was held to have been created a "public highway" by certain New Zealand statutes.

(4) The expression "dedicate" strictly has reference to the act of a landowner who gives the public the permanent right to pass over his land by a certain route, and not

to the taking over or adoption by the highway authority of the liability to repair a highway.

(5) *Tunbridge Wells Improvement Comrs. v. Southborough Loc. Bd.*, 60 L. T. 172; 1888 W. N. 237.

(6) *A.G. v. Day*, L. R. 1900, 1 Ch. 31; 69 L. J. Ch. 8; 81 L. T. 806; 64 J. P. 88.

(7) *Re Hall's Charity; Severn Comrs. v. Hall's Charity Trustees and Worcestershire C.C.* (1911), 79 J. P. 9; 10 L. G. R. 11.

(8) See s. 11 (2), *post*, Part I., Div. II.

(9) *A.G. v. Bidder*, *post*, p. 357.

sidered is, that you are not to sacrifice the interests of the public to the interests of the speculative builder or the owner of building land. It was not intended that the public were to make roads on building land for the benefit of the building owner. He was to pay proper expenses and make a proper road, and then if it was a beneficial road or street to the public the urban authority would take to it. Therefore the Legislature says this : when a great many things have been done, and not till then, you may dedicate for the use of the public. . . . But all those things are to be done. . . . The Legislature has pointed out what they consider a made road or street to be, and when all that is done such authority may, if they think fit, by notice in writing dedicate the road to the public." ⁹ The learned judge accordingly dismissed a motion, made by an urban sanitary authority, for an injunction to restrain the owners of some building land from interfering with a certain road through their land. The road, originally a private road for agricultural purposes, had been used by the public on payment of toll for vehicles to the owners, who had erected gates at the end of it to preserve their rights. The urban sanitary authority, after giving notice to the owners of the adjoining lands under sect. 150, had sewered and done other works to the road but had not laid any flagging, merely kerbing the footpaths, and had subsequently published a notice in the terms of the present section, declaring the road to be a highway and repairable by the inhabitants at large, and had then removed a fence and gate from the end of the road. The owners erected another fence and gate, and this was the subject of the motion for injunction. The motion was dismissed on the ground that the street had not been flagged at all, and therefore could not have been "levelled, paved, flagged, metalled, and made good to the satisfaction of the urban authority." ¹⁰

Now, however, where Part III. of the Public Health Acts Amendment Act, 1890, ¹¹ or the Private Street Works Act, 1892, ¹² is adopted, other provisions are substituted for the present section, enabling the council to take over the maintenance of the street whenever *all or any* of the works of sewerage, levelling, paving, etc., have been executed, and they are of opinion that the street ought to become a highway repairable by the inhabitants at large.

A company had agreed to construct a road over certain land, and the owner was to grant to them a right-of-way over the road when completed, and to permit it to be declared a public highway by the local board. The road was to be made according to a plan and specification already approved by the local board, and the company were to do all things necessary to carry out a resolution passed by the board that the road should, six months after completion to their satisfaction, be declared by the board a public highway. The specification however provided that the pathway should be *gravelled*, and did not provide for means of lighting the road. After completion of the road the local board, being advised that the road did not comply with the requirements of the present section, inasmuch as it was not flagged nor provided with means of lighting, withheld their sanction to its being declared a public highway. The landowner then brought an action against the company, claiming specific performance of the agreement, on the ground that the company had not done all things necessary to enable the local board to declare the road a public highway, and claiming damages; but it was held that, inasmuch as to compel the defendants to construct the road so as to conform with the provisions of the Act would be to enforce performance of terms at variance with the agreement and entirely outside the contemplation of the parties, specific performance could not be ordered, and it was doubted whether the plaintiffs would have been entitled to damages if any had been shown. ¹³

A landowner gave notice to a local board of his intention to dedicate a road as a highway; but the board replied that they could not adopt the road as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction. The owner, however, obtained and enrolled the certificate of two justices under sect. 23 of the Highway Act, 1835; ¹⁴ and the public then used the road, which was kept in repair by the owner for twelve calendar months as required by that Act. Afterwards, on the road becoming out of repair, an indictment was preferred against the inhabitants of the parish. It was, however, held that the inhabitants were not liable, inasmuch as the road had not become a highway repairable by the inhabitants at large; for, assuming that sect. 23 applied to the case, and was not

Sect. 152, n.

Street not
flagged—
*continued.*Amendment of
enactment.Agreement
to take over
street.Certificate of
justices.

(9) As to the strict meaning of "dedicate," see footnote (4), *ante*, p. 357.

(10) *A.G. v. Bidder*, "The West Ham Case," 47 J. P. 263; 1882 Loc. Gov. Chron. 210.

(11) See s. 41, *post*, Part I., Div. II.

(12) See ss. 19, 20, *ante*, pp. 352, 353.

(13) *Saunders v. Brading Harbour Co.* (1885), 52 L. T. 426.

(14) 5 & 6 Wm. IV. c. 50, s. 23.

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superseded by the clause of the Public Health Act, 1848,¹⁵ which was similar to the present section, the road had not been made to the satisfaction of the local board, who were the surveyors of the highways in their district.¹⁶

Meaning of proprietor.

Objection by Proprietors.

In a case relating to the payment of compensation for entry on lands by turnpike trustees to the "owners or proprietors," it was held that these words had no definite legal meaning but included any person having a beneficial interest in the land; and *per* Littledale, J., "the word 'proprietor' may mean interests of different kinds."¹⁷ In another case, Jessel, M.R., considered "owner" and "proprietor" to be synonymous.¹⁸

Form of objection.

Jessel, M.R., considered that a letter from the agent of the landowners stating that "the road is the property of the N. Company, and I do not think consent will be given by them to its being dedicated to the parish at present," was a sufficient objection by notice in writing.¹⁹

Power to require gas and water pipes to be moved.
P.H., s. 71.

Sect. 153. Where for any purpose of this Act any urban authority deem it necessary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gasworks laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required :
Provided—

That no such alteration shall be required or made which will permanently injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and
That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

Waterworks and gasworks.

Note.

See the provisions of the Waterworks Clauses Act, 1847,¹ "with respect to the breaking up of streets for the purpose of laying pipes" and "with respect to the communication pipes to be laid," incorporated with this Act by sect. 57. And see the provisions relating to gasworks in sects. 161-163, and the Notes thereon.
There appears to be no obligation on a district council, when they alter the level of a street, to exercise the powers of the present section in order to avoid exposing the pipes of a waterworks company to injury from frost.²

Power to purchase premises for improvement of streets.
P.H., s. 73.
L.G., s. 36.

Sect. 154. Any urban authority may purchase any premises for the purpose of widening opening enlarging or otherwise improving any street, or (with the sanction of the [Minister of Health]) for the purpose of making any new street.

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Making new street.

Rural Districts.

The powers of an urban authority under any of the provisions of the present Act may be conferred on a rural district council by an order of the Minister of Health under sect. 276. Powers, however, under the present section are not

(15) 11 & 12 Vict. c. 63, s. 70.
(16) *Reg. v. Dunkinfield Inhabitants* (1863), 4 B. & S. 158; 32 L. J. M. C. 230; 27 J. P. 805.
(17) *Lister v. Lobleigh* (1837), 7 A. & E. 124; 6 L. J. K. B. 200; 6 N. & M. 343.
(18) *Rossiter v. Miller* (1877), L. R. 5 Ch. D. 648; 46 L. J. Ch. 228; 36 L. T. 304; affirmed in H. L. (1878), L. R. 3 A. C. 1124; 48 L. J. Ch. 10; 39 L. T. 173. See also *Chauntler v. Robinson* (1849), 4 Ex. 163; 19 L. J. Ex. 170; *Russell v. Shenton* (1842), 11 L. J. Q. B. 289; 3 Q. B. 449.
(19) *A.G. v. Bidder*, ante, p. 357.
(1) Namely, ss. 28-34 and 44-53, post, Vol. II., pp. 1217, 1225.
(2) *Southwark and Vauxhall Water Co. v. Wandsworth Dist. Bd.*, ante, p. 303.

conferred generally on a rural district council; but when conferred are restricted in their operation to a particular work in a definite locality; and the Local Government Board only conferred them, in the case of a new road, on receiving an assurance that the road could be reached in each direction by means of a public highway repairable by the council.

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If a rural district council desire to widen a highway, they should either obtain an order under sect. 276 investing them with urban powers for the purpose under the present section or under sect. 160 (2), or they should obtain an order of justices under sect. 82 of the Highway Act, 1835, at any rate if they do not, as successors to a highway board, possess the power of making improvements given by sects. 47 and 48 of the Highway Act, 1864, or if they have not obtained an order putting in force sect. 95 of the Public Health Acts Amendment Act, 1907.³

Widening street.

See also sect. 3 of the Highways and Bridges Act, 1891,⁴ under which rural district councils may act without obtaining urban powers.

Purchase of Premises.

By the interpretation clause, sect. 4, "premises," and also "lands," include messuages, buildings, lands, easements, and hereditaments of any tenure.

Meaning of premises.

A similar provision to the present section is contained in the Towns Improvement Clauses Act, 1847,⁵ and is incorporated with this Act by sect. 160.

Where sect. 95 of the Public Health Acts Amendment Act, 1907,³ is in force, the district council may exercise the powers in relation to the purchase of land, given by sects. 175 and 176 of the present Act, for any "highway purposes."

Land purchased under the present section may be paid for "in money's worth as well as money."²

Payment.

The provisions of the Lands Clauses Acts, except certain clauses relating to access to the special Act and the sale of surplus land, are incorporated with the present Act by sect. 176. But if the council are unable to purchase the premises, which they require, by agreement, they must, before taking it compulsorily, apply to the Minister of Health under that section for a provisional order putting in force the compulsory powers of the Lands Clauses Acts, and when such an order has been made and confirmed by Parliament, they may take the land subject to the restrictions of those Acts.

Compulsory purchase.

An owner is not precluded from objecting that the local authority cannot under their compulsory powers take certain premises comprised in their notice to treat by the fact that he has entered into negotiations for the sale of such premises, unless he negotiates with the knowledge that the commissioners are acting beyond their powers.⁶

But with reference to the meaning of the word "street" in a local Act, it was held that when the Legislature empowered the Corporation of London to take lands, houses, and buildings for the purposes of the Act, it did not confine them to the mere width of the intended road, but gave them authority to take as much land as might be necessary for the formation of the street itself, by the erection of houses or other buildings on each side.⁷ And, following this decision, in a case where an urban sanitary authority were empowered to take lands and houses for widening and repairing a street, it was held that they were not restricted as in the case of a railway company to the land actually required for the purpose specified, but were entitled to take such other property included in the schedule as might be connected with or dependent upon the improvement.⁸

Extent of premises to be taken.

A corporation, however, with compulsory power to take lands for widening certain streets, were held not to be entitled to take the whole of a piece of land with a building on it, merely for the purpose of selling at a profit so much of it as they did not require for the widening,⁹ and under the Metropolitan Paving Act, 1817,¹⁰ the commissioners of sewers were held not to be entitled to adjudge the whole of a piece of land to be necessary to be taken for widening a street, when in fact only a portion of the land physically obstructed the widening, with the object of

(2) *Per* Neville, J., in *Hoare v. Kingsbury U.D.C.*, *post*, p. 460. For quotation, see 10 L. G. R. at p. 839, *bot*.

(3) *Post*, Part I., Div. III.

(4) *Post*, Vol. II., p. 1898.

(5) See s. 67, *post*, Vol. II., p. 1622.

(6) *Lynch v. London Comrs. of Sewers* (1886, C. A.), L. R. 32 Ch. D. 72; 55 L. J. Ch. 409; 54 L. T. 699; 50 J. P. 548.

(7) *Galloway v. London City Cpn.*; and *Metropolitan Ry. Co. and London City Cpn. v. Galloway* (1866), L. R. 1 H. L. 34; 35 L. J. Ch. 477; 14 L. T. 865; 12 Jur. (N.S.) 747.

(8) *Quinton v. Bristol Cpn.* (1874), L. R. 17 Eq. 524; 43 L. J. Ch. 783; 30 L. T. 112; 38 J. P. 516; see also *Islington Vestry v. Barrett* (1874), L. R. 9 Q. B. 278; 43 L. J. M. C. 85; 30 L. T. 11.

(9) *Donaldson v. South Shields Cpn.* (1899, C. A.), 68 L. J. Ch. 162; 79 L. T. 685.

(10) 57 Geo. III. c. xxix., s. 80.

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Extent of
premises to
be taken—
continued.

reselling the remainder at an increased price.¹¹ And in like manner it was held that a metropolitan vestry could not take the whole of the buildings and site of an orphanage, when the owners wished to sell the part only which was actually required for widening a street.¹² It was also held under the Metropolitan Act that the fact that the lessees of the building intended to alter it or were under covenant to alter it, and that they were aware of the intended street improvement when they took the lease of it, did not enable the local authority to take part only of the building, when the removal of that part would substantially alter the character of the building.¹³

But they may take part of a house, where such taking will not involve a substantial alteration in its structure and condition.¹⁴ And they may take the whole if the improvement cannot otherwise be effected with safety to the public.¹⁵

Bonâ fide
exercise of
powers.

In another case arising under the Metropolitan Paving Act, Buckley, J., said: "The local authority are entrusted with statutory powers, to be used *bonâ fide* for the statutory purpose and for none other. They have no right to seek to reduce the expense to the ratepayers by straining their powers in the interest of persons who desire to acquire the adjacent land from those who are owners of it. . . . The defendants were in this matter exercising a power in its nature judicial. . . . Their duty was to arrive at an honest decision in the matter, in the sense that, after considering the facts, they ought to have said whether they *bonâ fide* believed that the entirety or any and what part of the property was wanted—not necessarily for the purpose of throwing it into the thoroughfare, but *bonâ fide* for the purpose of carrying out the widening of the thoroughfare. If they have not accepted the responsibility of such a decision, and in that sense arrived at an honest adjudication, their decision is not binding." In the case in which this was laid down, it was found as a fact that the portion of a house which the owner desired to retain would itself form a house, the circumstance that it would require some reconstruction not being conclusive evidence that it would not be a house; and it was laid down that regard ought to be had to the fact that it would form a house, and that the owner desired to retain it.¹⁶

Further as to whether powers of compulsory purchase have been exercised *bonâ fide*, see the cases cited below.¹⁷

Faculty *re*
churchyards.

A faculty may be granted to the incumbent and churchwardens of a church for removing human remains from and setting back the fence of a portion of a churchyard for the purpose of widening a highway.¹⁸

Conveyance
of premises.

On a summons under the Vendor and Purchaser Act, 1874,¹⁹ Kay, J., declared that landowners who had agreed with an urban sanitary authority for the sale of land for a new street, were entitled to have a conveyance prepared by the purchasers and tendered to them for execution, the authority contending that such a conveyance was unnecessary, as the land would become vested in them under sect. 149 without it.²⁰

Covenants.

Where a corporation on purchasing land to improve a street covenanted with the vendor to make a pavement of a certain width, they were compelled to perform the covenant, although they contended that it would cause inconvenience to the public.²¹

(11) *Gard v. London Comrs. of Sewers* (1883, C. A.), L. R. 28 Ch. D. 486; 54 L. J. Ch. 698; 52 L. T. 827, explained in *Lynch v. London Comrs. of Sewers*, ante, p. 359.

(12) *Teuliere v. Kensington Vestry* (1885), L. R. 30 Ch. D. 642; 55 L. J. Ch. 23; 53 L. T. 422; 50 J. P. 53; followed in *Aldis v. London City Cpn.*, L. R. 1899, 2 Ch. 169; 68 L. J. Ch. 576; 80 L. T. 683; 63 J. P. 376.

(13) *Thompson v. Hammersmith B.C.*, L. R. 1906, 1 Ch. 299; 75 L. J. Ch. 129; 94 L. T. 135; 70 J. P. 100; 4 L. G. R. 331.

(14) *Gordon v. Kensington Vestry*, L. R. 1894, 2 Q. B. 742; 63 L. J. M. C. 193; 71 L. T. 196; 58 J. P. 463; followed in *Gibbon v. Paddington Vestry*, L. R. 1900, 2 Ch. 794; 69 L. J. Ch. 746; 83 L. T. 136; 64 J. P. 727.

(15) *Fernley v. Limehouse Bd. of Works* (No. 2) (1900), 82 L. T. 524; 64 J. P. 328. See also *Fernley v. Limehouse Bd. of Works* (No. 1) (1899), 68 L. J. Ch. 344; and *Green v. Hackney B.C.* (Ch. D.), L. R. 1910, 2 Ch. 105; 80 L. J. Ch. 16; 102 L. T. 722; 74 J. P. 278; 9 L. G. R. 427; and the Note to s. 176, post, p. 475.

(16) *Denman & Co. v. Westminster Cpn.*;

Cording & Co. v. Westminster Cpn., L. R. 1906, 1 Ch. 464; 75 L. J. Ch. 272; 94 L. T. 370; 70 J. P. 185; 4 L. G. R. 442.

(17) *Parry v. Hammersmith B.C.* (1904), 92 L. T. 161; 69 J. P. 35; 3 L. G. R. 95; *Pescod v. Westminster City Cpn.* (1905), L. R. 1905, 2 Ch. 475; 74 L. J. Ch. 664; 93 L. T. 160; 69 J. P. 387; 3 L. G. R. 1272; 21 T. L. R. 743; *Marquess Clanricarde v. Congested Districts Bd.* (1914, H. L. Ir.), 49 Ir. L. T. 42; 79 J. P. 481; 13 L. G. R. 415; *Woodford Land Co. v. Woodford U.D.C.*, post, Vol. II., pp. 1507, 1539; *Couron v. London C.C.*, cited in Note to Housing Act of 1890, s. 20, post, Part II., Div. III.

(18) See the *Leicester, Bideford, Uxbridge*, and other cases cited in the Note to the re-enactment of s. 21 of the Local Government Act, 1858, Amendment Act, 1861, in Sched. V., Part III. of the present Act, post.

(19) 37 & 38 Vict. c. 78.

(20) *Great Hospital Trustees v. Norwich Cpn.*, 1885 Loc. Gov. Chron. 860.

(21) *Emanuel v. Southampton Cpn.*, *Times*, 12th July, 1878.

An urban sanitary authority purchased a road under the powers of a local Act, which enacted that on the completion of the purchase the existing gates should be removed and the road should be a street open to the public, but the Act expressly reserved to the authority their right to exercise the powers of sect. 150 with respect to the road. The vendors were under a covenant to repair the road. It was held that this covenant did not run with the land so as to render the authority liable to repair it, or prevent them from putting in force the provisions of sect. 150.²²

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A covenant restricting the use of certain land made with a vendor who had no other land to which the benefit of such covenant was annexed, was held by the Court of Appeal to be merely personal and collateral, so that it could not be enforced by the administratrix of the vendor against the assignee of the purchaser.²³

Improvement of Street.

“ You cannot require a highway authority by reason of its duties as they stand without a special Act to widen the highway.”²⁴

Duty to widen.

As to the power to attach to the approval of plans a condition that the road be widened, see the case cited below.²⁵

Power to require widening.

A contract dealing with the widening of an old lane was held to have been entered into by the local authority as “ sanitary ” and not “ highway ” authority, and that therefore the contract must be sealed.²⁶ The vendor may require the contract to specify the exact dimensions of the added strip.²⁷

Contract for widening.

In assessing the value of land purchased for widening a highway, the betterment of the land not purchased may not be taken into consideration, nor may the fact that it is contiguous to other land of the owner and with that other land forms one building site.²⁸

Compensation.

One of the conditions upon which a landowner agreed to widen a highway, namely, that a public house signpost should be erected on a part of the new highway, was held to be lawful.²⁹

Legality of condition.

Highway authorities have no power to agree with an adjoining landowner to give up substantial portions of a highway in exchange for private land in order to straighten the highway.³⁰ As to the power to re-arrange the respective widths of footways and carriageways, see the cases cited below.³¹

Straightening highway.

If the alteration of a highway amounts to a diversion of it, the district council must obtain an order of quarter sessions in pursuance of the Highway Act, 1835,^{31a} before they can stop up any part of the existing highway. Thus, the urban sanitary authority of an Improvement Act district carried out the diversion of a highway in 1878 without obtaining such an order, and permitted an adjoining owner to build upon the site of the old road. The owner was indicted for thus obstructing the highway, and a verdict for the Crown was upheld on the ground that it was not competent to the authority to stop up and inclose this old portion of the road, without observing the proper legal method for such act, namely, procuring an order of quarter sessions; for otherwise the highway could not be divested of its character of a public high-road.³² In the foregoing case it was contended that the authority had power to effect the alteration under the incorporated provisions of the Towns Improvement Clauses Act, 1847,³³ as an improvement; but on this point the court said that as there were only a few houses on one side of the road, and none on the other, the road was not a “ street ” within the Act.³⁴

Diversion of highway.

As to the diversion of highways for military, etc., purposes, see the Note to sect. 335, *post*.

An Act which authorised turnpike trustees to “ make, divert, shorten, alter, and improve the course or path of any of the several roads under their care and management, or any part or parts thereof,” was held to give them power to effect the

Alteration of level of street.

(22) *Austerberry v. Oldham Cpn.* (1885, C. A.), L. R. 29 Ch. D. 750; 55 L. J. Ch. 633; 53 L. T. 543; 49 J. P. 532.
(23) *Formby v. Barker*, L. R. 1903, 2 Ch. 539; 72 L. J. Ch. 716; 89 L. T. 249; distinguished in *Ives v. Brown*, L. R. 1919, 2 Ch. 314; 88 L. J. Ch. 373; 122 L. T. 267; applied in *Chambers v. Randall*, L. R. 1923, 1 Ch. 149.
(24) *Per Kennedy, J., in A.G. v. Sharpness Docks Co.*, ante, p. 282. For quotation, see L. R. 1914, 3 K. B. at p. 17.
(25) *Crane v. Wallasey Cpn.*, post, p. 403.
(26) *Hoare v. Kingsbury U.D.C.*, post, p. 460. But see the *Northwich* and other cases cited ante, p. 275.
(27) *Monighetti v. Wandsworth B.C.* (1908,

Eve, J.), 73 J. P. 91. See also post, p. 466.
(28) *South Eastern Ry. Co. v. London C.C.* (C. A.), L. R. 1915, 2 Ch. 252; 84 L. J. Ch. 756; 113 L. T. 392; 79 J. P. 545; 13 L. G. R. 1302.
(29) *Hoare & Co. v. Lewisham Cpn.*, ante, p. 300.
(30) *Croft v. Fulwood U.D.C.*, post, p. 444.
(31) *Robertson's* and other cases cited ante, p. 289.
(31a) 5 & 6 Wm. IV. c. 50, ss. 84-91.
(32) *Reg. v. Platts* (1880), 49 L. J. Q. B. 848; 43 L. T. 159; 44 J. P. 765.
(33) See ss. 66, 67, post, Vol. II., p. 1821.
(34) Further as to “ streets,” see ante, p. 23.

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improvement of the roads "by the usual and ordinary mode, viz., by raising or lowering them."³⁵ It was also laid down in that case, that if persons in the execution of a public trust, and for the public benefit, act within their jurisdiction, not arbitrarily, carelessly, or oppressively, an action cannot be maintained against them by a person who is injured by the works executed, unless the statute gives him a remedy.

Injury will often be occasioned to property by an alteration of the level of the street in which it is situated. On this point it may be observed that an injunction was refused to restrain defendants from raising a footway under powers conferred by certain local Acts (which incorporated the Lands Clauses Act) in front of the plaintiffs' house, and thereby preventing access to a warehouse, and from otherwise damaging their property; it having been established that the defendants were empowered under their Act to alter the footway, and also that plaintiffs had sustained, and would sustain, injury thereby; but it was referred to chambers to ascertain the amount of injury, and what would be a proper sum to be awarded by way of damages.³⁶

Liability on
throwing
open new part
of highway.

A highway authority widened a narrow road by throwing part of the footpath into the roadway. A telephone post belonging to the Postmaster General stood on the original footpath. The highway authority gave notice to the Post Office authorities to remove it. This was done, and the hole left by the removal of the post was filled in by the workmen of the Post Office authorities. The highway authority then threw the road open to the public. Four days afterwards, owing to the negligent way in which the hole had been filled in, the plaintiff's waggon sank into it and was damaged. It was held that the road was unfit for traffic owing to what had been done by the Post Office authorities, that the case was not one of mere non-feasance on the part of the highway authority, and that they were liable in damages on the ground that by altering the character of the road—turning it from a footpath into a roadway for heavy traffic—they had made a new road, and that there was an obligation upon them to see that when they opened it to the public it was fit for the purposes for which it was intended to be used. The Post Office authorities were also liable in damages on the ground that, having done a piece of work which possibly they might not have been compelled to do, they did it negligently.³⁷

Application
of borough
fund to im-
provements.

Where a surplus is standing to the credit of the borough fund, arising from the rents and profits of the property of a municipal corporation, and not from the borough rate, and the borough is a sanitary district, the corporation may apply the surplus in payment of any expenses incurred by them as the sanitary authority in improving the borough by enlargement of streets or otherwise.³⁸

Sale of Surplus Land.

As to the necessity for selling surplus land purchased for street improvements, see sect. 67 of the Towns Improvement Clauses Act, 1847,³⁹ and sect. 175 of the present Act and Note, *post*.

Access to
pipes under
land sold.

The London County Council on appropriating, under statutory powers, certain land for the purpose of making a new street on part of it, guaranteed that the New River Company, whose water mains ran under the land, should have access to the new mains which were substituted for the existing mains. They then sold part of the land under which the new mains ran, and on the purchaser proceeding to deal with that part in such a manner as to prevent access to the mains, an injunction was granted on the ground that the purchaser must be taken to have purchased with notice of the statute and subject to the guarantee of free access.⁴⁰

New Street.

New roads may also be made by urban district councils by agreement with the landowners under sect. 146.

Repair of
new street.

A new street made by an urban district council must subsequently be maintained by them, for it cannot be dealt with under sect. 150 as a street not repairable by

(35) *Boulton v. Crowther* (1824), 2 B. & C. 703.

(36) *Wedmore v. Bristol Cpn.* (1862), 7 L. T. 459; see also *ante*, p. 302, and s. 308 and Note, *post*.

(37) *Thompson v. Bradford Cpn. and Tinsley*, L. R. 1915, 3 K. B. 13; 84 L. J. K. B. 1440; 113 L. T. 506; 79 J. P. 364; 13 L. G. R.

884. See also *McClelland's Case* and others cited in Note to s. 308, *post*.

(38) See M.C. Act, 1882, s. 143, *post*, Vol. II., p. 1831.

(39) *Post*, Vol. II., p. 1622.

(40) *New River Co. v. Wilmot and London C.C.*, 1901 Loc. Gov. Chron. 488.

the inhabitants at large.⁴¹ But a strip of land paved and added to an existing street by the adjoining owner, and dedicated by him to the use of the public, does not thereby become vested like the existing street in the urban district council.⁴²

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Rural districts.

A rural district council, to whom the land required for widening a road had been given, wished to carry out the work and to charge the expenses upon the parish in which the road was situated. Upon communicating with the Local Government Board in the matter, the council were informed that the Board were advised that the term "purchase" in the present section was applicable to a gift, and that they considered that before the widening could be effected the council should be invested with the powers conferred by the section upon urban authorities. The Board also required the council to forward to them a copy of a resolution applying for such powers, together with a detailed estimate, in a form supplied, of the cost of the works proposed, an ordnance map of the district with the road marked thereon, and a copy of a further resolution applying for the issue of an order declaring part of the expenses to be chargeable as a special expense on the parish. Inquiry was at the same time made as to whether the parish council agreed to the expenses being so charged; and the Board requested that they might be furnished with a copy of any correspondence which had taken place with the parish council on the subject.

On an application being made by a rural district council to have conferred upon them the powers vested in urban district councils under the present section in regard to the purchase of premises for the purpose of widening, opening, enlarging, or otherwise improving streets or for the purpose of making new streets, the Local Government Board stated that they only granted urban powers under the section in connection with the carrying out of some definite scheme or schemes for which the powers were required, and that they did not confer the powers on a rural district council in respect of the whole district or an entire parish.

Sect. 155. When any house or building situated in any street in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith.

Power to regulate line of buildings. L.G., s. 35.

The urban authority shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act.

Note.

Willes, J.,¹ said that the expression "regular line of buildings," in sect. 143 of the Metropolis Management Act, 1855,² "cannot possibly mean a geometrical line; it must mean substantially such a line as shall preserve uniformity of appearance."

Meaning of "line."

The present section relates to setting houses either back or forward when they have been wholly or partially taken down, whether they were originally built before the passing of the Act or not; sect. 156 related, and the statute set out in the Note thereto now relates, to setting them forward in front of the line of buildings; while sect. 157 affects buildings in new streets only. See also sects. 66 to 68 of the Towns Improvement Clauses Act, 1847,³ incorporated by sect. 160 of this Act, as to improving the line of the streets.

Improvement of line of buildings.

For cases relating to the certificate of the superintending architect of the London County Council as to the "general line of buildings" in London, see the Note to sect. 156.⁴

London.

Where a substantial part, namely, the whole of the second floor, of the house was not removed when the floors below it were taken down, the Court of Appeal held that the present section did not apply.⁵

House partly taken down.

Railway buildings are exempt from the provisions of the present section; see the last clause of sect. 157.

Railway buildings.

(41) See *Kingston-upon-Hull Loc. Bd. v. Jones*, ante, p. 314; *Portsmouth Cpn. v. Hall*, ante, p. 335. But see *Austerberry v. Oldham Cpn.*, ante, p. 361.
(42) See *Richards v. Kessick*, *Property Exchange, Ltd. v. Wandsworth Dist. Bd.*, and *Andrews v. Abertillery U.D.C.*, ante, p. 335.
(1) In *Tear v. Freebody* (1858), 4 C. B. (N.S.) at pp. 262, 263. See also the *Galashiels Case*, cited post, p. 367.
(2) 18 & 19 Vict. c. 120, s. 143.
(3) *Post*, Vol. II., p. 1621.
(4) *Fleming v. London C.C.* and other cases, post, p. 370.
(5) *A.G. v. Hatch*, L. R. 1893, 3 Ch. 36; 62 L. J. Ch. 857; 69 L. T. 469; 57 J. P. 825.

Sect. 155, n.
Building
commenced
before line
prescribed.

A school board were restrained from building in contravention of a prescribed building line, although at the time when persons purporting to act as the local board prescribed the line, the board had lapsed by reason of the resignation of all the members but two (three being a quorum). These two members had nominated three more, and the five then nominated four others to complete the full number of the board. The Court of Appeal held that the objection to the constitution of the board did not prevail against rule 9 of Sched. I. The court also held that a building line might be prescribed for any portion of the building which had not been commenced, unless what had been commenced necessarily involved a projection beyond the prescribed line.⁶

Schools and
factories.

The word "house" includes "schools, also factories and other buildings in which persons are employed:" see sect. 4 and Note.⁷ See also the Note to sect. 157, with regard to the meaning of the terms "building," "new building," "erection of a new building."

Church.

A church was held to be a house within the corresponding section of the Local Government Act, 1858.⁸

Front of
building.

The insertion of the words "*or the front thereof*" in the present section should be noticed; formerly the local authority were empowered to interfere only when the entire house had been taken down.

Street.

As to the meaning of "street," see sect. 4 and Note.⁹

The term "highway," as used incidentally only in an enactment prohibiting the erection of buildings beyond the general lines "in any street, place, or row of buildings," within 50 feet of the *highway*, was held not to be used in its proper legal sense, so as to limit the enactment to streets which had been dedicated to the use of the public, but only to point to the part of the street which was used as a highway.¹⁰

Effect of
approval
of plans.

A manufacturer, being desirous of pulling down his manufactory and of erecting a new one, sent plans and sections of his proposed new building to the surveyor of the council, who returned to him an approval of his plans by the building and improvement committee of the town council, but accompanied by a note (in a printed common form), stating that the ratification of the approval of any plans and particulars by the committee referred only to such matters as were required to be set forth as described therein in accordance with certain bye-laws; and that the approval of the committee gave no authority for the making of any projection on the front of any building into any street beyond the proper line of such street, etc. Relying on this approval, the owner pulled down the manufactory, and afterwards received a notice from the town council under the Local Government Act, 1858,¹¹ that any building thereafter to be built must be built on the line marked red in the plans thereto annexed, which line was about 13 feet beyond the mark on the plans which had been approved by the committee. It was, however, held that the town council were not at liberty to give any such notice after the notice of the approval of the committee had been given by their surveyor; and an injunction was granted to restrain the council from interfering in any way with the erection of the building according to the plans and sections which had been approved. The enactment was therefore to be taken to apply only to such buildings as had been taken down without any previous approval by the local board of a plan for their re-erection.¹²

This case was followed in one in which a local board had passed a resolution that the line of building be erected as shown in a plan sent in by the builder, and at the same time resolved to offer him a certain sum for the land given up for street improvement. The builder pulled down the front wall of the existing building, but as he did not accept the compensation offered, the local board altered their resolution and prescribed a different building line. This it was held they could not do.¹³

But where a local board had objected to plans, they were held entitled to prescribe a building line, although their objection was founded on a bye-law which was not really applicable to the case.¹⁴ It is, however, too late to prescribe a line when

(6) *Newhaven Loc. Bd. v. Newhaven School Bd.* (1885), L. R. 30 Ch. D. 350; 53 L. T. 571; 34 W. R. 172.

(7) *Ante*, p. 29.

(8) 21 & 22 Vict. c. 98, s. 35; *Folkestone Cpn. v. Woodward* (1872), L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. 574; 37 J. P. 324.

(9) *Ante*, p. 23.

(10) *Poplar Bd. of Works v. North Metropolitan Tramways Co.* (1879), 43 J. P. 590.

(11) 21 & 22 Vict. c. 98, s. 35.

(12) *Slee v. Bradford Cpn.* (1863), 4 Giff. 262; 8 L. T. 491; 9 Jur. (N.S.) 815.

(13) *Masters v. Pontypool Loc. Bd.* (1878), L. R. 9 Ch. D. 677; 47 L. J. Ch. 797. See also *Lister v. Lobley*, *ante*, p. 358.

(14) *Newhaven Loc. Bd. v. Newhaven School Bd.* (1885, C. A.), L. R. 30 Ch. D. 350; 53 L. T. 571; 34 W. R. 172.

what has already been done in the way of building necessarily involves, as a matter of construction, the crossing of that line.¹⁵ Sect. 155, n.

A local Act¹⁶ enabled a local authority to prohibit the erection of buildings within 30 feet of the centre of a street, but exempted Crown property. The commissioners of works, as managers of the Edinburgh Royal Botanic Gardens, which are Crown property, obtained a warrant from the Dean of Guild,¹⁷ without opposition on the part of the local authority, to erect the first wing of a building within 30 feet of the centre of a street, at the same time lodging plans showing the other wing within 30 feet of the centre of the street. The first wing was erected and the commissioners then applied for a warrant to erect the second wing as shown on the plans lodged on the former occasion. The local authority then passed a resolution that no buildings be erected within 30 feet of the centre of the street, and brought an action for an injunction to restrain the commissioners from erecting the second wing within that distance. It was held that an injunction must be refused (*per* Lords Dunedin, L.P., and Kinnear) on the ground that the exemption clause in the local Act applied to future as well as to existing buildings, and (*per* Lord Johnston, Lord Kinnear dissenting) that the local authority, by not opposing the erection of the first wing, were estopped from opposing the erection of the second within the prescribed distance.¹⁸

Further as to the approval of plans, see the Note to sect. 158, *post*.

Fry, J., declined to say that the tender of compensation must be made at the time of prescribing the building line.¹⁹

Tender of compensation.

On January 19th, 1912, the owner of a house in a street deposited plans with the urban district council showing his intention to pull down the house and rebuild it on the same site. On February 5th the council's surveyor laid before them a plan showing the building line and the street line for the whole of this side of the street, they approved this plan, and subsequently at the same meeting disapproved the deposited plans on the ground that the new house was not set back to the new building line so prescribed. On February 15th this decision was communicated to the owner. On February 24th his architect informed the authority that he could not agree to this setting back, and on the 25th he began to rebuild. On March 12th, when the new building was 5 feet high, the surveyor gave him formal notice not to proceed further with the work. On March 13th the owner claimed compensation and the clerk to the council intimated that none was due. On March 18th the council resolved to take proceedings. On April 27th the building was completed at a cost of £200. On May 20th an action was commenced claiming a mandatory order directing the owner to pull down so much of the building as was in advance of the prescribed building line. The statement of claim alleged that the council had at all times been and still were ready to pay compensation under the present section, though they had at no time offered compensation or given the owner notice of the enactment upon which they were relying, and had by their clerk given the above-mentioned intimation. Joyce, J., dismissed the action on the ground that the present section made a tender of compensation before the prescribing of a building line a condition precedent to insisting upon such a line. It was held by the Court of Appeal (1) that the building line had been duly prescribed, (2) that its reference to the whole street instead of to the owner's house was immaterial, (3) that notice to the owner giving the section relied upon by the council was unnecessary, (4) that tender of compensation was not a condition precedent, and that, if it was, the owner's hostile attitude amounted to waiver, and (5) that, though the matter was trivial and no public benefit would be gained by the new building line, yet, as the council had not acted *mala fide*, the mandatory order asked for must be granted, but without costs in the court below.²⁰

With regard to arbitration, see sects. 179 to 181, *post*.

Arbitration.

Sect. 156. [*It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building* [Buildings not to be brought forward.]
L.G. Am., s. 28.

(15) *Newhaven Loc. Bd. v. Newhaven School Bd.*, ante, p. 364; followed by *Keke-wich, J.*, in *A.G. v. Hatch*, ante, p. 363.

(16) *Edinburgh Cpn. Act, 1906* (6 Edw. VII. c. clxiii), ss. 67, 78.

(17) For the functions of this body, which corresponds to the Tribunal of Appeal in London, see the Note in 3 *Glen's Loc. Gov. Case Law* at pp. 165, 166.

(18) *Edinburgh Magistrates v. Lord Advocate*, 1912 S. C. (S.) 1085; 49 Sc. L. R. 873; 3 *Glen's Loc. Gov. Case Law* 163.

(19) In the *Pontypool Case*, ante, p. 364 (13).

(20) *A.G. (Lye and Wollescote U.D.C.) v. Parish*, L. R. 1913, 2 Ch. 444; 82 L. J. Ch. 562; 109 L. T. 57; 77 J. P. 391; 11 L. G. R. 1134. See also *Sutton Loc. Bd. v. Hoare* (1894, North, J.), 10 T. L. R. 586.

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on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same.

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is committed, after written notice in this behalf from the urban authority.]

Note.

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Line of Buildings.

Buildings not to be brought forward.

Sect. 3 of the Public Health (Buildings in Streets) Act, 1888,¹ which is to be “ construed as one with ” the present Act,² and in which, “ unless the context otherwise requires, words and expressions to which meanings are assigned ” by the present Act,³ are to have “ the same respective meanings ”⁴ repealed the present section “ save as hereinafter mentioned ” and “ in lieu thereof ” enacted as follows :— “ It shall not be lawful in any urban district, without the written consent of the urban authority, to erect or bring forward any house or building in any street, or any part of such house or building beyond the front main wall of the house or building on either side thereof in the same street, nor to build any addition to any house or building beyond the front main wall of the house or building on either side of the same. Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority. Provided that the repeal by this Act enacted shall not affect anything duly done or suffered, or any right or liability acquired, accrued, or incurred, or any security given under the section hereby repealed, or any penalty, forfeiture, or punishment incurred in respect of any offence committed against such section, or any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.”

Repealed enactment.

The old provision differed from the new in the following respects :—It did not contain the words “ erect or ” before “ bring forward,” and in the absence of any such words was held not to apply to the erection of new houses on ground which was not already built upon :⁵ it applied to a house or building “ forming part of any street,”⁶ whereas this section applies to any house or building “ in any street ” ; it referred to the “ front wall,” and in the case of additions, to the “ front,” instead of the “ front main wall ” ; it did not contain the words “ in the same street ” after “ on either side thereof ” ; it prohibited the building of “ any addition thereto,” i.e., to the house or building forming part of the street, whereas this section prohibits the building of “ any additions to any house or building ” beyond the front main wall, etc., and does not repeat the words “ in the same street.”

Other enactments.

Railway buildings were exempted from the operation of the repealed section by the last clause of sect. 157 ; and as this section is enacted “ in lieu of ” the repealed section, such buildings would appear to be exempt from the operation of this also.

With regard to the improvement of the line of buildings in a street in certain cases in which the urban district council are unable to put this section in force, see sect. 155, under which compensation is payable to the owner or other person immediately interested in the building.

Under sect. 66 of the Towns Improvement Clauses Act, 1847,⁷ the urban district council may allow, upon such terms as they think fit, any building to be set forward, for improving the line of the street. This does not, however, allow them to authorise an encroachment on the highway.⁸ Under sects. 69 and 70 of the Act of 1847,⁹ the council may cause inconvenient projections in the front of houses to be removed.

Rural districts.

Rural district councils cannot proceed under this Act unless they obtain power to do so from the Minister of Health—see sect. 276 and Note, *post*.

(1) 51 & 52 Vict. c. 52, s. 3.

(2) *Ibid.*, s. 1. This section contains a list of Acts to be cited as the Public Health Acts, but as to that see the Note to s. 1 of the present Act, *ante*, p. 1.

(3) See s. 4, *ante*, p. 7.

(4) 51 & 52 Vict. c. 52, s. 2.

(5) *Williams v. Wallasey Loc. Bd.* (1886), L. R. 16 Q. B. D. 718 ; 55 L. J. M. C. 133 ; 55 L. T. 27 ; 50 J. P. 582.

(6) See *London School Bd. v. Islington Vestry*, *ante*, p. 323.

(7) *Post*, Vol. II., p. 1621.

(8) See *Reg. v. Platts*, *ante*, p. 361.

(9) *Post*, Vol. II., p. 1622.

Erection of Buildings under Statutory Powers.

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Special
Acts.

A special Act, authorising a railway company to make a subway "with all *necessary* buildings, etc., connected therewith," was held to override the general provisions of the Metropolis Management Act with respect to the building line, and to allow the company to erect a station within their limits of deviation beyond the general line of buildings: the station being necessary for the purposes of the company's undertaking, though it was not necessary that it should project beyond the line of buildings.¹⁰ But the provision in sect. 93 of the Waterworks Clauses Act, 1847,¹¹ providing that nothing in that Act or the special Act "shall exempt the undertakers from . . . any Act for improving the sanitary condition of towns and populous districts" was held to render the Act of 1888 applicable to buildings proposed to be erected by a waterworks company under provisions in their special Act (with which the Act of 1847 was incorporated) enabling them to extend their works whenever it should be necessary.¹² And a gas company, in erecting a building upon land scheduled to their special Act, which authorised them to erect such gasworks as they thought fit upon the land, but which was held to contemplate that they should be subject to the general body of sanitary legislation, were held to be subject to the provisions of the London Building Act with respect to observances of the general line of buildings in a street.¹³ And the majority of a Divisional Court held that those provisions were applicable to a coal office erected on a railway company's land by their lessees and used in connection with dealings in coal arriving by rail, Sutton, J., holding that the saving in the London Building Act, 1894,¹⁴ for the powers conferred on a railway company by a special Act "for railway purposes" was applicable because it was not shown that compliance with the Building Act would prevent the railway company from exercising any of their special statutory powers; and Channell, J., holding that a proviso in the special Act of the company that nothing in the Act should prejudice any rights, etc., of the Metropolitan Board of Works¹⁵ (the predecessors of the London County Council), would, even if the saving had been applicable, have prevented it from applying. Bray, J., on the other hand, was of opinion that the saving in the Building Act exempted the coal office, and that the proviso in the special Act did not prevent it from doing so.¹⁶

Meaning of certain Expressions."Line of
street.""House."
"Street."

"Building."

The "regular line of the street" in the Police and Improvement (Scotland) Act, 1862,¹⁷ was held to refer to the line of buildings, and not the line indicating the boundary of the highway.¹⁸ Such a line is not a "geometrical" line.¹⁹

The terms "street" and "house" are defined by sect. 4.²⁰ A turnpike road, although not a "street" by virtue of that definition, may come within the operation of sect. 3 of the Act of 1888, if it is a street in the ordinary sense of the term, that is a row of houses in some degree proximate and continuous, and has not merely a set of detached houses along it at irregular distances and not in a continuous line, but some facing one way and some another, and having no appearance of uniformity;²¹ and it has been considered that there must be a continuous line of buildings on the same side of the road in order to make the road a "street" within the meaning of the enactment.²²

With regard to the meaning of "building," see the Note to sect. 157.²³ Willes, J., with the concurrence of Channell, B., ruled that the addition of a porch to a house did not come within the corresponding provision²⁴ of the Local Government Act, 1861.²⁵ But a conviction under sect. 3 of the Act of 1888 was upheld by the court in a case where a wooden and glass structure, 9 feet 6 inches long

(10) *City and South London Ry. Co. v. London C.C.*, L. R. 1891, 2 Q. B. 513; 60 L. J. M. C. 149; 65 L. T. 362; 56 J. P. 6; followed in *Stretford U.D.C. v. Manchester and Altrincham Ry. Co.* (C. A.), ante, p. 313; and in *London C.C. v. London Sch. Bd.*, cited in Note to s. 341, post.

(11) 10 & 11 Vict. c. 17, s. 93.

(12) *Grand Junction Water Co. v. Hampton U.D.C.* (1898), 67 L. J. Q. B. 903; 79 L. T. 176.

(13) *London C.C. v. Wandsworth and Putney Gas. Co.* (1900), 82 L. T. 562; 64 J. P. 500.

(14) 57 & 58 Vict. c. ccxiii., s. 31.

(15) Namely, under 18 & 19 Vict. c. 120, s. 143, replaced by the amending Act, 25 & 26 Vict. c. 102, ss. 75, 76.

(16) *London C.C. v. Coal Co-operative Soc.*

(1907), 98 L. T. 580; 72 J. P. 68; 6 L. G. R. 387.

(17) 25 & 26 Vict. c. 101, s. 162.

(18) *Schultze v. Galashiels Cpn.*, L. R. 1895 A. C. 666; 60 J. P. 277.

(19) See *Freebody's Case*, ante, p. 363.

(20) Ante, pp. 23, 29.

(21) *Reg. v. Fullford* (1864), 33 L. J. M. C. 122; 10 Jur. (N.S.) 522; 10 L. T. 346; 12 W. R. 715.

(22) *Reg. v. Ormesby Loc. Bd. of Health* (1894), 43 W. R. 96; s.c. nom. *Thorold v. North Ormesby Loc. Bd.*, 1894 Loc. Gov. Chron. 996.

(23) Post, p. 383.

(24) 24 & 25 Vict. c. 61, s. 28.

(25) *Reg. v. Nicholson* (1866), 41 L. T. (O.S.) 657.

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and 3 feet 7 inches wide, was erected in front of a photographer's house for the purpose of exhibiting photographs as an advertisement.²⁶

The owner of a house, without the consent of the local authority, erected on the pathway and steps to his front door a wooden porch with felt roof, glass windows, and a seat. The back of the porch touched the pilasters of the doorway. The structure was 10 feet 1 inch high at the back, 7 feet 5 inches high in front, 8 feet 6 inches wide, and projected 4 feet 8 inches from the front door. It was 6 feet 6 inches beyond the front main wall of the adjoining house. It was not attached to the front door or the steps, but rested on six wheels, three on each side. An iron railing prevented its removal from the front door more than a few inches, but it was so moved on the day of the hearing of the summons under this section. The summons was dismissed, and it was held that there was evidence upon which this decision could be supported.²⁷

"Front main wall."

The back wall of a house may be treated as "the front main wall" for the purposes of the building line under sect. 3 of the Act of 1888.²⁸

On the other hand, Romer, J., did not consider the front wall of the projecting wing of an asylum to be the "front main wall" of the building taken as a whole.²⁹

Under provisions of the London Building Acts (Amendment) Act, 1905,³⁰ relating to protection in case of fire, it was held that the "main front" of a corner building was not necessarily the front which faced the principal street.³¹

Where there is a doubt whether a wall is or is not a "front main wall," the matter must be settled by justices and not on *mandamus*, unless the local authority have agreed to this method of raising the point of law,³² or unless they have not acted *bonâ fide*.³³

"On either side."

The expression "house on either side" has reference to the house on one side, and does not necessarily mean the houses on both sides, and the enactment is therefore applicable to the house at the end of a row or to a corner house.³⁴ And where a building is erected in a street between two others which are set back to different distances, the new building must not be brought forward beyond the front main wall of that one of the existing buildings which is set furthest back.³⁵

Where the nearest house, which was in another street in line with the street in question, was 400 feet away, and the nearest house in the street in question was 800 feet away, Lord Coleridge, C.J., and Wills, J., made absolute a rule *nisi* for a writ of *mandamus* directing the local authority to approve a plan (which had been disapproved on the ground that it showed a contravention of this section), there being no house "on either side" of the house shown on the plan.³⁶

It was held that sect. 3 of the Act of 1888 did not apply where the next house to that in question was in course of erection only, the front main wall of it being 5 inches high and not up to the level of the road at the time when the building complained of was commenced, and was 300 feet distant from that building. *Per* Fry, L.J.: "the expression means a house . . . within some degree of proximity."³⁷ In a subsequent case the question was whether the front wall of a wing of an asylum set the building line for some new shops about to be erected at a distance of 57 feet 3 inches from it. The main portion of the asylum stood some 100 feet back from the street, which was there known as Queen's Road. One wing consisted of a chapel set back about 25 feet from the pavement of the street, and the wing in

(26) *Leicester Cpn. v. Brown* (1892), 62 L. J. M. C. 22; 67 L. T. 686; 57 J. P. 70. See also *Hull v. London C.C.*, L. R. 1901, 1 Q. B. 580; 84 L. T. 160; 65 J. P. 309; *Tunmer v. Partington Advertising Co.* (1904), 68 J. P. 318; *Coburg Hotel Co. v. London C.C.* (1899), 81 L. T. 450; 63 J. P. 805; *London C.C. v. Illuminated Advertisements Co.*, L. R. 1904, 2 K. B. 886; 73 L. J. K. B. 1034; 91 L. T. 352; 68 J. P. 445; 2 L. G. R. 905; *London C.C. v. Schewzik*, L. R. 1905, 2 K. B. 695; 3 L. G. R. 1159; *London C.C. v. Hancock* (K. B. D.), L. R. 1907, 2 K. B. 45; 76 L. J. K. B. 526; 96 L. T. 618; 71 J. P. 268; 5 L. G. R. 572; *Rex (Palace Theatre Co.) v. Denman* (1907, K. B. D.), 96 L. T. 672; 71 J. P. 279; 5 L. G. R. 649; *Pears, Ltd. v. London C.C.* (1911, K. B. D.), 105 L. T. 525; 75 J. P. 461; 9 L. G. R. 834; decided under L. B. Act, 1894, 56 & 57 Vict. c. ccxiii.

(27) *Sunderland Cpn. v. Charlton* (1913, K. B. D.), 77 J. P. 127; 11 L. G. R. 484. But, as to the wheels defence, see *Andrews v. Wirral R.D.C.*, cited in Note to P. H. Act,

1907, s. 27, *post*, Part I., Div. III.

(28) *Reg. v. Ormesby Loc. Bd.*, *ante*, p. 367.

(29) *A.G. v. Edwards*, *post*, p. 369.

(30) 5 Edw. VII. c. ccix., ss. 10, 12.

(31) *London C.C. v. Cannon Brewery Co.* (K. B. D.), L. R. 1911, 1 K. B. 235; 80 L. J. K. B. 258; 103 L. T. 574; 74 J. P. 461; 8 L. G. R. 1094.

(32) *Rex (Brickell) v. Chiswick U.D.C.* (1908, K. B. D.), 72 J. P. 165; 6 L. G. R. 605.

(33) *Reg. (Wright) v. Eastbourne Cpn.* (1900, C. A.), 83 L. T. 338; 64 J. P. 724; 16 T. L. R. 546.

(34) *Leyton Loc. Bd. v. Causton* (1893), 57 J. P. 135.

(35) *Anderson v. Richards* (1906), 70 J. P. 231; 4 L. G. R. 404.

(36) *Reg. v. Middlesbrough Cpn.*, *Times*, July 7th, 1890, p. 13, col. ii. But see *Rex v. Chiswick U.D.C.*, *supra* (32).

(37) *Ravensthorpe Loc. Bd. v. Hinchcliffe* (1889), L. R. 24 Q. B. D. 168; 59 L. J. M. C. 19; 61 L. T. 780; 54 J. P. 421. See also *Reg. v. Ormesby Loc. Bd.*, *ante*, p. 367.

question was set back about 24 feet. Between this wing and the new shops, which fronted a continuation of the same street, known as Park Row, and were set back from 11 feet 8 inches to about 14 feet from it, there was a strip of garden ground and then a private road belonging to the asylum, and beyond that vacant ground belonging to the defendant. Romer, J., after expressing considerable doubt, refused an injunction to restrain the defendant from continuing the erection of the shops on the grounds that (1) having regard to the nature of the asylum building, the intervening distance, and the character of the intervening ground, the asylum was not a building "on the side of" the shops; (2) looking at the asylum building as a whole and the manner in which it was set back, it was not "in the same street" as the shops; and (3) also looking at the asylum as a whole, the front wall of the wing was not the "front main wall" of the building.³⁵ In another case Mathew, J., appears to have considered a distance of 70 to 90 feet between the houses too great for them to have the necessary proximity.³⁶ But when the justices had found that a row of cottages, separated from the house in question by a space 64 feet wide marked out for building purposes, constituted houses or buildings "on the side of" that house, the Court (Mathew and A. L. Smith, JJ.) declined to hold that as a matter of law the justices were wrong.³⁷

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In the Bristol case above cited,³⁸ Romer, J., considered that the asylum there in question was not "in the street" so as to set the building line for the proposed buildings.

"In the street."

Houses set back 62 feet from the footpath of the street were held to be too far back to set the building line for proposed houses, which were intended to be set back only 21 feet; and a mandamus requiring the urban authority to approve the plans of the houses was granted.³⁹ But in another case the Court of Appeal considered that there could be no doubt that certain houses set back 30 feet were in the street for the purposes of the section.⁴⁰

A building situated at the corner of two streets may sometimes be considered as situated in both streets for purposes connected with the line of buildings. *Per* Lord Herschell, L.C.: "Such a question must in each case be decided upon its own merits, having regard to all the circumstances."⁴¹ The finding of a magistrate that a corner house, fronting and in a uniform line with the houses in one street, and having no access or approach from the street at right angles to it, was situate in the latter street for the purposes of the provisions of the Metropolis Management Act, 1862,⁴² relating to the line of buildings in streets was accordingly upheld by the court.⁴³ And a house fronting an old road, but having an external wall along a new street at right angles to the old road was held to come within the prohibition in the Metropolis Management Act, 1862,⁴⁴ against erecting a building above a certain height without consent of the Metropolitan authority "on the side of any new street."⁴⁵ For the purposes of a betterment rate, it was held that, where a leasehold interest in a house had been acquired in order to give an entrance from one street to a freehold music hall fronting another street, the premises as a whole fronted or abutted on the former street.⁴⁶

And under sect. 3 of the Act of 1888 it has been decided that it is a question of fact whether a corner house is in the two streets.⁴⁷

Consent of Urban District Council.

The consent need not be under seal,¹ but it must be in writing, and the urban district council will not be bound by mere acquiescence. *Per* Jessel, M.R.: "In the common case of acquiescence the man who acquiesces has a right to allow that to be done which he stands by and sees done; but here the local board had no right to do anything except give a consent in writing, therefore the ordinary doctrine of acquiescence could not apply."²

Written consent.

(35) *A.G. v. Edwards*, L. R. 1891, 1 Ch. 194; 63 L. T. 639.
 (36) *Reg. v. Ormesby Loc. Bd.*, ante, p. 367.
 (37) *Warren v. Mustard* (1891), 61 L. J. M. C. 18; 66 L. T. 26; 56 J. P. 502.
 (38) *A.G. v. Edwards*, supra.
 (39) *Reg. v. Fulwood Loc. Bd.* (1895), 72 L. T. 592; 59 J. P. 311.
 (40) *A.G. v. Siddall*, *Times*, June 24th, 1898.
 (41) *Barlow v. Kensington Vestry* (1886), L. R. 11 A. C. 257; 55 L. J. Ch. 680; 55 L. T. 220; 50 J. P. 691.
 (42) 25 & 26 Vict. c. 102, s. 75.
 (43) *Gilbart v. Wandsworth District Bd. of Works* (1888), 60 L. T. 149; 53 J. P. 229; distinguishing *Barlow v. Kensington Vestry*, supra.
 (44) 25 & 26 Vict. c. 102, s. 85.
 (45) *London C.C. v. Lawrance & Sons*, L. R. 1893, 2 Q. B. 228; 62 L. J. M. C. 176; 69 L. T. 344; 57 J. P. 617.
 (46) *Oxford, Ld. v. London C.C.*, L. R. 1898, 2 Ch. 491; 79 L. T. 22.
 (47) *Warren v. Mustard*, supra.
 (1) See *Paddington Vestry v. Bramwell* (1880), 44 J. P. 815.
 (2) *Kerr v. Preston Cpn.* (1876), L. R. 6 Ch. D. at p. 468. Also cited post, p. 371 (22).

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Presumed
consent.**

But where projections beyond the general line of buildings in a street had existed for many years during the time of the Metropolitan Board of Works, though no consent or application for consent could be found among the records in the possession of the London County Council, Farwell, J., said that the true presumption of law was that the projection had been made with the consent of the Board on the principle that "*omnia rite esse acta presumuntur*."³

Under the London Building Act, 1894,⁴ which prohibits the erection of buildings beyond the "general line of buildings" in a street without the written consent of the county council, the House of Lords held that the erection of certain buildings on the forecourts of a line of buildings with the consent of the Metropolitan Board of Works (the predecessors of the council), given under a similar provision of the Metropolis Management Act, 1862,⁵ and limited by the board, under the same Act,⁶ to buildings of one storey, had not prevented the board from refusing to consent to the erection of other buildings beyond the original line, and therefore did not prevent the superintending architect of the council from defining the general line of the buildings for the purposes of the first-mentioned Act as being that original line.⁷ This decision does not, however, appear to be applicable to the terms of sect. 3 of the Act of 1888 so as to prevent a person from building up to the line to which the front main walls of the buildings on either side have already been brought forward, merely because such walls have been brought forward with the consent of the urban authority.

**Approval of
plans.**

Plans of a proposed building, deposited in pursuance of the bye-laws and showing the intention to build beyond the limit prescribed by the Act, had been approved subject to an amendment by resolution of a committee of the district council and stamped by the chairman of the committee "approved subject to amendment," and the resolution had been approved and adopted by the council itself. It was held by Farwell, J., that there was a "written consent" sufficient to satisfy the requirement of the present section.⁸ And a similar decision was given immediately afterwards by the Divisional Court, Lord Alverstone, C.J., saying that the view that the approval of the plans only extended to a recognition that they complied with the bye-laws as regards construction, drainage, etc., was too narrow.⁹

**Consent after
erection.**

Where a person had already erected a building within 20 feet from the centre of the street without the consent of the London County Council, which is required in such a case by sect. 13 of the London Building Act, 1894,¹⁰ the court discharged a rule for a mandamus to require the council to hear and determine an application for their consent, which had subsequently been made by him and the council had refused to entertain.¹¹

**Sale of
consent.**

A railway company were prohibited by their Act from exhibiting on certain premises advertisements other than such as related to their undertaking "unless the same shall have been approved" by the local authority, and it was held that the authority could not insist on a charge of 2d. per yard for such approval.¹²

In a case under sect. 3 of the Act of 1888, the Divisional Court granted a rule *nisi* for a mandamus requiring a local authority to approve plans of an extended shop front, which they had disapproved on the ground that the owner had refused to give up land to widen the street in exchange for their consent to the extension, and the rule was subsequently made absolute with costs, the local authority not appearing to show cause.¹³

(3) *Fleming v. London C.C.*, L. R. 1909, 2 K. B. 317, at p. 336; 78 L. J. K. B. 830; 101 L. T. 323; 73 J. P. 339; 7 L. G. R. 720; affirmed in H. L., see *infra*.

(4) 57 & 58 Vict. c. cxxiii., s. 22.

(5) 25 & 26 Vict. c. 102, s. 75.

(6) *Ibid.*, s. 76.

(7) *Fleming v. London C.C.; Metrop. Ry. Co. v. London C.C.*, L. R. 1911 A. C. 1; 80 L. J. K. B. 35; 103 L. T. 466; 75 J. P. 9; 8 L. G. R. 1055. For other decisions on these provisions, see *Rea v. London C.C.* (as to setting back boundary wall), L. R. 1911, 1 K. B. 740; 80 L. J. K. B. 704; 104 L. T. 501; 75 J. P. 261; 9 L. G. R. 299; *London C.C. v. Clode* (as to superintending architect's certificate), L. R. 1915 A. C. 947; 84 L. J. K. B. 1705; 113 L. T. 754; 80 J. P. 1; 13 L. G. R. 1234; *London C.C. v. Galsworthy* (as to finality of order of Tribunal of Appeal), L. R. 1918 A. C. 851; 87 L. J. K. B. 1053; 119 L. T. 719; 82 J. P. 297; 16 L. G. R. 729; *London*

C.C. v. Metropolitan Ry. Co. (as to jurisdiction of Tribunal of Appeal) (C. A.), L. R. 1919, 1 K. B. 283; 88 L. J. K. B. 448; 120 L. T. 182; 83 J. P. 105; 17 L. G. R. 210.

(8) *Mullis v. Hubbard*, L. R. 1903, 2 Ch. 431; 72 L. J. Ch. 593; 88 L. T. 661; 67 J. P. 281; 1 L. G. R. 769.

(9) *Merrett v. Charlton Kings U.D.C.* (1903), 67 J. P. 419.

(10) 57 & 58 Vict. c. cxxiii., s. 13.

(11) *Reg. v. London C.C.* (1897), 66 L. J. Q. B. 516; 76 L. T. 472; 45 W. R. 605; 61 J. P. 439. But see *Rex (Cornell) v. Bexhill Cpn.*, *post*, p. 401.

(12) *Southwark B.C. v. Partington Advertising Co.* (1905, K. B. D.), 69 J. P. 183; 3 L. G. R. 505.

(13) *Rex (White) v. Newcastle-upon-Tyne Cpn.* (1912, K. B. D.), 3 Glen's Loc. Gov. Case Law 152. See also *London C.C. v. Dingwall (ibid.)*, where Mr. Hedderwick at North London Police Court adjourned a summons for

Where a local authority refused their consent to the establishment of an offensive trade except on a condition which was not acceptable to those proposing to establish the trade, the Court of Sessions refused a declaration that the trade could be established without compliance with the condition.¹⁴ See also the cases as to the imposition of conditions on the grant of cinema licences,¹⁵ and as to the exercise of "discretion" in granting taxi-cab licences.¹⁶

Legal Proceedings.

The second paragraph of sect. 3 of the Act of 1888 was not contained in the original clause, viz., sect. 28 of the Local Government Act, 1858, Amendment Act, 1861,¹⁷ under which the remedy was by indictment.¹⁸

"It is a clear and established principle, that when a new offence is created by an Act of Parliament, and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty; but he may proceed on the prior clause, on the ground of its being a misdemeanour."¹⁹ This principle was followed where one section of an Act of Parliament declared building beyond the line to be a common nuisance, and a subsequent section gave a summary remedy for removal of the building.²⁰ With regard to the recovery of penalties, see sects. 251 to 253, *post*.

Under sect. 3 of the Act of 1888, however, Farwell, J., held that a private individual had no cause of action against a person who has built in such a manner as to have committed an offence against the Act, although he might have sustained special damage by reason of the building;²¹ the legislature under the Public Health Acts having intended, not to create rights in individuals, but general rights for the benefit of the inhabitants of the particular district.

The court will not interfere by injunction to restrain proceedings before justices on any ground which is merely matter of defence before the justices, for the court will assume that the justices will give full weight to such defences; though it may interfere to prevent a wrongful act, such as exceeding statutory powers by pulling down a house. The court therefore refused to restrain an urban sanitary authority from taking proceedings under the repealed section in respect of an alleged bringing forward of the front of a house.²² And Stirling, J., dismissed an action claiming a declaration that the plaintiffs, who were alleged by the defendant local authority to be building in contravention of sect. 3 of the Act of 1888, were entitled to build in the manner they were doing, although the question at issue was a pure question of law, on the ground that the legislature had indicated a court of summary jurisdiction as the proper tribunal to deal with questions under the Act.²³

But after penalties have been recovered under sect. 3 of the Act of 1888, a mandatory injunction or order to pull down the building may, if necessary, be obtained in an action in the name of the Attorney-General.²⁴

Within an urban sanitary district a building being part of a street had been brought forward beyond the front wall of the house or building on either side thereof without the consent of the sanitary authority, and the owner was afterwards served with a written notice by the authority to the effect that he had committed a continuing offence under the repealed section, and an information was laid more than six months after the date of the notice. The owner having been convicted, it was held that the conviction was right, for the offence was continuing, the section itself referring to a continuance of it.²⁵

building over a sewer without the consent of the local authority with an intimation that they must give their consent without insisting on a payment of 1s. a year. But see *per* Ivory, J., in *Vigers Bros. v. London C.C.*, *ante*, p. 93; and on this point, 16 L. G. R. at p. 906.

(14) *Darney v. Calder*, cited in Note to P.H. Am. Act, 1907, s. 51, *post*, Part I., Div. III.

(15) In Note to P.H. Am. Act, 1890, s. 51, *post*, Part I., Div. II.

(16) *Post*, Vol. II., p. 1662.

(17) 24 & 25 Vict. c. 61, s. 28.

(18) As in *Reg. v. Fullford*, *ante*, p. 367; and *Reg. v. Rowley*, *Times*, May 13th, 1870.

(19) *Per* Ashhurst, J., in *Rex v. Harris* (1791), 4 T. R. 205. See also *Rex v. Dickenson* (1668), 1 Wm. Saunders, 134, b; *Rex v. Wright* (1758), 1 Burr. 547; *Reg. v. Buchanan* (1846), 8 Q. B. 883; 15 L. J. Q. B. 227; 10 Jur. 736; *Rex v. Gregory* (1833), 5 B. & Ad. 555;

2 N. & M. 478; *Reg. v. Hall*, L. R. 1891, 1 Q. B. 747; 60 L. J. M. C. 124; 64 L. T. 394; 17 Cox C. C. 278; see also Note to s. 251 (under heading "Statutory Remedies"), *post*.

(20) *Rex v. Gregory*, *supra*.

(21) *Mullis v. Hubbard*, *ante*, p. 370 (8).

(22) *Kerr v. Preston Cpn.* (1876), L. R. 6 Ch. D. 463; 46 L. J. Ch. 409; 25 W. R. 265.

(23) *Grand Junction Water Co. v. Hampton U.D.C.*, L. R. 1898, 2 Ch. 331; 67 L. J. Ch. 603; 78 L. T. 673; 62 J. P. 566.

(24) *A.G. v. Wimbledon House Estate Co.*, L. R. 1904, 2 Ch. 34; 68 J. P. 341; 2 L. G. R. 826.

(25) *Rumball v. Schmidt* (1882), L. R. 8 Q. B. D. 603; 46 L. T. 661; 30 W. R. 949; 46 J. P. 567; distinguishing *Marshall v. Smith*, *post*, p. 507 (10): see also *Metropolitan Bd. of Works v. Anthony* (1884), 54 L. J. M. C. 39; 33 W. R. 166; 49 J. P. 229; and cases cited in Note to s. 251, *post*, p. 650.

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Conditional consent.

Statutory remedy.

Action by person aggrieved.

Injunction.

Continuing offence.

Sect. 156, n.

After premises had been erected in contravention of sect. 3 of the Act of 1888, the building owner became bankrupt, and the premises passed into the ownership of another person without his knowing that the enactment had been contravened. The borough council then served the latter person with notice of such contravention, and subsequently took proceedings against him for penalties, contending that as he had continued to keep the premises up after the notice, he was guilty of a continuing offence. The court, however, held that he had committed no offence.²⁶

Limitation of time.

Under the Metropolis Management Act, 1862,²⁷ it was held that the six months' limitation of proceedings for the recovery of a penalty for infringing the building line under that Act, ran from the time when the structure was discovered to be so far advanced as to show the full extent of the projection, and not from the completion of the building.²⁸ But in a later case it was held that the matter of complaint arose, and therefore the six months commenced to run, when the builder began to build beyond what was afterwards certified to be the general line.²⁹

The above-mentioned Metropolitan provision was held not to apply to a case where the site had formerly been covered with buildings and the owner had not relinquished his right to build on such site; and the authority ought to have proceeded under the preceding section of the Act,³⁰ which corresponds to sect. 155 of the present Act, and under which the owner would have been entitled to compensation for setting back his building line.³¹ This case was distinguished in one in which there had been on the part of the owner no continuing intention to rebuild.³² It was also distinguished, by the Court of Appeal, in another case on three grounds, namely, that the building line which was infringed in erecting a new house on the site of one which had been pulled down, was not the building line of the street in which the old house had been, but the building line of a new street formed at right angles to that street through the site of an adjoining building; that the site of the new house included, not a mere small courtyard inclosed by a wall such as was held in *Lord Auckland's Case* to have been appurtenant to the house which was pulled down in such a way as to form part of it, but a considerable area of land not built on in front of the house and a larger area still forming a garden at the back; and that the owner had abandoned the right to the old house and was building a new and different building.³³

Res judicata.

Where justices, being equally divided in opinion, dismissed an information under sect. 3 of the Act of 1888, it was held that, though the better course would have been to adjourn the case in order that it might be heard before a differently constituted bench, still the dismissal of the information was an acquittal, and that, the circumstances remaining the same, a subsequent information against the same party for a continuance of the alleged offence would therefore not lie.³⁴

A summons for penalties under sect. 3 of the Act of 1888 having been dismissed on the ground that notice of the offence had not been given to the defendant as required by the section, another summons for the same offence was issued. It was contended that the matter was *res judicata*, but the court held the contrary.³⁵

Where justices had convicted a builder of building contrary to sect. 3 of the Act of 1888, and quarter sessions had affirmed the conviction, and an appeal by special case had been dismissed on a technical objection,³⁶ it was held, by Bailhache, J., that the owner was not precluded by the *res judicata* rule from claiming compensation for injurious affection by a town-planning scheme.³⁷

A determination by justices as to a man's status as regards compulsory military service was held by Avory, J., to be a judgment *in rem* which could be pleaded as *res judicata*, though the summons had been dismissed under the Probation Act.³⁸

Further as to the doctrine of *res judicata*, see the Note to sect. 150.³⁹

(26) *Blackpool Cpn. v. Johnson*, L. R. 1902, 1 K. B. 646; 87 L. T. 28.

(27) 25 & 26 Vict. c. 102, s. 75.

(28) *Brutton v. Hanover Square Vestry* (1871), L. R. 13 Eq. 339; 41 L. J. Ch. 134; 25 L. T. 552; 20 W. R. 84; 36 J. P. 580.

(29) *London C.C. v. Cross* (1892), 66 L. T. 731. See also *post*, pp. 650-653.

(30) 25 & 26 Vict. c. 102, s. 74, now repealed.

(31) *Lord Auckland v. Westminster District Bd.* (1872), L. R. 7 Ch. 597; 41 L. J. Ch. 723; 26 L. T. 961; 20 W. R. 845.

(32) *Worley v. Kensington Vestry*, L. R. 1892, 2 Ch. 404; 61 L. J. Ch. 601; 66 L. T. 747; 40 W. R. 566.

(33) *London C.C. v. Pryor*, L. R. 1896, 1 Q. B. 465; 65 L. J. M. C. 89; 74 L. T. 234;

60 J. P. 292. But see, as to "abandonment," *A.G. v. Reynolds*, *post*, Vol. II., p. 1451.

(34) *Kinnis v. Graves* (1898), 67 L. J. Q. B. 583; 78 L. T. 502; 46 W. R. 480.

(35) *Jenkins v. Merthyr Tydvil U.D.C.* (1899), 80 L. T. 600.

(36) *Hollidge v. Ruislip Northwood U.D.C.* (1913), 77 J. P. 126. See Note to s. 262, *post*.

(37) *Ellis v. Ruislip Northwood U.D.C.* (1919, K. B. D.), 17 L. G. R. 427. The decision dismissing the claim on another ground was reversed in C. A., where the above point was not dealt with—see Note to Housing Act of 1909, s. 59, *post*, Part II., Div. III.

(38) *Oaten v. Auty*, *post*, p. 658 (76). On this point, see 83 J. P. at p. 176, col. iii. *bot*.

(39) *Ante*, p. 333.

Sect. 157. Every urban authority may make byelaws with respect to the following matters; (that is to say,)

- (1.) With respect to the level width and construction of new streets, and the provisions for the sewerage thereof :
- (2.) With respect to the structure of walls foundations roofs and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health :
- (3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings :
- (4.) With respect to the drainage of buildings, to waterclosets earthclosets privies ashpits and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation :

And they may further provide for the observance of such byelaws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) to remove alter or pull down any work begun or done in contravention of such byelaws : Provided that no byelaw made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board [now Minister of Health] subject to this enactment.

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company, and used for the purposes of such railway under any Act of Parliament.

Note.

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Bye-laws.

In their Circular of the 29th August, 1912,¹ the Local Government Board said :—

“ Byelaws with respect to new streets and buildings are intended to operate in the interest of the inhabitants and to prescribe reasonable standards to which building development may fairly be called upon to conform with a view to securing stability, protection from fire, and healthy conditions, and it is obviously undesirable that the byelaws in any area should afford any ground for the suggestion that they are either unnecessarily restrictive or obsolete in character. New methods of construction and design will almost inevitably demand periodical revision of byelaws. . . . It therefore behoves all local authorities from time to time to consider the terms of the byelaws in force in their areas, so as to see that they are sufficient to meet present day requirements. . . . It has been felt that in areas altogether rural in character a restricted series would be more suitable, and in 1901 the Board compiled a model series of building byelaws for rural districts, which dealt only with such matters of sanitary importance as most need regulation and control. Byelaws based on this model have to a considerable extent been adopted for these areas and the Board believe that experience in their working has shown them to be generally sufficient to secure the observance of proper sanitary requirements. The Board have also tentatively framed for working purposes a series intermediate in character between the urban and rural model codes suitable for rural areas which are beginning to assume urban characteristics. This series contains the same clauses with respect to the level width and construction of new streets as the urban model, but includes only those clauses concerning the structure of walls, foundations, roofs, and chimneys of new buildings which are the most

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Power to make bye-laws re-
specting new
buildings, etc.
L.G., s. 34.
P.H. 1874, s. 44.

**Local Govern-
ment Board
circular.**

(1) Set out in 10 L. G. R. (Orders) 237, 238. 1922, set out in 20 L. G. R. (Orders) 197.
See also M. H. Circular (No. 332) of Sep. 1,

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important for securing stability and the prevention of fires, and for purposes of health. It also contains a special clause partially exempting small dwellings, where sufficiently isolated, from the structural requirements relating to walls. Copies of the rural model or of the intermediate code will be furnished by the Board to the council on application, and also draft forms in which the proposals of the council can be submitted."

Revocation by Minister of Health.

Unreasonable byelaws may be revoked by the Minister of Health in certain circumstances under sect. 44 of the Housing Act of 1909.¹

Public Health Acts, 1890 and 1907.

Sect. 23 of the Public Health Acts Amendment Act, 1890,² considerably extends the byelaw-making powers of the authorities in whose districts that enactment is in force, and sects. 15 to 18 of the Public Health Acts Amendment Act, 1907,³ extend the powers of such authorities in relation to plans deposited under byelaws, and sects. 24 and 25 of the Act of 1890 render it unlawful to occupy or to suffer others to occupy as a dwelling-place, sleeping-place, workroom, or place of habitual employment, a room of which any part is immediately over a privy, cesspool, midden, or ashpit, and prohibit the erection of new buildings on ground filled up with matter impregnated with fæcal, animal, or vegetable matter, or upon deposits of such matter, unless such matter has been either removed or rendered innocuous.

War buildings.

As to making buildings erected under the Defence of the Realm (Acquisition of Land) Act, 1916, in contravention of byelaws comply therewith, see sect. 11 of that Act.⁵

Rural districts.

The power to make byelaws under the present section was frequently conferred upon rural district councils by order of the Local Government Board under sect. 276.

Making, &c., of bye-laws.

With regard to the making, alteration, and repeal of byelaws, and their "validity," see sect. 182 and Note, *post*. With regard to the imposition of penalties, see sect. 183. The byelaws must be confirmed under sect. 184 before they can be enforced.

Model byelaws.

A series of model byelaws under the present section for urban districts (Series No. IV.) was issued by the Local Government Board in 1877. Some of the byelaws in that series were subsequently modified; and in 1904 the Board issued a series for rural districts (No. IV. *a*) under the present section and the Public Health Acts Amendment Act, 1890, sect. 23 (3). On the 1st September, 1922,⁶ the Minister of Health issued a Circular advising local authorities to revise their byelaws relating to new streets and buildings "at least every ten years," or even at shorter intervals in order to make sure that they "provide adequately for modern requirements." The series now consists of "Series IV: The full urban model, for large towns, industrial areas, and other thickly populated districts; Series IV*a*: The rural model (new buildings and certain matters in connection with buildings only) intended primarily for rural areas; and Series IV*c*: The intermediate model, for parts of rural districts which have become urban in character, or for sparsely populated and residential urban districts, small towns, etc." See also the Circular quoted at the commencement of the present Note.

Retrospective operation.

"No byelaw ought to have a retrospective operation unless it is clearly expressed that it is to have that operation,"⁷ and, as a general rule, byelaws cannot be applied to buildings erected before the constitution of the district,⁸ but certain byelaws may apply to buildings already in existence when the byelaws were made.⁹

Waiver of byelaws by council.

A district council cannot dispense with the law as laid down in their byelaws, for it is not for their benefit but for the benefit of the public.¹⁰ And as the council have no power to sanction plans which are in contravention of their byelaws, a building owner is not entitled to erect buildings which contravene the byelaws, although he may erect them in accordance with plans which have been approved by the council.¹¹

Where a local Act enacted that no new street should be laid out of less width than 40 feet, an injunction was granted against a person whom the local authority purported to authorise by a resolution to build houses so as to leave a new street

(1) *Post*, Part II., Div. III.

(2) *Post*, Part I., Div. II.

(3) *Post*, Part I., Div. III.

(5) *Post*, Vol. II., p. 2278.

(6) 20 L. G. R. (Orders) 197-199.

(7) *Per* Ridley, J., in *Hubbard v. Bromley U.D.C.*, *post*, p. 396 (51). For quotation, see 79 J. P. at p. 438. See also *Felkin v. Berridge* and other cases noted *post*, p. 395.

(8) See *Burgess v. Peacock*, *post*, p. 394 (24).

(9) See *Simmons v. Mallory R.D.C.*, *post*, p. 392 (1); *London & S.W. Ry. Co. v. Hills*, *post*, p. 393 (17).

(10) *Baxter v. Bedford Cpn.* (1885), 1 T. L. R. 424.

(11) *Re McIntosh and Pontypridd Improvements Co.* (1891), 61 L. J. Q. B. 164; *Yabbi-com v. King*, L. R. 1899, 1 Q. B. 444; 68 L. J. Q. B. 560; 80 L. T. 159; 63 J. P. 149.

of less width; though the demurrer of the local authority to the bill and information, which prayed a declaration that the resolution was invalid, was allowed.¹²

As to the power to include "dispensing" powers in byelaws, see the case cited below.¹³ Such a power is inserted in most town planning schemes.

Byelaws may, however, be "relaxed" in certain cases under sect. 24 of the Housing, Town Planning, etc., Act, 1919,¹⁴ and sect. 25 of the same Act gives a temporary power to consent to breaches of building byelaws.¹⁵ See also sect. 18 of the Ancient Monuments Act of 1913,¹⁶ which allows relaxation on artistic grounds.

With regard to the person who is responsible for the manner in which the work is carried out, when it contravenes the byelaws, the following cases may be cited:—

A builder, who in accordance with his contract with a building owner simply built along a line of street already laid out by such owner, was held not to be a "person who lays out a new street" within the meaning of a byelaw as to minimum width;¹⁷ and an action in the name of the Attorney General for an injunction to restrain the laying out construction or continuance of a new street of a less width than the byelaws in force required, though an injunction was granted against the landowner, was dismissed as against the contractor, who had completed his contract before the commencement of the action; although he had, when objection had been taken to the original plan which he had deposited with the local authority, stated in writing that the plan, amended so as to show a street of the proper width, would be carried out in due time.¹⁸

A landowner contracted with B. for the erection of buildings. B. subsequently, with the owner's consent, contracted with C. for the completion of the buildings, and did not further interfere in their completion. C. having infringed a byelaw as to construction of walls, it was held that B. could not be convicted under the byelaw, but that C. could.¹⁹

And where a wooden structure, left by the owner ready for roofing, was covered with a canvas roof and converted into and used as a shop by the tenant, without the knowledge or consent of the owner, the conviction of the owner as a person erecting a new building was quashed.²⁰

A builder employed by the owner of a house to repair a drain, who repaired it in such a manner that it was a nuisance and injurious to health, was the "person who undertook or executed such repair" within the meaning of sect. 42 of the Public Health London Act, 1891,²¹ and could be proceeded against under that section without the owner being summoned.²² But the mere fact that certain alterations in the drains of a house, which was being converted into flats, were carried out by the workmen of a plumber employed by the owner, was not sufficient to render the plumber responsible for compliance with the byelaws with respect to drainage, made by the London County Council under the Metropolis Management Acts, in the absence of anything to show that he was responsible for the work being done; though Lord Alverstone, C.J., said that no doubt byelaws could be made rendering builders plumbers or other persons responsible, if it was desired that certain formalities should be carried out by them.²³

Under the Metropolitan Building Act, 1855,²⁴ a builder, who was engaged in erecting a building when notice to comply with certain provisions of the Act and of byelaws made under it was served upon him, but had completed his work and left it before orders requiring him to comply with the notices were made by a magistrate, was held not to be liable to penalties for non-compliance with the magistrate's orders.²⁵

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Dispensing powers.

Relaxation.

Person responsible for contravention of bye-law.

(12) *A.G. v. Folkestone Cpn.*, 1873 W. N. 127.

(13) *Salt's Case*, *post*, p. 504 (2).

(14) *Post*, Part II., Div. III.

(15) The Ministry of Health (Temporary Relaxation of Building Bye-laws) Regulations, 1922, have been made under this section, and will be found in 20 L. G. R. (Orders) 225.

(16) *Post*, Vol. II., p. 1533.

(17) *Sunderland Cpn. v. Brown* (1880), 43 L. T. 478; 44 J. P. 831.

(18) *A.G. v. Gibb*, L. R. 1909, 2 Ch. 265; 78 L. J. Ch. 531; 101 L. T. 16; 73 J. P. 343; 7 L. G. R. 754. Also cited *post*, p. 379.

(19) *Brown v. Edmonton Loc. Bd.* (1881),

45 J. P. 553; and see *Wallen v. Lister*, *infra*.

(20) *Bennett v. Skegness Loc. Bd.*, M. S. and 1890 Loc. Gov. Chron. 919. See also *Yabbicom v. Bristol Brewery, Ltd.*, *post*, p. 405 (10).

(21) 54 & 55 Vict. c. 76, s. 42.

(22) *Young v. Fosten* (1893), 69 L. T. 147; 41 W. R. 589; 58 J. P. 8.

(23) *Kershaw v. Brooks*, L. R. 1909, 2 K. B. 265; 78 L. J. K. B. 736; 100 L. T. 853; 73 J. P. 231; 7 L. G. R. 578.

(24) 18 & 19 Vict. c. 122, ss. 45, 46.

(25) *Wallen v. Lister*, L. R. 1894, 1 Q. B. 312; 63 L. J. M. C. 51; 70 L. T. 348; 58 J. P. 283.

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Meaning of
new street.

"New Streets."

As to the meaning of the word "street," see sect. 4 and Note.¹

Where a piece of land is newly laid out for the purpose of being used as a street, where there was previously no road at all, it is a "new street," although there are no houses along it.² But it is not necessary that the street should be wholly new, for the conversion of a street of one kind, namely, a country lane without houses, into a street of another kind, namely, a house-built street, by the erection of buildings along it, was held by the Court of Appeal to create a "new street."³

This case last cited was overruled by the House of Lords on another point. There the House considered the meaning of the words "new street," and decided that a byelaw under the present section, providing that every new street should be laid out and formed of such width and at such level as the urban authority should in each case determine, referred only to the width of roadway and not to the width between the houses on opposite sides of the street, and that therefore the authority were not entitled to disapprove of and pull down the houses in course of erection on the ground that the building line was too near the roadway. Lord Selborne, L.C., said: "The interpretation clause has said that (when there is nothing in the context to exclude it) the words shall be applicable to a mere highway, on neither side of which are houses. . . . It is perfectly consistent with that that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in: and in the natural and popular sense of the word 'street,' or the words 'new street,' I should certainly understand a roadway with buildings on each side; it is not necessary to say how far they must, or may be continuous or discontinuous; and by 'new street,' a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it." It was accordingly held that the term "new street" in the Act and the byelaws was applicable to a road which had existed as a country lane with a cinder roadway, with no well-defined footways, and with grass growing at the sides, since a period long before the existence of the local board. The road had been lighted by the board since 1865; it had been sewered by them in 1876 and 1877; cindered footpaths had been made in 1880 and 1881; the roadway was channelled and paved in 1880; and the road was repaired by the board as a highway repairable by the inhabitants at large. There were eighty-seven houses along the road, of which sixty-two had been erected within the last ten years, during which time the byelaws had been in force.⁴

A. L. Smith, L.J., said that "the popular meaning of 'new street' is a lane or roadway which has been built upon."⁵

It had previously been decided, with reference to the Metropolis Management Acts, which give the express definitions of "new street" quoted below, that an old highway became a new street on the erection of buildings along it.⁶

Sect. 250 of the Metropolis Management Act, 1855,⁷ enacts that "in the construction of this Act . . . the word 'street' shall apply to and include any highway (except the carriageway of any turnpike road) and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage." Sect. 112 of the Metropolis Management Act, 1862,⁸ enacts that "the expression 'new street' shall apply to and include all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof, had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out."

(1) *Ante*, p. 23.

(2) See *per* Cave, J., in *Arter v. Hammer-smith Vestry*, *post*, p. 377.

(3) See *per* Brett, L.J., in *Robinson v. Barton Eccles Loc. Bd.*, *infra*; L. R. 21 Ch. D. at p. 635.

(4) *Robinson v. Barton Eccles Loc. Bd.* (1883), L. R. 8 A. C. 798; 53 L. J. Ch. 226; 50 L. T. 57; 48 J. P. 276.

(5) In *Davis v. Greenwich District Bd.* (1895), 59 J. P. 517.

(6) *Pound v. Plumstead Bd. of Works*, and *Lord Northbrook v. Plumstead Bd. of Works*

(1871), L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. 461; 36 J. P. 468; *Dryden v. Putney Overseers* (1876), L. R. 1 Ex. D. 223; 34 L. T. 69; 40 J. P. 263, followed in *Camberwell Vestry v. Crystal Palace Co.*, L. R. 1892, 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. 840; 57 J. P. 5.

(7) 18 & 19 Vict. c. 120, s. 250.

(8) 25 & 26 Vict. c. 102, s. 112. The Act of 1894 repealed s. 98 of this Act (as to the formation of new streets), and replaced it by ss. 6, 7, and 9.

New street
under Metro-
politan Acts.

Under these Acts it was also held that a portion of the Edgware Road in the metropolis, not yet built upon to any extent, having formerly been a turnpike road, became a "new street" on the expiration of the trust.⁹ On the other hand, the court held that a magistrate was justified in finding that the portion, within the district of a metropolitan authority, of a road which was built upon to a considerable extent beyond the district, was not a "new street" which could be paved at the owner's expense, because that portion had only one house on one side of it and a house and a chapel and hall on the other side, and no new buildings had been erected for twenty years or were likely to be built for some years to come, although the street came within the definition of "new street" in the above quoted sect. 112.¹⁰ So also under the same Acts where a lane was a private carriage-way with a public footway along one side of it, and the character of it had not been altered by the building of new houses, or otherwise than by the neighbourhood having become more populous, since the passing of those Acts, it was held, notwithstanding the definitions of "street" and "new street" in those Acts, that the lane was not a new street which the vestry could pave at the expense of the adjoining owners.¹¹

A new road was made as an approach to Wandsworth Bridge in 1877, under a special Act which rendered it repairable by the inhabitants at large. No houses were built along it until 1890, when houses were built on one side. In 1896 houses were built on the other side. In proceedings to recover the cost of making it up under the Metropolitan Acts, the magistrate found that it first became a "new street" when the houses were built, and made an order for payment of the expenses by the frontagers; and he was upheld by the Court of Appeal.¹²

A turnpike road in the metropolis was disturnpiked and became repairable by the inhabitants at large in 1864; and houses were built along one side of it by 1883. In 1899 the vestry resolved that it was not paved to their satisfaction, and proceeded to recover the estimated cost of making it up from the frontagers. The magistrate found that the road became a new street in 1883, and it was held that he was justified in so finding, and that the lapse of time and the execution of repairs to the road by the vestry did not prevent the road from being paved as a new street at the cost of the frontagers.¹³

Where sect. 17 of the Public Health Acts Amendment Act, 1907,¹⁴ is in force the council have power to vary the position direction termination or level of a proposed new street.

A person built six cottages upon a piece of garden ground adjoining an ancient public lane 6 feet wide and 250 feet long, upon which there had previously been only two houses, the sides of which abutted on the lane, one at each end. The cottages stood 15 feet back from the lane, and had gardens in front, leaving the lane of the same width as before. The builder was convicted, subject to a special case, of having neglected to give proper notices under the byelaws before constructing a new street, and of laying out and forming a new street of less width than that required by the byelaws. The case "found as facts on the facts proved or admitted that the erection of the said cottages in accordance with the said plan would have and had converted the said lane into a new street within the meaning of the Public Health Act, 1875, and the said bye-laws." As to this statement, Denman, J., said that what the magistrates had done was that though they found certain facts, they felt themselves bound in point of law to find it was a new street. On this point of law the convictions were quashed, the court holding that there was no evidence to show more than that the appellant, having land on which he was entitled to build, determined to build six cottages without contemplating the formation of a new street, and nothing to justify the magistrates in coming to the conclusion that the lane became a new street by the act of the appellant alone, without the aid of the other owners. The court discussed the judgment of the Court of Appeal in the case above cited,¹⁵ which was not affected on this point by its

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new street.

(9) *Hampstead Vestry v. Cotton* (1885), L. R. 16 Q. B. D. 475; 55 L. J. Q. B. 213; 54 L. T. 441; 50 J. P. 453; affirmed on other points, L. R. 12 A. C. 1; 56 L. J. Q. B. 225; 56 L. T. 1; 51 J. P. 340.

(10) *Battersea Vestry v. Palmer*, L. R. 1897, 1 Q. B. 220; 66 L. J. Q. B. 77; 75 L. T. 362; 60 J. P. 774.

(11) *Arter v. Hammersmith Vestry*, L. R. 1897, 1 Q. B. 646; 66 L. J. Q. B. 460; 76 L. T. 390; 61 J. P. 279.

(12) *Allen v. Fulham Vestry*, L. R. 1899,

1 Q. B. 681; 68 L. J. Q. B. 450; 80 L. T. 253; 63 J. P. 212.

(13) *Simmonds v. Fulham Vestry*, L. R. 1900, 2 Q. B. 188; 69 L. J. Q. B. 560; 82 L. T. 497; 64 J. P. 548. See also, as to estoppel by previous repairs, *Crosse v. Wandsworth Bd. of Works* (1898, Q. B. D.), 79 L. T. 351; 62 J. P. 807.

(14) *Post*, Part I., Div. III.

(15) *Robinson v. Barton Eccles Loc. Bd.*, ante, p. 376.

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new street—
continued.

reversal on another point by the House of Lords,¹⁶ Hawkins, J., saying that it was there "pointed out that a street may become a new street in a variety of ways. If the land on both sides belongs to one owner, and he lays it out in building plots, and begins to build on one plot, he would begin to form a new street, having an intention to go on and make a street. Another way is where the land belongs to different owners, and by their united acts you can find an intention indicated to make a new street in the popular sense of the term. In that case it would be impossible to come to any other conclusion than that it was a new street. Another case is where the land belongs to different owners, and no tribunal could say that there ever was at the same time an intention amongst them all to build. In that case the precise time at which it does become a new street may be a question of some difficulty, and it is a question of fact to be decided by the justices."¹⁷

In a later case the lessee of a piece of ground adjoining a private road 15 feet wide, was held not to be laying out the road as a new street by commencing to build two houses on his piece of ground. *Per Day, J.* : "It is utterly unreasonable to require a person who has a lease of one bit of the land to make the whole length of this imaginary new street 36 feet wide."¹⁸ And the Court of Appeal upheld the refusal by Lawrance, J., of an injunction to restrain the purchaser of the land on one side of an alley already built upon on the other side from erecting houses fronting the street into which the alley led, although the flank wall of one of such houses abutted on the alley.¹⁹

Where a person had erected thirteen houses, including a terrace of eight houses, on a piece of land 420 feet in length, fronting a road, and there had for a hundred years been six houses on the opposite side of the road, it was said by the court that there was sufficient evidence to justify a finding by the justices either that he had or that he had not, laid out a new street; the question for the justices being whether, under all the circumstances of the case, including the fact that the builder had at first sent in plans showing his boundary wall set back so as to widen the road to the width prescribed for new streets by the bye-laws, they thought as a matter of fact that when he began to build he meant to begin and did begin to execute a building plan which would when finished constitute the road a street.²⁰

A conviction for breach of a bye-law requiring new streets to be formed of a certain width, and for neglecting to comply with a notice from a local board calling upon the landowner to make the street of the required width in accordance with the deposited plans, was quashed, in a case in which it appeared that in 1878 a plan showing the street of a sufficient width, and also showing certain houses intended to be erected along it, had been deposited with the board by the then owner, and approved. The houses had been completed in 1879, but the street was, in that and the following year, contracted to a width of 9 feet by the adjoining owner enclosing his land, which up to that time had been open. The local board then called upon the mortgagee in possession to make the street of the width shown on the plan, and on his default took proceedings against him, but it was held that they had power beforehand to see that the proposed street should be of the proper width, and could not, long after the houses had been built, call on him to make a street on what was not his own land.²¹

Under a local Act incorporating sect. 63 of the Towns Improvement Clauses Act, 1847,²² which enacts that it shall not be lawful to make or lay out any new street unless the same be of a certain width, an injunction was granted to restrain the defendants, who were brickmakers, from building or erecting any buildings or erections on land adjoining a certain lane, so as to make or lay out that lane as a new street of less than the prescribed width. The lane was of irregular width, and North, J., said that the defendants were defining the road along which people were to pass by erecting a wall and altering the state of things so that there would be a wall on each side limiting the width of the road to 21 or 22 feet, and that which would be the line of road between the walls would be a new street within the meaning of the section.²³

Under bye-laws made in the model form in pursuance of the present section and

(16) As to which, see *post*, p. 381.

(17) *Williams v. Powning* (1883), 48 L. T. 672; 47 J. P. 486.

(18) *Gozzett v. Maldon U.S.A.*, L. R. 1894, 1 Q. B. 327; 70 L. T. 414.

(19) *St. George's Loc. Bd. v. Ballard*, L. R. 1895, 1 Q. B. 702; 64 L. J. Q. B. 547; 72 L. T. 345; 59 J. P. 182.

(20) *Wetherby R.D.C. v. Hewling*, 1897 Loc.

Gov. Chron. 69.

(21) *Thompson v. Failsworth Loc. Bd.* (1881), 46 J. P. 21. See also *Reg. v. Newcastle-upon-Tyne Cpn.*, *post*, p. 400 (4); and *Skinner's Case*, *post*, p. 396 (53).

(22) 10 & 11 Vict. c. 34, s. 63.

(23) *A.G. v. Rufford & Co.*, L. R. 1899, 1 Ch. 537; 68 L. J. Ch. 179; 80 L. T. 17; 63 J. P. 232.

requiring that "every person who shall lay out a new street which shall be intended for use as a carriage-road shall so lay out such street that the width thereof shall be 36 feet at the least," an action for an injunction, and a mandatory order to the defendant to remove the buildings which he had erected, or, in the alternative, a declaration that the local authority were entitled to remove them, was dismissed. In this case the defendants had erected and were continuing to erect houses within their own boundary fences along two old highways in some cases at a less distance than 36 feet from the opposite boundary of the road, and had not removed their fences which were within that distance. Joyce, J., held that this did not constitute "laying out or constructing a new street" within the meaning of the bye-laws, and his decision was upheld by the Court of Appeal. Collins, M.R., pointed out that the strip of ground between the front of the houses and the fence had not in any sense become a street, and declined to differ from the inference of fact drawn by Joyce, J., namely, that the defendants were not then engaged in forming a new street. Romer, L.J., said that it was clear that the bye-law in question was dealing with something in the nature of a physical laying out, and not what he called a metaphorical laying out, of the street, and that it related to something to be done, or contemplated to be done, on the land in question which was to be the street. The question whether such an action would lie without the Attorney-General being a party was also considered by both courts in this case, and it was held that it would not lie, as the local authority had no proprietary rights which were being interfered with by the defendants, and a special remedy by proceeding for penalties was provided.²⁴

The decision in this case that the laying out must be "physical" and not "metaphorical" was applied even where the fences had been removed.²⁵ The defendant was convicted for not giving notice and depositing a plan and section of a new street, the stipendiary magistrate finding that he was "a person intending to lay out a new street" within the meaning of bye-laws as to new streets. He had sold building plots along a private road over which he had a right of way, but the plots were separated from the road by a strip of land six feet wide which he reserved. The purchasers deposited plans for the erection of buildings on their plots, and the appellant removed the fence separating the strip from the road, and threw the strip into the road. The Divisional Court allowed the appeal, holding that there was no substantive evidence to support the magistrate's finding. *Per* Darling, J., "I think he really intended to keep this strip of land so that his purchasers might, if they chose, lay out a new street, and that they, if they so intended, would have to give notice and deposit plans."

On the other hand a person who erected a fence at a distance of 5 feet from an old agricultural fence, and levelled the surface between the fences and covered it with rubble and sand, leaving openings in the new fence as a means of access to cottages erected for him at about the same time at a distance of 6 or 7 feet from the fence, was held by Parker, J., in an action in the name of the Attorney General, both to have "laid out" and to have "constructed" a new street; and an injunction to restrain the continuance of such street without complying with the bye-laws as to new streets was granted against him, the action being dismissed as against the actual builder who had completed his contract before the issue of the writ.²⁶

But in another action,²⁷ which was brought in the name of the Attorney General for a declaration, and an injunction to restrain the breach of a bye-law requiring new streets to be laid out thirty-six feet wide, the owner of a field surrounded by a hedge and abutting on an old road fourteen feet wide, had built ten houses backing on the old road. He had left the hedge where it was, and a space of sixteen feet between the houses and the hedge. He had done nothing to the old road itself, though he had laid drains for his houses under it, made openings in the hedge, placed gates in the openings, and laid cement paths from the gates to the houses. The other side of the road had already been built upon fully. The action was dismissed with costs on the ground that there had been no such "physical

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new street—
continued.

(24) *Devonport Cpn. v. Tozer & Son*, L. R. 1903, 1 Ch. 759; 72 L. J. Ch. 411; 88 L. T. 113; 67 J. P. 269; 1 L. G. R. 421. See also *Greenwood v. Queensbury* U.D.C. (1906, K. B. D.), 3 Architect's L. R. 145, where a conviction under a bye-law was quashed on appeal by special case, there having been no alteration to the boundary wall, Lord Alverstone, C.J., saying: "The appellant merely built within his own curtilage."

(25) *Fellows v. Sedgeley* U.D.C. (1906), 70 J. P. 412; 4 L. G. R. 970. See also *Sunderland Cpn. v. Skinner*, *post*, p. 396 (53).

(26) *A.G. v. Gibb*, *ante*, p. 375.

(27) *A.G. v. Dorin* (Ch. D.), L. R. 1912, 1 Ch. 369; 81 L. J. Ch. 225; 106 L. T. 18; 76 J. P. 181; 10 L. G. R. 194. See also *Mason v. Rodger*, 1913 S. C. (S.) 52; 50 Sc. L. R. 41; 4 Glen's Loc. Gov. Case Law 79.

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new street—
continued.

laying out " of the old road as a " new street " as had been held to be necessary in the *Devonport Case*, *supra*.

The erection of a factory upon a site which was distant about 180 feet from a proposed new street, and the construction of an access to the factory from the existing track on a portion of the site of such proposed street, were held not to be the erection of a new building " upon the site of " or " upon a site abutting upon " the roadway of the proposed street within the meaning of a condition attached by the London County Council to the sanction which they had given to the formation of the new street; and the improvement of the existing track by placing clinkers on it was held not to be the commencement of the formation or laying out of the new street.²⁸

By a provision of the Metropolis Management Act, 1862, which is now superseded by the London Building Act, 1894, it was enacted that " no existing road, passage, or way " of a less width than 40 feet should be formed or laid out for building as a street for the purposes of carriage traffic, unless widened to the full width of 40 feet, etc., and that any road, etc., to be formed or laid out for the purposes aforesaid should be deemed to be a new street, and become subject to all the provisions of the Act and to the provisions and penalties of any bye-laws in pursuance thereof in relation to sewerage, drainage, or paving, and to width, construction, surface inclination, and other requirements and particulars.²⁹ This provision as to widening was held not to apply where the new buildings abutted in rear upon an old lane of less width than 40 feet; ³⁰ nor where back gardens abutted on a road which the builders of other houses had begun to lay out for building as a street, even though the owner had erected a new fence instead of that which divided his ground from the previously existing road.³¹

A person erected a shop with a side entrance, and a coach-house and stable with their only entrance, from a vacant space over which he had no control, though it had been marked on the plan of the building estate as a proposed street. He was held not to have commenced to " form " a street within the meaning of the London Building Act, 1894.³²

Construction
of new street.

A bye-law that no building should be erected until the street had been constructed to the approval of the local authority was considered good by the Court of Appeal on the ground that " the construction of new streets " included the construction of the buildings by its side.³³

In the case in the House of Lords above cited,³⁴ the Lord Chancellor for argument's sake assumed that bye-laws as to the " construction of new streets " might deal not merely with the roadways or the footways of the streets, but also with the buildings erected or to be erected on each side of them—the whole construction—every part of those buildings external and internal; but he did not express an opinion to that effect, though cases were cited in support of the suggestion.³⁵

The construction of the houses in the streets may be provided for by bye-laws under clauses (2), (3), and (4) of the present section. The Local Government Board, however, stated that the present section did not appear to them to authorise the making of bye-laws regulating the line of buildings in new streets. The line of buildings in urban districts is to some extent dealt with by the Public Health (Buildings in Streets) Act, 1888.³⁶

A bye-law that " every person who constructs a new street shall cause the kerb of each footpath in such street to be put in such level as may be fixed or approved by the urban sanitary authority ": and that " no person shall commence the erection of a building in a new street unless and until the kerb of each footpath therein shall have been put in pursuant to the precedent requirement "; was held to be unreasonable and therefore unenforceable on the following grounds, viz.: that there was no limit of time or place; that whether a new street was broad or narrow, short or extensive, the kerb of each footpath must be laid on both sides before the owner of any portion of land on it could begin to build; that the bye-law

(28) *London C.C. v. Collins* (1905, K. B. D.), 93 L. T. 540; 69 J. P. 401; 3 L. G. R. 1103. See also *London C.C. v. King* (1905, K. B. D.), 69 J. P. 406; 3 L. G. R. 1046.

(29) 25 & 26 Vict. c. 102, s. 98; 57 & 58 Vict. c. ccxiii., s. 11.

(30) *Metropolitan Bd. of Works v. Cox* (1865), 19 C. B. (N.S.) 445.

(31) *Metropolitan Bd. of Works v. Clever* (1868), L. R. 3 C. P. 531; 37 L. J. M. C. 126; 18 L. T. 723.

(32) *London C.C. v. Dixon*, L. R. 1899,

1 Q. B. 496; 68 L. J. Q. B. 526; 80 L. T. 232; 63 J. P. 390.

(33) *Baker v. Portsmouth Cpn.* (1878), L. R. 3 Ex. D. 157; 47 L. J. Ex. 223; 37 L. T. 822; 42 J. P. 278.

(34) *Robinson v. Barton Eccles Loc. Bd.*, ante, pp. 376, 377.

(35) See *Baker v. Portsmouth Cpn.*, *supra*, and *Galloway v. London City Cpn.*, ante, p. 359.

(36) *Ante*, p. 366.

was not even confined to the particular piece of land opposite to that on which the owner might be going to build; and that it put it in the power of the urban sanitary authority to dictate to a man when he should begin to build; and it was doubted whether the authority had power to make such provisions with respect to matters specifically provided for (viz. by sect. 150), since they amounted to imposing on landowners an absolute duty to do certain things under pain of incurring a penalty, while that section merely provides that if they decline to do them, there shall be no penalty, but the authority shall themselves do the work, and recover the expenses.³⁷

A person had been held to have infringed a bye-law requiring any one who “constructed a new street” to construct it of the width of 30 feet, by erecting a wall along the boundary of his own land and thereby leaving only a space of 7 feet 3 inches between the wall and the front of a row of houses built before the bye-law came into force, and shutting off the access from the houses to the existing roadway which was within his own boundary.³⁸ But an appeal was allowed by the Divisional Court against the conviction of a person who had merely built a wall on the site of a previously existing wooden fence, which had formed the boundary of his land and had also defined the limits of the adjoining road which did not belong to him.³⁹

A street is not a “principal” street within the meaning of a bye-law relating to such streets merely because the local authority have required it to be laid out 36 feet wide.⁴⁰

A bye-law, under a general heading of width and level of new streets, provided for the width of new streets, dividing them into front, cross, and back streets, and in a subsequent paragraph stipulated that no dwelling-house should be built immediately adjoining any back street. The court held that the words “back street” must be read as “new back street.”⁴¹

A bye-law leaving the width of new streets to the discretion of the local authority was held applicable to passages at the backs of houses for affording access to ashpits, etc.⁴²

In 1922 the Minister of Health ruled that, where a local authority’s byelaws did not contain the “principal approach” clause, a new footpath, being a “street” within sect. 4 and the present section, must be 36 feet wide.

As to the power to vary the proposed “level” of a new street, see sect. 17 of the Public Health Acts Amendment Act, 1907.⁴³

Lord Selborne, L.C., expressed the opinion that the “level of new streets” was confined to the level of the carriage-way and footway; and the House of Lords decided that the “width of new streets” was confined in like manner, Lord Selborne saying that it would be a very extravagant thing to read the bye-law as meaning a street in one sense as to width and in another sense as to level.⁴⁴

A bye-law requiring new streets above 100 feet in length to be 30 feet wide was held to be reasonable.⁴⁵

A register of public streets was required to be kept by a local authority in Scotland under certain Building Regulation Acts, which provided that with regard to each street an entry (amongst others) might be made of the width of the street. It was held by the House of Lords that the “width” meant the actual width, not necessarily a measurement of scientific and mathematical accuracy, but a width fixed with regard to actual conditions and not based on theories as to what would be a public improvement.⁴⁶

As to the power to vary the proposed “termination” of a new street, or the proposed “openings” at their ends, see sect. 17 of the Public Health Act of 1907.⁴³

A bye-law that “every person who shall construct a new street shall provide at one end at least of such street an entrance of a width equal to the width of such street, and open from the ground upwards” (model bye-law, No. 8), was held to be reasonable and valid; and an injunction was granted by North, J., restraining a

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of new street
—continued.

Principal
street.

Back street.

Footpath.

Level and
width of
new street.

Entrance to
new street.

(37) *Rudland v. Sunderland Cpn.* (1884), 52 L. T. 617; 49 J. P. 359; 33 W. R. 164. The case of *Woodhill v. Sunderland Cpn.* (1887, 57 L. T. 303; 51 J. P. 356, n.) turned upon a local enactment, and not a bye-law.

(38) *Roberts v. Richards*, 54 J. P. 693; 1890 W. N. 76.

(39) *Bushell v. Creer* (1900), 64 J. P. 600. See also *London C.C. v. Heathman* (1905), 69 J. P. 222; 3 L. G. R. 1016; *London C.C. v. King* (1905), 69 J. P. 406; 3 L. G. R. 1046; decided under the London Building Act, 1894.

(40) *A.G. (Balinforth) v. Pudsey Loc. Bd.*

and *Bell* (1895, North, J.), 59 J. P. 329.

(41) *Shiel v. Sunderland Cpn.* (1861), 6 H. & N. 796; 30 L. J. M. C. 215; 25 J. P. 647.

(42) *Reg. v. Goole Loc. Bd.*, L. R. 1891, 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. 595; 55 J. P. 535.

(43) *Post*, Part I., Div. III.

(44) *Robinson v. Barton Eccles Loc. Bd.*, ante, p. 376.

(45) *Roberts v. Richards*, 1890 W. N. 76; 54 J. P. 693.

(46) *Caledonian Ry. Co. v. Glasgow Cpn.*, L. R. 1907 A. C. 160.

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Entrance to
new street—
continued.

landowner from building on his land so as to form a "bottle-neck" street, although he could not provide an entrance of the width required by the bye-law on his own land.⁴⁷

The "entrance" to a new street was distinguished by Kekewich, J., from the "mode of access" to the street in a later case where the entrance was from a narrow public road, and an interlocutory injunction was granted to restrain the landowner from constructing or commencing the new street until an entrance should have been provided according to the bye-law;⁴⁸ but at the trial before Wills, J., the injunction was dissolved, the learned judge holding that the "entrance" meant a practicable way into the street, and considering that the language in the report of the *Hendon Case* did not sufficiently indicate what it was that North, J., did decide.⁴⁹ In delivering his judgment, Wills, J., said, "I should say that the word 'entrance' meant an opening into a street. In many cases it would depend upon local circumstances as to what was meant by 'entrance,' but I should say that in most cases it meant the actual opening. In some streets, however, there was no proper entrance, because they might abut upon another road at right angles. I cannot believe that in such cases, if the public road was not more than 20 feet wide, a man could be prevented from making a 40 feet road into it."⁵⁰

The above decisions of North, J., and Kekewich, J., were followed by Pollock, B., and Kennedy, J., in a case in which the new street appears to have been intended to form a continuation in a rural district of an existing street in an adjoining urban district. The existing street was of less width than that prescribed for new streets in the rural district, but was of the width prescribed for such streets in the urban district except at the point of junction where it was somewhat narrower.⁵¹

Sect. 98 of the Metropolis Management Act, 1862 (like No. 8 of the model bye-laws of the Local Government Board as to new streets and buildings), required the entrance to a new street to be "open at both ends from the ground upwards." It was held that this enactment required the street to be a thoroughfare, and prevented the erection of a barrier across the end of the street to exclude the public; and that a person could be convicted under it as for a continuing offence.⁵²

A new carriage-way leading from and eventually turning back into the same street was held to "communicate at both ends with a public carriage-way," within the meaning of the London County Council (General Powers) Act, 1890.⁵³

Two years after a new street had been completed in accordance with the bye-laws, but before it had become a highway, the owner erected gates across its ends. The justices convicted him of a breach of the bye-laws requiring persons constructing new streets to construct them (1) so that the width of the carriage-ways shall be of the entire width of the street, and (2) so that one end at least shall be open to the full width of the street. It was held that there was no evidence upon which the justices could find that such erection of gates was the "construction of a new street," their other findings being inconsistent with this, and the conviction was accordingly quashed.⁵⁴ The bye-law to fit such a case would be the common one providing against altering work done in accordance with the bye-laws in such a way as to make it infringe a bye-law.⁵⁵

Cul-de-sac
streets.

A Scottish enactment, authorising local authorities to impose conditions for the purpose of avoiding cul de sac streets,⁵⁶ was held not to allow the prohibition of such streets altogether.⁵⁷

Direct com-
munication
between
streets.

The court refused to interfere with a decision of the Tribunal of Appeal under the London Building Act, 1894, that a new street consisting of two portions at right angles to each other and connecting two other streets did not afford "direct communication" between the two streets, on the ground that the question was one of fact.⁵⁸ And subsequently where a special Act required the London County

(47) *Hendon Loc. Bd. v. Pounce* (1889), L. R. 42 Ch. D. 602; 61 L. T. 465; 38 W. R. 377.

(48) *Bromley Loc. Bd. v. Lloyd* (1892), 66 L. T. 462; 56 J. P. 278.

(49) *Ibid.*, 9 T. L. R. 306.

(50) *Ibid.*; see also Knight's 'Annotated Model Bye-laws,' 5th Edit., App. IV., p. 240, where the judgment of Wills, J., is fully reported.

(51) *Barton Regis R.D.C. v. Stevens* (1896), 61 J. P. 598; 40 S. J. 459; 11 T. L. R. 347.

(52) *Daw & Son v. London C.C.* (1890), 59 L. J. M. C. 112; 62 L. T. 937; 54 J. P. 502.

(53) 53 & 54 Vict. c. cexliii. *London C.C.*

v. Edmondson & Sons, or Edmundson (1892), 66 L. T. 200; 56 J. P. 343.

(54) *Tarrant v. Woking U.D.C.*, L. R. 1914, 3 K. B. 796; 84 L. J. K. B. 314; 111 L. T. 800; 79 J. P. 22; 12 L. G. R. 1293.

(55) See P. H. Am. Act, 1890, s. 23 (4), *post*, Part I., Div. II.

(56) *Burgh Police (Sc.) Act*, 1903 (3 Edw. VII. c. 33), s. 12.

(57) *Kirkcaldy Magistrates v. Earl Rosslyn's Trustees*, 1910 S. C. (S.) 790; 47 Sc. L. R. 692; 1 Glen's Loc. Gov. Case Law 55.

(58) *Woodham v. London C.C.*, L. R. 1898, 1 Q. B. 863; 67 L. J. Q. B. 707; 78 L. T. 553; 62 J. P. 342.

Council to maintain public streets (of not less than a specified width along the northern and southern boundaries of a certain piece of land) leading into a new central street to be made by them under the Act, it was held by Kekewich, J., that the obligation was to maintain streets leading without inconvenient corners and substantially, though not necessarily mathematically, in a straight line into the new street, and was not satisfied by making a street with two right angle turns in it.⁵⁹

A local authority sanctioned the laying out of a new street on condition that the owner entered into a covenant not to build so as to interfere with the future continuation of the street. The owner entered into this covenant, subsequently sold the land, and the purchaser erected houses in breach of the covenant. It was held that, as the local authority had no land affected by the covenant, they could not enforce it against the purchaser.⁶⁰

“ Buildings.”

In many of the cases cited below in this Note, under the heading “ New Building,” the meaning of the term “ building ” is discussed.

An open shop, having its front built on the foundation of an old wall, and connected by a roof with the front of a house, was held to be a “ building ” within the meaning of an Act prohibiting the erection or continuance of any building within 10 feet of a road.¹

A wooden structure intended to be used as a shop of a considerable size, and likely to last a considerable time, resting on joists, but having its footings or foundations in masonry, and capable of being lifted bodily off the ground by the application of sufficient mechanical power, was, in the opinion of the court, a building within the prohibition in the Metropolitan Building Act, 1855,² which required every building to be “ inclosed with walls constructed of brick, stone, or other hard and incombustible substances.”³ This decision was followed in a case arising under a local Act containing a similar provision. In that case a wooden building, 30 feet long by 13, had been brought to the corner of a new street on wheels, and it was there used as a butcher’s shop; and Lord Coleridge, C.J., said : “ The question is for what purpose the building is there. I think it was not at all intended to be used merely as a caravan, but to all intents and purposes it is a house or building, and is so used; and the wheels have been adopted evidently with the intention of evading the Act of Parliament.”⁴ A small tobacco stall on wheels at the side of a road was held to be a “ building ” within the present section.⁵

The effect of buildings being on wheels was also discussed in the cases cited below.⁶

Parke, J., said ⁷ that a wall would not be a building within the meaning of an Act prohibiting the erection of any building within 10 feet from a road, and added that it had been so held in a case which arose on an Inclosure Act. And in another case Pollock, C.B., said that he much doubted whether a wall was a “ building ” within the provision of the Local Government Act, 1858,⁸ relating to the line of buildings. The Act said “ a house or building,” and building there he thought must mean a chapel or warehouse, or an erection of that kind.⁹ And the provisions of the Metropolis Management Act, 1862,¹⁰ with respect to the line of buildings,

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Covenant as to continuation of street.

New building.

Sheds, &c.

Effect of wheels.

Walls.

(59) *Metropolitan Electric Supply Co. v. London C.C.* (1904), 68 J. P. 501; 2 L. G. R. 1286.
(60) *London C.C. v. Allen* (C. A.), L. R. 1914, 3 K. B. 642; 83 L. J. K. B. 1695; 111 L. T. 610; 78 J. P. 449; 12 L. G. R. 1003. *Tulk v. Moxhay* (1848, 2 Ph. 774) considered. Cf. *Millbourn v. Lyons* (L. R. 1914, 1 Ch. 34), re enforceability of restriction against erection of music hall when land sold before completion of contract for sale in which covenant was contained; and *Mathieson v. Allan's Trustees* (1914, Sc. S., 51 Sc. L. R. 458) and *Anderson v. Dickie* (1914, Sc. S., 51 Sc. L. R. 614), re restriction against user for shops.
(1) *Rex v. Gregory* (1833), 5 B. & Ad. 55; 2 N. & M. 478.
(2) 18 & 19 Vict. c. 122, Sched. I.; now the London Building Act, 1894, 57 & 58 Vict. c. ccxiii., Sched. I.
(3) *Stevens v. Gourley* (1859), 7 C. B. (N.S.)

99; 29 L. J. C. P. 1; 6 Jur. (N.S.) 147; 1 L. T. 33.
(4) *Richardson v. Brown* (1885), 49 J. P. 661. See also *Badley v. Cuckfield R.D.C.*, post, p. 388 (14).
(5) *Staines R.D.C. v. Connell* (1921, Felt-ham P. S.), 85 J. P. Jo. 393. See also *Odwell's Case*, post, p. 385.
(6) *Andrews v. Wirral R.D.C.*, post, p. 398; *Sunderland Cpn. v. Charlton*, ante, p. 368; *Williams v. Weston-super-Mare U.D.C.*, and *London C.C. v. Pearce*, post, p. 385 (25) (33).
(7) In *Rex v. Gregory* (1833), 5 B. & Ad. at p. 561.
(8) 21 & 22 Vict. c. 98, s. 35, similar to s. 155 of the present Act.
(9) *Brown v. Holyhead Loc. Bd.* (1862), 7 L. T. 332; 1 H. & C. 601; 32 L. J. Ex. 25. See also *Regent's Canal Co. v. London C.C.*, post, p. 386 (42).
(10) Now the London Building Act, 1894, see footnote (2), *supra*.

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were held not to prevent a person from building such a wall or fence as would be a reasonable ascertainment of and protection to his property; and it was for the magistrate to determine whether the wall or fence was *bonâ fide* made for that purpose, or was a "building, structure, or erection" which might not be built beyond the general building line.¹¹

A wall, however, which was 11 feet high, and was built for the purpose of an advertising station as well as to serve as a boundary in place of a previously existing dwarf wall only 2 or 3 feet high, was held by the Court of Appeal to be such a "building, structure or erection."¹²

Upper
portion of
building.

With reference to the same provisions it has been held that continuing the erection of a building, above a portion previously erected, in front of the general line of buildings constitutes the erection of a building. In one case the limitation of time in the Summary Jurisdiction Act, 1848, had prevented proceedings from being taken in respect of the erection of the lower portion of the building;¹³ and in another there were no other houses, and therefore no general line of buildings, in existence when the lower portion was erected.¹⁴ In the latter case the Court of Appeal affirmed the decision on the ground that the footings of the external walls of two sides of a shop and a wall erected on them to the height of 12 feet, which constituted the portion first erected, did not themselves constitute a "building structure or erection," and that therefore the appellant in completing the building had erected a building or structure beyond the general line of the houses which had been built in the mean time.¹⁵

Temporary
buildings.

Where sect. 27 of the Public Health Acts Amendment Act, 1907,¹⁶ is in force, local authorities may license temporary buildings subject to certain conditions. In addition to the cases cited below, reference should be made to those cited in the Note to that section.

Brick kiln.

A temporary building for storing workmen's tools, and a brick kiln, were held not to be "buildings" to which the bye-laws requiring notices and deposit of plans were applicable.¹⁷

Steam
roundabouts.

Steam roundabouts, shooting galleries, and the like, were held not to be "structures or erections" within the meaning of the Metropolis Management and Building Act, 1882,¹⁸ which prohibited persons from erecting or setting up wooden structures or erections of a movable or temporary character, without a licence, the structures in question not being intended for the habitation of man, like the other structures to which the Building Acts apply.¹⁹

Hoarding.

And a structure, not containing any feature contemplated by and dealt with in the bye-laws, such as walls in the ordinary sense of the term, foundations, roof, or chimneys, and affording no shelter or protection, but consisting merely of a wooden hoarding varying from 13 to 19 feet in height, enclosing a triangular piece of land on which stood an office shed, and supported by upright timbers, stays and ties, crossing the piece of land, was held not to be a building such as the bye-laws required to be constructed with incombustible walls.²⁰ An advertisement hoarding, 160 feet long by 20 feet high, and supported by stakes driven deep into the ground, was held not to be a building within sect. 40 of the Public Health (Ireland) Act, 1878.²¹

Boiler.

So also a new boiler and flue erected in place of an old boiler and flue in a brewery yard was not a building in respect of which it was necessary to give notice and deposit plans under the bye-laws; the boiler being partly sunk in the ground, and having a casing of 9-inch brick work round it, but no roof or covering.²²

Conservatory.

In holding that a conservatory made of wood and glass was not a building subject to a bye-law requiring new buildings to be enclosed with walls made of incombustible

(11) *Ellis v. Plumstead Bd. of Works* (1893), 68 L. T. 291; 41 W. R. 496; 57 J. P. 359. See also *London C.C. v. Aylesbury Dairy Co.*, L. R. 1898, 1 Q. B. 106; 67 L. J. Q. B. 24; 77 L. T. 440; 61 J. P. 759; *Rea v. London C.C.* (K. B. D.), L. R. 1911, 1 K. B. 740; 80 L. J. K. B. 704; 104 L. T. 501; 75 J. P. 261; 9 L. G. R. 299.

(12) *Lavy v. London C.C.*, L. R. 1895, 2 Q. B. 577; 64 L. J. M. C. 262; 73 L. T. 106; 59 J. P. 630.

(13) *Nathan v. Metropolitan Bd. of Works* (1886), L. R. 1894, 1 Q. B. 230, n.

(14) *Wendon v. London C.C.*, L. R. 1894, 1 Q. B. 227; 63 L. J. M. C. 55.

(15) *Ibid.* (in C. A.), L. R. 1894, 1 Q. B. 812; 63 L. J. M. C. 117; 70 L. T. 440; 58

J. P. 606.

(16) *Post*, Part I., Div. III.

(17) *Fielding v. Rhyl Improvement Comrs.* (1878), L. R. 3 C. P. D. 272; 38 L. T. 223; 26 W. R. 881.

(18) 45 Vict. c. 14, s. 13; now the London Building Act, 1894, 57 & 58 Vict. c. cxxiii., ss. 82-86.

(19) *Hall v. Smallpiece* (1890), 59 L. J. M. C. 97; 54 J. P. 710.

(20) *Slaughter v. Sunderland Cpn.* (1891), 60 L. J. M. C. 91; 65 L. T. 250; 55 J. P. 519.

(21) 41 & 42 Vict. c. 52, s. 40. *Dublin Cpn. v. Allen & Sons* (1903, Dublin P. C.), 38 Ir. L. T. Rep. 78.

(22) *Gery v. Black Lion Brewery Co.* (1891), 55 J. P. 711.

substances, Lord Esher, M.R., said that in his opinion it was not such a building, although he would not say that no conservatory could come within the bye-law. But this conservatory had not a single element of a building within the bye-law. Bowen, L.J., said that the conservatory in the case seemed nothing but a magnified glass frame, and the wording of the bye-law was not applicable to it. And Fry, L.J., said that the bye-law dealt with buildings capable of being enclosed with walls. Conservatories were not capable of being so enclosed, as they required light. The very language of the bye-law was not applicable to such structures: he was, however, far from saying that a bye-law might not be framed applicable to conservatories.²³

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A coffee-stall was held to be a "new building" of which it was necessary to deposit plans in pursuance of the bye-laws²⁴; and under a bye-law prohibiting, except under certain restrictions, the erection on the foreshore of any booths, sheds, tents, stands, stalls, shows, exhibitions, swings, roundabouts, "or other erections," a coffee-stall on wheels which was brought on the foreshore was held to be an erection.²⁵

Coffee-stall.

An enclosed wooden erection, with a wooden floor, a wooden roof covered with felt, and a door, placed on an esplanade as a shelter for a weighing machine used by visitors, in charge of the defendant during the day and locked up at night, and containing a table, two chairs and some hat pegs, was held not to be a building within the meaning of the bye-law requiring the walls to be made of incombustible materials²⁶; and the same conclusion was arrived at in the case of a wooden structure with a canvas roof and movable front, used during the summer months for the sale of light refreshments.²⁷

Lock-up shop.

A wooden stable was held to be a "new building," although the bye-law in question required the plans to show the situation of the fireplaces, chimneys, etc., which it was not proposed to provide for the stable; Wills, J., saying that the words of the bye-law ought to be read as if they were qualified by the words "if any."²⁸

Stable.

A portable wooden theatre, which had never remained in one place more than five months, was held by the Vice-Chancellor of the Palatine Court of Lancaster not to be a "building" within the meaning of the present section or of bye-laws made under it.²⁹

Portable theatre.

A structure 65 feet long by 21 feet wide, with a canvas roof, was made up in sections and could be put up or removed in a few days. It was used for religious meetings, and held not to come within the scope either of Irish bye-laws or of the Irish Acts relating to building beyond the building line.³⁰

Mission hall.

A clause in the Metropolis Management and Building Acts (Amendment) Act, 1882,³¹ exempting wooden structures or erections of a movable or temporary character erected by a builder for use during the construction alteration or repair of any building, from a provision prohibiting the erection of such structures or erections without the licence of the Metropolitan Board of Works, was held to apply only to structures for the builder's own use during the process of rebuilding, and not to include a structure erected for carrying on the business of a publican during the alteration of his public-house.³² A builder's office, made of wood, with a zinc roof, and standing on wheels, which was taken to any place where it was required in connection with building operations, and which was kept in the builder's yard and used as a pay office for his men when not so required, was afterwards held not to be a "structure or erection" at all, and therefore, apart from the exempting clause, not to come within the substantive enactment.³³

Builders' offices.

A wooden house or "bungalow" erected by manufacturers of such structures

Specimen bungalow.

(23) *Hibbert v. Acton Loc. Bd.* (1889), 5 T. L. R. 274. See also *Leicester Cpn. v. Brown*, ante, p. 368. But see *Clifford v. Holt*, post, p. 386.

(24) *Odwell v. Willesden Loc. Bd.*, 1891 Loc. Gov. Chron. 996. See also the *Staines' Case*, ante, p. 383.

(25) *Williams v. Weston-super-Mare U.D.C.* (No. 2), post, p. 502 (73).

(26) *Southend-on-Sea Cpn. v. Archer* (1901), 70 L. J. K. B. 328; 84 L. T. 264; 65 J. P. 292.

(27) *Southend-on-Sea Cpn. v. Romanis* (1901), 70 L. J. K. B. 328; 84 L. T. 264; 65 J. P. 292.

(28) *South Shields Cpn. v. Wilson* (1901), 84 L. T. 267; 65 J. P. 294. And see *Hobbs*

v. Dance, post, p. 405, and *Collins v. Greenwood*, post, p. 390.

(29) *Newell v. Ormskirk U.D.C.* (1907), 71 J. P. 119, following an unreported decision of the Divisional Court in *Nant-y-glo U.D.C. v. Ebley*.

(30) *Dublin Cpn. v. Irish Church Missions*, 1901 Ir. K. B. 387.

(31) 45 Vict. c. 14, s. 13, now replaced by London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), s. 84.

(32) *London C.C. v. Candler* (1891), 60 L. J. M. C. 114; 55 J. P. 679.

(33) *London C.C. v. Pearce*, L. R. 1892, 2 Q. B. 109; 66 L. T. 685; 56 J. P. 790. See also *Fielding's Case*, ante, p. 384.

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as a specimen of their wares, and exposed for sale,³⁴ was held not to come within the same enactment.

Platforms.

Movable seating, consisting of tiers of wooden platforms, capable of accommodating 3,000 persons, which was from time to time erected for spectators at exhibitions in the Agricultural Hall, Islington, was not itself a "building or structure or work" with respect to which a building notice was required to be sent to the district surveyor under the London Building Act, 1894, before it was begun.³⁵ But a structure made wholly of wood, except so far as nails were used in its construction, and erected for the temporary purpose of enabling persons to view a public procession, was held to come within sect. 84 of the same Act.³⁶

Electric-light boxes.

Electric-light boxes constructed under the footpaths of a street were held to come within the expression "building or structure or work" in sect. 145 of the London Building Act, 1894, so as to render it necessary to give notice to the district surveyor before commencing to construct them.³⁷

Meaning of building in other Acts.

The following decisions on the meaning of the term "building" had reference to provisions not relating to the regulation of the mode of constructing buildings:—Arches used as store-rooms under a street were held to be "buildings" within the meaning of sect. 7 of the Gasworks Clauses Act, 1847.³⁸ A greenhouse was protected by injunction, as a "building" within sect. 3 of the Prescription Act,³⁹ against interference with its ancient lights.⁴⁰ A screen to prevent the acquisition of a right of light was held not to be a "building" within the Disused Burial Grounds Act, 1884.⁴¹ The wall supporting the towing path of a canal was held not to be a "house or other building or manufactory" within sect. 92 of the Lands Clauses Act, 1845.⁴²

Meaning of building in covenants.

A vinery was held to be a "building" within a covenant that no building should be erected.⁴³ Bay windows, projecting 3 or 4 feet from the main line of houses, and carried from the foundation to the roof, came within a covenant not to erect "any building" on the land conveyed nearer to the road than the line of frontage of the present house.⁴⁴ But an advertisement hoarding was held not to be a "building" within the meaning of a covenant that all buildings to be erected on the land conveyed should have a stuccoed front, slated roof, etc.⁴⁵

Meaning of one building.

A building divided into separate flats, intended to be occupied by different tenants, was held to be only one building so far as concerned the fees payable to the district surveyor under the Metropolitan Building Act, 1855,⁴⁶ in respect of new buildings.⁴⁷

With reference to a prohibition in the London Building Act, 1894,⁴⁸ prohibiting the erection of a building on the side of a new street less than 50 feet wide to a height greater than the width of the street, the Court of Appeal held that it was a question of fact in each case whether the building should be treated as a whole or might be regarded as several distinct buildings; and decided that a building could not be erected in steps or terraces with a series of fronts one behind the other to a height exceeding the height to which the front immediately abutting on the street could have been erected.⁴⁹

Meaning of public building.

The model bye-laws of the Local Government Board under the present section define "public building" as meaning "a building used or constructed or adapted to be used, either ordinarily or occasionally, as a church, chapel, or other place

(34) *London C.C. v. Humphreys*, L. R. 1894, 2 Q. B. 755; 63 L. J. M. C. 215; 71 L. T. 201; 58 J. P. 734.

(35) 57 & 58 Vict. c. ccxiii., s. 145. *Venner v. McDonell*, L. R. 1897, 1 Q. B. 421; 66 L. J. Q. B. 273; 76 L. T. 152; 61 J. P. 181.

(36) *Westminster City Cpn. v. London C.C.*, L. R. 1902, 1 K. B. 326; 71 L. J. K. B. 244; 86 L. T. 53; 66 J. P. 199.

(37) 57 & 58 Vict. c. ccxiii., s. 145. *White-chapel District Bd. of Works v. Crow* (1901), 84 L. T. 595; 65 J. P. 549.

(38) *Thompson v. Sunderland Gas Co.*, post, p. 417. See also Note to that section, post, Vol. II., p. 1203.

(39) 2 & 3 Wm. IV. c. 71, s. 3.

(40) *Clifford v. Holt*, L. R. 1899, 1 Ch. 698; 68 L. J. Ch. 332; 80 L. T. 48; 63 J. P. 22.

(41) 47 & 48 Vict. c. 72, s. 3. *Paddington B.C. v. A.G.*, L. R. 1906 A. C. 1. Further as to this case, see Note to re-enactment of Loc. Gov. Am. Act, 1861, s. 21, in Sched. V.,

Part III., post.

(42) *Regent's Canal Co. v. London C.C.*, post, Vol. II., p. 1587.

(43) *Bowes v. Law* (1870), L. R. 9 Eq. 636; 39 L. J. Ch. 483; 22 L. T. 267.

(44) *Lord Mannors v. Johnson* (1875), L. R. 1 Ch. D. 673; 45 L. J. Ch. 404; 24 W. R. 481.

(45) *Foster v. Fraser*, L. R. 1893, 3 Ch. 158; 63 L. J. Ch. 91; 69 L. T. 136; 57 J. P. 646.

(46) 18 & 19 Vict. c. 122, Sched. II., Part I., now London Building Act, 1894, 57 & 58 Vict. c. ccxiii., Sched. III.

(47) *Moir v. Williams*, L. R. 1892, 1 Q. B. 264; 61 L. J. M. C. 33; 66 L. T. 215; 56 J. P. 197. See also *A.G. v. Melville*, post, p. 390; *London C.C. v. Edwards*, cited in Note to Infectious Disease (Notification) Act, 1889, s. 3, post, Part II., Div. I.

(48) 57 & 58 Vict. c. ccxiii., s. 49.

(49) *A.G. v. Metcalf*, L. R. 1908, 1 Ch. 327; 72 J. P. 97. See also, as to "one building," ante, pp. 31, 32, and *Rex v. Preston R.D.C.*, post, p. 401.

of public worship, or as a hospital, workhouse, college, school (not being merely a dwelling-house so used), theatre, public hall, public concert-room, public ballroom, public lecture-room, or public exhibition-room, or as a public place of assembly for persons admitted thereto, by tickets or otherwise, or used or constructed or adapted to be used, either ordinarily or occasionally, for any other public purpose." With reference to a similar definition of the expression in the Metropolitan Building Act, 1855,⁵⁰ an ambulance station erected by the Metropolitan Asylums Board, for housing ambulances, stabling horses, and accommodating the ambulance staff, and from which the general public were rigorously excluded, was, notwithstanding a contrary finding by the magistrate, held not to be a "public building," so as to require plans to be deposited and notice to be given under a bye-law relating to such buildings.⁵¹ And an ordinary dwelling-house, altered and adapted by the Metropolitan Asylum District Managers as a home for children of defective intellect or bodily infirmity, was held not to be a "public building" (defined as including a "hospital") within the meaning of the London Building Act, 1894.⁵² *Per* Bruce, J., "I think that the substance of that decision⁵³ is that a place used for public purposes means not a place used in the public interest, but a place to which the public can demand admission or to which they are invited to come."⁵⁴

On the other hand, a workhouse was held to be a "public building" within the meaning of the Factory and Workshop Act, 1901,⁵⁵ so as to render the guardians liable to a penalty for not securely fencing a steam engine in "that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade or for the lighting of any street, public place or *public building*, or of any hotel or of any railway or other industrial undertaking."⁵⁶

The model bye-laws define "building of the warehouse class" as meaning "a warehouse, factory, manufactory, brewery, or distillery." And justices were upheld in deciding that in determining whether a building was of the warehouse class within the meaning of the bye-laws, they must look at the building as a whole. The building in question was a steam bakery with stables forming part of it, and the justices had held that it did not come within a bye-law which related solely to domestic buildings, because looked at as a whole it was "of the warehouse class."⁵⁷ In the case cited below,⁵⁸ Lord Alverstone, C.J., said: "It would be straining language to say that an ordinary barn, which is nothing more than a store-room for grain, is a warehouse" within the above definition.

"New Building."

With regard to the person who is responsible under the bye-laws for the mode of construction of a new building, see the Note on the "person responsible."¹

Under sect. 159 of the present Act, the "erection of a new building" includes the re-erection of an old building, the conversion into a dwelling-house of that which was not constructed for human habitation, and the conversion of one dwelling-house into two. And where sect. 23 of the Public Health Acts Amendment Act, 1907,² is in force, various other alterations to existing buildings make them "new buildings." See also sect. 33 of the Adoptive Act of 1890.³ The cases relating to such "conversions" will be found in the Notes to those enactments.

A partly erected building was held to have been "erected" for the purposes of sect. 13 (1) (b) of the Defence of the Realm (Acquisition of Land) Act, 1916.⁴

Where a wooden building on wheels had been constructed elsewhere and then brought to the corner of a new street, Lord Coleridge, C.J., said, "the question is asked, when could it be said to begin to be erected? I think it began to be erected when it was put where it is. The beginning and completion may mean in this instance much the same thing."⁵

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Meaning of
public
building—
continued.

Building of
the ware-
house class.

Person
responsible.
Meaning of
erection of
new building.

Date of
erection.

(50) 18 & 19 Vict. c. 122, s. 3.
(51) *Josolyne v. Meeson* (1885), 53 L. T. 319; 49 J. P. 805.
(52) 57 & 58 Vict. c. cexiii., s. 5 (27).
(53) *I.e., Josolyne v. Meeson, supra.*
(54) *Moses v. Marsland*, L. R. 1901, 1 Q. B. 668; 70 L. J. K. B. 261; 83 L. T. 740; 65 J. P. 183.
(55) See Sched. VI., Part I. (20), *post*, Vol. II., p. 2170.
(56) *Mile End Old Town Guardians v. Hoare*, L. R. 1903, 2 K. B. 483; 72 L. J. K. B. 651; 89 L. T. 276; 67 J. P. 395; 1

L. G. R. 732.
(57) *Briarley v. Harper*, 1900 Loc. Gov. Chron. 321; 1901, 152.
(58) *Rex v. Preston R.D.C.*, *post*, p. 401.
(1) *Ante*, p. 375.
(2) *Post*, Part I., Div. III.
(3) *Post*, Part I., Div. II.
(4) *Post*, Vol. II., p. 2280. See *Minister of Munitions v. Chamberlayne* (C. A.), L. R. 1918, 2 K. B. 758; 87 L. J. K. B. 1266; 118 L. T. 740; affirming decision of Ry. & C. C., 16 L. G. R. 425.
(5) *Richardson v. Brown, ante*, p. 383.

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Alteration of
old buildings.

Precautions
during
erection of
buildings.

Where sect. 23 (4) of the Public Health Acts Amendment Act, 1890,⁶ is in force, a byelaw may be made preventing the alteration of existing buildings "in such a way that if at first so constructed they would have contravened the byelaws."

With regard to the precautions to be taken during building operations, by shoring up the adjoining houses, erecting and maintaining hoardings, etc., see sects. 79 to 83 of the Towns Improvement Clauses Act, 1847,⁷ and sect. 34 of the Public Health Acts Amendment Act, 1890,⁸ and, as to the security of hoardings, sect. 32 of the Public Health Acts Amendment Act, 1907.⁹

Walls.

Incombustible
materials.

The Metropolitan Building Act, 1855,¹⁰ required buildings to be inclosed with walls constructed of brick, stone, or other hard and incombustible substances. This was held to amount to a prohibition against building the walls of wood or other combustible substance; and on an action being brought by a builder for work executed under a contract to erect a wooden shop, the contract was held to be illegal, and the builder could not recover for the work.¹¹

The same Act¹² required buildings to be covered externally with "slates, tiles, metal, or other incombustible materials"; and it was held that "duroline" or wire-wove roofing, which would ignite and burn away, leaving the wirework uninjured, was not an "incombustible material" within the meaning of the enactment, because it was not wholly incombustible.¹³

A byelaw (in the model form) providing that "every person who shall erect a new building shall cause such building to be inclosed with walls constructed of good bricks, stone, or other hard and incombustible materials, properly bonded and solidly put together . . . with good mortar, etc.," was held to apply, not merely to walls which were bonded and made with mortar, but to a building which had been erected with walls consisting of a wooden framework covered outside with corrugated iron and felt and inside with match boarding, and was therefore held to have prohibited the erection of such a building.¹⁴

Party walls.

The side wall of a part of a house which projects beyond the next house is not a "party wall" within the meaning of the Metropolitan Building Act, 1855;¹⁵ nor is the continuation of a party wall upwards, above the level at which it ceases to divide two portions of a building, a "party wall" within the meaning of the London Building Act, 1894.¹⁶

A garden wall had been so built upon as to have become a party wall between two houses. It failed to keep out the damp from one of the houses, and for that reason it was held that it might be "defective" and therefore might be dealt with as "a party structure which is defective or out of repair" under the London Building Act, 1894,¹⁷ although it was not unsound in any other respect.¹⁸

Thickness
of walls.

With reference to the rules in the Metropolitan Building Act, with respect to the thickness of walls, the term "topmost story" was held not to be confined to a story having four vertical walls, but to be applicable to a room with a sloping roof.¹⁹

(6) *Post*, Part I., Div. II.

(7) *Post*, Vol. II., pp. 1627, 1629.

(8) *Post*, Part I., Div. II.

(9) *Post*, Part I., Div. III.

(10) 18 & 19 Vict. c. 122, Sched. I., now the London Building Act, 1894, 57 & 58 Vict. c. cxxiii., Sched. I.

(11) *Stevens v. Gourley* (1859), 7 C. B. (N.S.) 99; 29 L. J. C. P. 1; 6 Jur. (N.S.) 147; 1 L. T. 33.

(12) 18 & 19 Vict. c. 122, s. 19 (1); now 57 & 58 Vict. c. cxxiii., s. 61.

(13) *Payne v. Wright*, L. R. 1892, 1 Q. B. 104; 61 L. J. M. C. 7; 66 L. T. 148; 56 J. P. 564.

(14) *Badley v. Cuckfield R.D.C.* (1895), 64 L. J. Q. B. 571; 72 L. T. 775; 59 J. P. 582.

(15) *Johnston v. Mayfair Property Co.* (No. 2), 1893 W. N. 73.

(16) *Drury v. Army and Navy Auxiliary Supply, Ltd.*, L. R. 1896, 2 Q. B. 271; 65 L. J. M. C. 169; 74 L. T. 621; 60 J. P. 421; *London, Gloucestershire, etc., Dairy Co. v. Morley* (1911, K. B. D., settled in C. A.), L. R. 1911, 2 K. B. 257, 1143; 80 L. J. K. B. 908, 1361; 104 L. T. 773; 105 L. T. 658; 75

J. P. 437, 548; 9 L. G. R. 738.

(17) 57 & 58 Vict. c. cxxiii., s. 88.

(18) *Minturn v. Barry & London C.C.* (K. B. D.), L. R. 1911, 2 K. B. 265; 80 L. J. K. B. 802; 104 L. T. 635; 75 J. P. 330; 9 L. G. R. 611. As to disputes between building owner and adjoining owner as to method of remedying defects in party walls under Act of 1894, see *Clayton v. Jones* (1910, K. B. D.), 1 Glen's Loc. Gov. Case Law 15; *Mason v. Fulham B.C.*, L. R. 1910, 1 K. B. 631; 79 L. J. K. B. 385; 102 L. T. 188; 74 J. P. 170; 8 L. G. R. 415; *Minturn v. Barry and London C.C.* (No. 2) (C. A.), L. R. 1912, 3 K. B. 510; 81 L. J. K. B. 1235; 106 L. T. 923; 76 J. P. 441; 10 L. G. R. 884; *Selby v. Whitbread & Co.*, L. R. 1917, 1 K. B. 736; 86 L. J. K. B. 974; 116 L. T. 690; 81 J. P. 165; 15 L. G. R. 279. As to dealing with party walls as "dangerous structures" under the same Act, see *Spiers & Son v. Troup* (1915, K. B. D.), 84 L. J. K. B. 1986; 112 L. T. 1135; 79 J. P. 341; 13 L. G. R. 633.

(19) 18 & 19 Vict. c. 122, Sched. I. *Foot v. Hodgson* (1890), L. R. 25 Q. B. D. 160; 59 L. J. Q. B. 343; 55 J. P. 116.

Sculleries with no fireplace or flue, and containing only a slop stone and stone bench, are not rooms which " may be used for human habitation " within byelaws as to the height of such rooms.²⁰ *Per* Ivory, J., " There must be some particular adaptation of a building such as this at the rear at a cottage to bring it within any definition of a living room, that is to say, a room in which a man may pass his life."

The roots of trees on the defendant's land penetrated into the plaintiff's land under a wall separating such lands and caused the wall to fall. It was held, on the maxim *sic utere tuo ut alienum non lædas*, that the defendant was liable to be restrained by injunction from continuing such injury, and to pay damages and costs.²¹

As to the rating of walls used for advertisements, see the Advertising Stations (Rating) Act, 1889,²² and the case cited below.²³

As to the " splaying off " of corner buildings, see sect. 22 of the Public Health Acts Amendment Act, 1907.²⁴

Where sect. 24 of the same Act is in force the height of buildings may be dealt with by byelaws.

Foundations.

As to the erection of a new building on ground which has been filled up with fæcal, animal, or vegetable matter, see sect. 25 of the Public Health Acts Amendment Act, 1890.²⁵ A similar provision is contained in the model byelaws framed under the present section.

With regard to the meaning of the word " foundations," although the word is not expressly defined by the present Act, the following decision should be noticed. Under the Metropolis Management and Building Act, 1878,²⁶ the Metropolitan Board of Works made a bye-law that " no house, etc., shall be erected upon any site or portion of any site which shall have been filled up or covered with any material impregnated or mixed with any fæcal, animal, or vegetable matter, or which shall have been filled up or covered with dust or slop or other refuse, or in or upon which any such matter or refuse shall have been deposited, unless and until such matter or refuse shall have been properly removed by excavations or otherwise from such site." The Act defined " foundations " as the space immediately beneath the footings of a wall, and " site " as the whole space to be occupied by the house, etc., between the level of the bottom of the foundations and the level of the base of the wall. The court held that this definition of " site " applied to the word as used in the byelaws, and that the board had no power to require the removal of fæcal matter, etc., from the soil below the level of the foundations.²⁷

Roofs.

As to the securing of roofs of buildings, balconies, platforms, etc., intended to be let or used on the occasion of any show, entertainment, procession, or the like, see sect. 37 of the Public Health Acts Amendment Act, 1890.²⁸

A wire-wove roofing material, which would ignite and burn away, leaving the wirework uninjured, was held not to be an incombustible material within the meaning of an enactment requiring buildings to be covered with incombustible material, because it was not wholly incombustible.²⁹

Chimneys.

As to byelaws with respect to the height and structure of chimneys, see sect. 24 of the Public Health Acts Amendment Act, 1907.²⁴

The Chimney Sweepers and Chimneys Regulation Act, 1840,³⁰ enacts that " all withs and partitions between any chimney or flue which at any time shall be built or rebuilt shall be of brick or stone, and at least equal to half a brick in thickness, and every breastback and with or partition of any chimney or flue hereafter to be built or rebuilt shall be built of sound materials, and the joints of the work well

Sect. 157, n.
Height of
rooms.

Damage by
trees.

Use for ad-
vertisements.

Corner
buildings.

Height of
buildings.

Site filled in
with refuse.

Meaning of
foundations.

Platform on
roof.

Incombustible
materials.

Height and
structure.

(20) *Bain v. Compstall Co-op. Soc.* (1910, K. B. D.), 103 L. T. 759; 75 J. P. 76; 9 L. G. R. 75.

(21) *Middleton v. Humphries* (1912, Ch. D., I.), 47 Ir. L. T. 160; 4 Glen's Loc. Gov. Case Law 174.

(22) *Post*, Vol. II., p. 2204.

(23) *Lewisham B.C. v. Avey* (1912, K. B. D.), 76 J. P. 343; 10 L. G. R. 553.

(24) *Post*, Part I., Div. III.

(25) *Post*, Part I., Div. II.

(26) 41 & 42 Vict. c. 32, s. 16, now 57 & 58 Vict. c. cxxiii., s. 164.

(27) *Blashill v. Chambers* (1884), L. R. 14 Q. B. D. 479; 53 L. T. 38; 49 J. P. 388.

(28) *Post*, Part I., Div. II.

(29) *Payne v. Wright*, ante, p. 388.

(30) 3 & 4 Vict. c. 85, s. 6, repealed, as to the metropolis only, by 7 & 8 Vict. c. 84, s. 1.

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filled in with good mortar or cement, and rendered or stuccoed within; and also every chimney or flue hereafter to be built or rebuilt in any wall, or of a greater length than 4 feet out of the wall, not being a circular chimney or flue 12 inches in diameter, shall be in every section of the same not less than 14 inches by 9 inches; and no chimney or flue shall be constructed with any angle therein which shall be less obtuse than an angle of 120° , except as hereinafter excepted; and every salient or projecting angle in any chimney or flue shall be rounded off 4 inches at the least, upon pain of forfeiture, by every master-builder or other master workman who shall make or cause to be made such chimney or flue, of any sum of not less than £10 nor exceeding £50: provided, nevertheless, that notwithstanding this Act chimneys or flues may be built at angles with each other of 90° and more, such chimneys or flues having therein proper doors or openings not less than 6 inches square." With reference to this clause it was held that it was not impliedly repealed by a local Improvement Act, which required the chimneys and flues of every new building to be constructed in manner determined or approved by the corporation, or if they should give no directions, then "of good brickwork or stonework, etc., and, if circular, of earthenware pipes of not less than 10 inches diameter, etc.," and that the appellant was rightly convicted under the former and general Act.³¹

Flues.

A byelaw required party walls not exceeding 25 feet in height to be 7 inches thick. Another byelaw required the backs of chimney openings to be $4\frac{1}{2}$ inches thick in external walls and 9 inches thick in other walls, "provided that where flues are constructed back-to-back the thickness at the back of such flues may not be less than $4\frac{1}{2}$ inches." It was held that the proviso did not authorise back-to-back flues $4\frac{1}{2}$ inches thick in party walls.³²

The London Building Act, 1894, enacts that "a flue shall not be built in or against any party structure unless it be surrounded with new brickwork at least 4 inches in thickness properly bonded."³³ Where chimney-flues had been constructed of actual new brick on three sides only, the fourth side, to which two of the new sides were bonded, consisting of an existing party wall, North, J., overruled a contention that the party wall, being sound and in good condition, was to be considered "new brickwork" within the meaning of the Act.³⁴

Space about Buildings.

Validity of
bye-laws.

The validity of byelaws is dealt with in the Note to sect. 182, *post*. Among the cases in which byelaws with respect to the space about buildings were considered are those cited below.³⁵

Domestic
building.

Though a wooden stable, without any living rooms, was held to be a "domestic building" within the definition of that expression in certain byelaws ("a dwelling house or an office or other outbuilding appurtenant to a dwelling house whether attached thereto or not"), Lord Alverstone, C.J., and Channell, J. (Lord Coleridge, J., dissenting) considered it outside the byelaw which required the provision of an open space in the rear.³⁶ *Per* Lord Alverstone, C.J.: "We cannot look at the group of byelaws [as to space about buildings] without seeing that they deal with ventilation and air space for the purpose of human habitation."

Meaning of
open space.

A series of coach houses and stables, erected on a strip of ground at right angles to a street, and being about 300 feet long and of the average width of 20 feet, and presenting to the eye the appearance of three blocks of buildings connected by smaller lean-to buildings, but having a passage running through the whole, was held by Kekewich, J., to be one building for the purposes of a byelaw requiring an open space to be provided in rear, so that the byelaw was satisfied by the provision of an open space, 30 feet by 20 feet, at the further end of the series from the street; although the premises were adapted for use by more than one person, and the stables at the further end from the street, which formed the third block and were about 175 feet long, opened on a yard about 14 feet wide and extending along the whole length of that block.³⁷

(31) *Hill v. Hall* (1876), L. R. 1 Ex. D. 411; 45 L. J. M. C. 153; 35 L. T. 860; 41 J. P. 183.

(32) *Miller v. Field* (1913, K. B. D.), 110 L. T. 36; 78 J. P. 5; 12 L. G. R. 284.

(33) 57 & 58 Vict. c. cxxiii., s. 64 (18).

(34) *Aerated Bread Co. v. Shepherd* (1897), 13 T. L. R. 311.

(35) *Adams v. Bromley Loc. Bd.*; *Tucker v. Rees*; and *Quinby v. Liverpool Cpn.*, *post*,

p. 497 (12); *Clark v. Bloomfield*, *post*, p. 402 (23); and *Repton School Governors v. Repton R.D.C.*, cited in Note to P. H. Act, 1907, s. 23, *post*, Part I., Div. III.

(36) *Collins v. Greenwood* (1910), 103 L. T. 36; 74 J. P. 327; 8 L. G. R. 702. Further as to this case, see *post*, p. 498 (26).

(37) *A.G. v. Melville and King* (1905), 93 L. T. 612; 70 J. P. 17; 4 L. G. R. 166.

With regard to the meaning of the expression "building on the open space," reference may be made to a case where the construction of an underground urinal, the roof of which projected slightly above the surface of the ground, was held not to contravene a covenant that a certain garden or open space should for ever be kept "open and unbuilt upon."³⁸

A bank sloping down to a road was excavated so as to allow some coal offices to be erected fronting, and with their floors on the same level as, the road. The backs of the offices were built against the unexcavated earth, on the top of which was an open space extending back from the offices to the prescribed distance. A conviction of the owners, for infringing a byelaw, which was in the model form, was upheld by a majority of the Divisional Court, whose judgment was afterwards followed by Warrington, J., in an action for an injunction to restrain the continuance of the buildings. *Per* Lord Alverstone, C.J., "the byelaw does not contemplate an open space which is filled with solid earth."³⁹

A byelaw providing that every building to be erected and used as a dwelling-house should have in the rear or at the side of it an open space exclusively belonging to it, required that the distance across such open space between every such building and the opposite property at the rear or side, exclusive of any common passage, should be a certain number of feet at least, according to the height of the building. It was held that the space required to be left between the building to be erected and the opposite property must be co-extensive with the line of demarcation between such building and such opposite property, and that at no point should a less distance than that prescribed by the bye-law intervene between them, exclusive of any common passage.⁴⁰

With reference to a similar byelaw, a public street was held to come within the expression "opposite property."⁴¹

The following words in a local Improvement Act, "every house to be constructed shall have a *back yard or other vacant ground or area* from the ground upwards of not less than 8 feet, extending from the main building for the whole length of such building," the court were inclined to think, though no judgment was pronounced on the question, pointed to a yard *at the back*, and not to an open space *at the side* of the house, and therefore that the leaving an open space of the requisite width at the side of the building did not comply with the enactment.⁴²

Sect. 170 of the Burgh Police (Scotland) Act, 1892,⁴³ requires dwelling houses to be "ventilated from an adjoining street or other open space directly attached thereto." Where two parallel rows of dwelling houses were erected with their backs separated by open ground, it was held that the whole of this open ground was "directly attached" to each row.⁴⁴ This was followed in a case under the same section, where there were four rows of dwelling houses arranged in the form of a square, the open space inside the square being held to be "directly attached" to each row.⁴⁵ But there is considerable difference between this expression and the words "exclusively belonging thereto" which are used in byelaws under the present section.

A provision in a local Act that it should not be lawful to build any houses with their fronts facing each other, which should be separated from each other by a space less than 24 feet wide, was held only to apply to the erection at the same time of two houses facing each other, and only to the erection of houses in streets.⁴⁶

As to byelaws with respect to the paving of yards and open spaces in connection with dwelling houses, see sect. 23 (1) of the Public Health Acts Amendment Act, 1890.⁴⁷ See also sect. 25 of the Public Health Acts Amendment Act, 1907,⁴⁸ under which, without making any such byelaw, local authorities may cause the yards of dwelling houses to be properly paved, drained, etc., by or at the expense of the owners.

Where sect. 26 of the last-mentioned Act is in force,⁴⁸ restrictions are placed upon the narrowing, etc., of the entrances to courts.

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Meaning of open space—
*continued.*Measurement
of open space.

Yards.

Courts.

(38) *Graham v. Newcastle-on-Tyne Cpn.*, 1892 W. N. 134; 67 L. T. 260; affirmed in C. A., 67 L. T. 790.

(39) *A.G. v. Friary Holroyd and Healey's Breweries, Ltd.* (1907, K. B. D. & Ch. D.), 71 J. P. 348; 5 L. G. R. 697, at p. 701.

(40) *Anderton v. Rigby or Birkenhead Improvement Comrs.* (1863), 13 C. B. (N.S.) 603; 9 Jur. (N.S.) 1058; 32 L. J. M. C. 137.

(41) *Jones v. Parry* (1887), 57 L. T. 492; 52 J. P. 69.

(42) *Pearson v. Kingston-upon-Hull Loc.*

Bd. (1865), 3 H. & C. 921; 35 L. J. M. C. 36; 13 L. T. 180; 29 J. P. 711.

(43) 55 & 56 Vict. c. 55, s. 170.

(44) *Hoy v. Portobello Magistrates* (1896), 23 S. C. (4th Series) 1039.

(45) *Bryce v. Lindsay* (1901), 4 S. C. (5th Series) 241.

(46) *Reg. v. Sidebotham* (1859), 28 L. J. M. C. 189; 5 Jur. (N.S.) 1083; 8 Cox C. C. 206; Bell C. C. 171.

(47) *Post*, Part I., Div. II.

(48) *Post*, Part I., Div. III.

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Drainage of Buildings.

Existing buildings.

Power to enforce the drainage of existing buildings is given by sects. 23 and 24, and of new buildings by sect. 25.

It is to be observed that clause (4) of the present section is not confined to the drainage of "new buildings," or buildings erected after the byelaws have come into operation. A byelaw, therefore, made by a rural authority in pursuance of urban powers conferred upon them under sect. 276, and requiring any person who constructed a cesspool in connection with a building to construct it at a distance of at least 50 feet from the building, was held applicable to a cesspool constructed in connection with a building erected before the urban powers were conferred on the authority. The court in this case declined to say that the distance of 50 feet was unreasonable or that the byelaw was unreasonable because it might sometimes be impossible to construct a cesspool at all at the prescribed distance from the building.¹

Level of basement of building.

A prohibition in the London Building Act, 1894,² against erecting a dwelling house on land below the level of Trinity highwater mark so situate as not to admit of being drained by gravitation into an existing sewer of the London County Council, except with the permission of that council, was held not to have been contravened by the erection of a house on land below that level, where the house drains discharged into a sewer of the borough council that was connected with an outfall sewer of the county council, although during a substantial number of days in the year the drainage was in fact prevented from passing into the outfall sewer by reason of that sewer becoming surcharged with rain-water which closed a flap, or valve, at the point of connection of the borough sewer.³

Exercise of discretion.

Under the Metropolis Management Acts,⁴ persons making drains are required under penalties to make them in such manner as the local authority shall order. Under these enactments it was held that although the authority must exercise a certain discretion in each case, a builder was liable to a penalty for failing to comply with certain general regulations made by a metropolitan vestry with respect to the construction of drains, because a copy of the regulations had been served upon him and no objection to them had been taken by him, the court considering that it was unnecessary that a fresh regulation should be made in each case, "as though no one had experienced such works before."⁵

Separation of sewage and surface water.

A byelaw made under the present section provided that works for the sewerage of new streets were not to be carried out otherwise than in accordance with a specification to be made by the surveyor of the local authority. It was held that it was open to the surveyor under this byelaw to require separate sewage and surface water sewers, though express power to require such separate sewers was for the first time conferred on the local authority by a local Act passed subsequently to the making of the byelaw.⁶

Conditional approval of drains.

In a case arising under the Metropolis Management Act, 1855, the building owners, whose plans for new drains had been approved subject to their removing the old drains in accordance with the regulations made under that Act, were held to be bound to comply with the condition; such condition not being too remote from the subject-matter of sect. 83 of the Act, which imposed a penalty on a person who made a drain contrary to the regulations of the local authority.⁷

Reconstruction of drain.

The following work was held to amount to "reconstruction" as distinguished from "repair," within the meaning of a byelaw made under the last-mentioned Act, namely, taking up an old drain, laying a bed of concrete and thereon laying four new lengths of pipe and a new gully and connection, and one of the old lengths of pipe and one of the old gullies.⁸

Drain traps.

A byelaw made under the Metropolis Management Act, 1855, requiring drains in buildings to be trapped, was held applicable to the provision of a trap outside the walls of the building.⁹

Another byelaw under the same enactment, requiring every pipe for carrying off

(1) *Simmons v. Malling R.D.C.*, L. R. 1897, 2 Q. B. 433; 66 L. J. Q. B. 585; 77 L. T. 341; 61 J. P. 502.

(2) 57 & 58 Vict. c. ccxiii., s. 122.

(3) *Ellis v. London C.C.*, L. R. 1904, 1 K. B. 283; 73 L. J. K. B. 151; 90 L. T. 206; 68 J. P. 99; 2 L. G. R. 147.

(4) 18 & 19 Vict. c. 120, s. 76; 25 & 26 Vict. c. 102, s. 64.

(5) *Frost v. Fulham Vestry* (1900), 82 L. T. 720; 64 J. P. 629 (see *per* Ridley, J., at p. 630, col. ii.).

(6) *Airey v. Smith*, L. R. 1907, 2 K. B. 273; 76 L. J. K. B. 766; 96 L. T. 691; 71 J. P. 285; 5 L. G. R. 713.

(7) 18 & 19 Vict. c. 120, ss. 76, 83. *London School Bd. v. Fulham B.C.* (1903), 90 L. T. 116; 68 J. P. 117; 2 L. G. R. 409.

(8) 18 & 19 Vict. c. 120, s. 202. *Agar v. Nokes* (1905, K. B. D.), 93 L. T. 605; 69 J. P. 374; 3 L. G. R. 1168.

(9) 18 & 19 Vict. c. 120, s. 202. *Kingsland v. Haben* (1904), 90 L. T. 449; 68 J. P. 159; 2 L. G. R. 470.

waste water from every lavatory or sink in a new building to be trapped, was held not to require the pipe leading from each basin in the lavatory of a board school to be separately trapped.¹⁰

A byelaw required that “any person who shall provide a soil pipe . . . shall, whenever practicable, cause such soil pipe to be situated outside such building, and shall construct such soil pipe in drawn lead or of heavy cast iron. Provided that in any case where it shall be necessary to construct such soil pipe within such building he shall construct such soil pipe in drawn lead.” A magistrate held that this byelaw only applied to soil pipes either wholly outside or wholly inside buildings; and, where a soil pipe for 30 feet from the top was outside and for the last 20 feet to the basement inside a building, dismissed a summons for constructing the last 20 feet of cast iron instead of drawn lead. It was held that the byelaw could not be so construed, and that the case must be sent back with a direction to convict.¹¹

As to the paving and drainage of the yards of dwelling-houses, see sect. 23 (1) of the Public Health Acts Amendment Act, 1890,¹² and sect. 25 of the Act of 1907.¹³

Water-closets, Ashpits, etc.

The district council have power to enforce the provision of sufficient water-closets, earth-closets, or privies and ashpits in old as well as new houses and factories under sects. 35 to 38; by sect. 40 they are required to provide that all such conveniences shall be constructed and kept so as not to be a nuisance or injurious to health, and sect. 41 enables them to examine them on complaint of such a nuisance and to require the owners or occupiers of the premises to do any necessary works for abating the nuisance; and if sect. 23 of the Public Health Acts Amendment Act, 1890,¹⁴ is in force, the council may make byelaws as to keeping water-closets supplied with sufficient water for flushing.

The reconstruction of the pans and traps only of certain water-closets was held not to be the “construction” of the water-closets within a byelaw requiring that every person who should construct any water-closet should provide the trap with certain means of ventilation; and another byelaw, which applied the last-mentioned byelaw to persons constructing or reconstructing any pipe or drain or other means of communicating with sewers, or any trap or apparatus connected therewith, in any building erected before the confirmation of the byelaws, was held not to require means of ventilation to be provided for those water-closets.¹⁵

A byelaw, made under the Public Health (London) Act, 1891,¹⁶ requiring that “every person who shall intend to construct any watercloset, earthcloset, or privy, or to fit or fix in or in connection with any watercloset, earthcloset, or privy, any apparatus, or any trap or soil pipe, shall, before executing any such works, give notice in writing to the clerk to the sanitary authority,” was held applicable to waterclosets constructed before, as well as to waterclosets constructed after, the making of the byelaw. And, *per* Ridley, J., the expression “apparatus” must be understood as limited to those things which upon renewal would, if inefficiently renewed, be liable to render the premises insanitary.¹⁷

A byelaw that no dwelling-house should be erected without having at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy or ashpit belonging to the same, was held to be *ultra vires*, under the provisions in the Local Government Act, 1858, corresponding to sub-sect. (4). But, *per* Lush, J., “If the byelaw had provided that no privy, etc., should be constructed without a back street or roadway, it might have been good.”¹⁸

The expression “ashpit” in the Public Health Acts includes any ash-tub or other receptacle for the deposit of ashes, faecal matter, or refuse.²⁰

Buildings unfit for Habitation.

As to the meaning of “human habitation”²¹ and “unfitness” for such habitation,²² see the cases cited below.

(10) *Treasure & Co. v. Bermondsey B.C.* (1904), 68 J. P. 206; 2 L. G. R. 488.

(11) *St. Marylebone B.C. v. White* (1912, K. B. D.), 76 J. P. 382; 10 L. G. R. 767.

(12) *Post*, Part I., Div. II.

(13) *Post*, Part I., Div. III.

(14) *Post*, Part I., Div. II.

(15) *Metropolitan Industrial Dwellings Co. v. Long* (1903), 68 J. P. 113; 2 L. G. R. 233.

(16) 54 & 55 Vict. c. 76, s. 39.

(17) *London & S. W. Ry. Co. v. Hills*, L. R. 1906, 1 K. B. 512; 75 L. J. K. B. 340; 94

L. T. 517; 70 J. P. 212; 4 L. G. R. 399.

(18) *Waite v. Garston Loc. Bd.* (1867), L. R. 3 Q. B. 5 (judgment condensed to seven lines); 37 L. J. M. C. 19, at p. 21, col. i; 17 L. T. 201, at p. 202 (*dictum* attributed to Cockburn, C.J.); 32 J. P. at p. 288, col. iii.

(20) See P. H. Am. Act, 1890, s. 11, *post*, Part I., Div. II., which is in force in both urban and rural districts without adoption.

(21) *Bain's Case*, *ante*, p. 389; and *Collins' Case*, *ante*, p. 390.

(22) *Hall v. Manchester Cpn.*, cited in Note

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Material for soil pipes.

Yards.

Water-closets, &c.

Access to privy.

Meaning of ashpit.

Human habitation.

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Old buildings.**

An urban district council have no power (except under the Public Health Acts Amendment Act, 1890²³) to make a byelaw relating to buildings erected before the date of the constitution of the district, or to the closing of such buildings when unfit for human habitation, or to the prohibition of their use for such habitation.²⁴ A power to close buildings unfit for human habitation under an order of justices is, however, given by sect. 97.

**Certificate of
fitness.**

A byelaw that "no new house shall be occupied . . . until such house has been certified by the local board or their officer authorised to give such certificate, after examination, to be in every respect fit for human habitation in their or his opinion," was held to be reasonable and not inconsistent with any of the provisions of the Act, and a conviction for causing or permitting a new house to be occupied without such a certificate, was upheld.²⁵

The court upheld the dismissal of an information (under a byelaw) against a person for letting a house not certified as fit for habitation, where he had allowed it to be occupied by a caretaker who had it in his mind to become a permanent tenant.²⁶

In rural districts a certificate as to the fitness of the water supply is required by sect. 6 of the Public Health (Water) Act, 1878.^{26a}

*Means of Ingress and Egress.***New means
of access to
premises.**

Where sect. 18 of the Public Health Acts Amendment Act, 1907,²⁷ is in force, the district council may require the deposit of plans of any proposed new access for vehicles, cattle, etc., across the kerb or paved footway of a highway repairable by the inhabitants at large.

**Public
buildings, &c.**

With regard to the provision of proper means of ingress to and egress from buildings used as places of public resort, see sect. 36 of the Public Health Acts Amendment Act, 1890.²⁸

**Means of
escape from
fire.**

Sect. 15 of the Factory and Workshop Act, 1901,²⁹ enables any district council to make byelaws providing for means of escape from fire in the case of factories and workshops. Under the Celluloid and Cinematograph Film Act, 1922,³⁰ county councils are given certain powers for securing the safety of places where these substances are kept.

With regard to the liability, as between landlord and tenant, to defray the expense of providing such means of escape, see the case cited below.³¹

*Notices and Plans.***Failure to
comply with
bye-laws
as to plans.**

The present section empowers the urban district council to make a byelaw requiring a notice, plans, and sections of a new building to be given to them, and a penalty may be imposed for failure to comply with such byelaw. Moreover, a house built without such compliance is erected in contravention of the byelaws, so that the urban authority may by a byelaw give themselves power to pull down the house.³² Where the byelaws require notice to be given, this requirement cannot be waived or dispensed with by the urban sanitary authority,³³ unless the byelaws themselves contain a dispensing power.³⁴

Convictions for building without depositing plans,³⁵ for building otherwise than in accordance with plans deposited,³⁶ and for converting premises into a dwelling without the execution of any structural work,³⁷ have been upheld.

Where sect. 33 of the Public Health Acts Amendment Act, 1890,³⁸ is in force,

to Housing Act of 1890, s. 30, *post*, Part II., Div. III.

(23) See s. 23, *post*, Part I., Div. II.

(24) *Burgess v. Peacock* (1864), 16 C. B. (N.S.) 624; 10 L. T. 617; 10 Jur. (N.S.) 803.

(25) *Horsell v. Swindon New Town Loc. Bd.* (1888), 58 L. T. 732; 52 J. P. 597. And see *James v. Tudor*, *post*, p. 404.

(26) *Gowen v. Sedgwick* (1904, K. B. D.), 68 J. P. 484.

(26a) *Post*, Vol. II., p. 1270.

(27) *Post*, Part I., Div. III.

(28) *Post*, Part I., Div. II.

(29) *Post*, Vol. II., p. 2147.

(30) See Note to P. H. Am. Act, 1890, s. 51, *post*, Part I., Div. II., and the *Cambridge Case*, *post*, p. 401 (20).

(31) *Arding v. Economic Printing Co.*, cited

in Note to s. 257, *post*, p. 688 (36). As to such liability in London, see footnote (27), *ante*, p. 156.

(32) *Baker v. Portsmouth Cpn.*, *post*, p. 397.

(33) *Baxter v. Bedford Cpn.* (1885), 1 T. L. R. 424; but see Note on "Waiver" and "Relaxation," *ante*, pp. 374, 375.

(34) See *Salt v. Scott Hall*, *post*, p. 504 (2).

(35) *James v. Tudor*, *post*, p. 404 (3); *Morgan v. Kenyon*, cited in Note to P. H. Am. Act, 1907, s. 23, *post*, Part I., Div. III.

(36) *James v. Masters*, L. R. 1893, 1 Q. B. 355; 67 L. T. 855; 57 J. P. 167; *Burton v. Acton* (1887), 51 J. P. 566.

(37) *Harding v. Larne U.D.C.*, *post*, p. 652 (46).

(38) *Post*, Part I., Div. II.

the use as a dwelling of a building not described as such in the deposited plans is punishable summarily. See also the Note to sect. 159.

A byelaw requiring the deposited plans to show the situation of the fireplaces, etc., was, in a case relating to a wooden stable, read by Wills, J., as if qualified by the words "if any."³⁹

Where sect. 15 of the Public Health Acts Amendment Act, 1907,⁴⁰ is in force, work shown on plans may be required to be commenced within a certain time.

Where an owner deposited a plan and signed a printed notice (supplied by the local authority) of his intention to erect the building shown on the plan, and he saw on the front of the notice the words "see regulations over" but did not see a stipulation on the back to the effect that deposited plans could be retained, it was held that the local authority could retain the deposited plans even though they disapproved of them. It was also held in the same case that such a regulation was reasonable.⁴¹

In the case of a private person employing an architect, the plans, in the absence of express agreement to the contrary, belong to the employer, and the architect is not entitled to retain them after completion of his work and payment of his remuneration.⁴²

Where sect. 16 of the Public Health Acts Amendment Act, 1907,⁴⁰ is in force, the council have express power to retain approved drawings, plans, etc., deposited with them.

A mandatory order to allow an inspection of deposited plans will not be made on an application for an interlocutory injunction to restrain their approval.⁴³

Some time before the coming into operation of the Local Government Act, 1858, certain persons proposing to lay out a new street gave the necessary notices to the local board, but did not proceed to lay out the street until May, 1862. In the mean time the board had made a byelaw requiring notices of a more detailed character than had been required by the Public Health Act, 1848,⁴⁴ and they contended that the street had not been begun within the meaning of the Act, and that therefore the parties ought to have given fresh notices so as to satisfy the new byelaw. The justices dismissed a summons for recovery of a penalty, and the court held that their decision was not wrong, but intimated their opinion very guardedly, so that the parties might raise the question again, when subsequent dealings took place with the property.⁴⁵

A local authority made a new set of byelaws with respect to new buildings, which repealed the previously existing byelaws, but contained a saving for work commenced under those byelaws. Plans for a number of houses had been deposited and approved under the old byelaws. Some of the houses had been erected before the repeal, but some had been commenced afterwards and were not all completed, and as to those no objection had been made by the local authority. On the defendant proposing to commence others, the local authority required the new byelaws to be complied with, but the Vice-Chancellor of the County Palatine of Lancaster, in an action for a declaration and an injunction, held that the saving was applicable, and that it was unfair for the local authority to turn round and repudiate the approval which they gave to the scheme.⁴⁶ So also a saving clause in the London Building Act, 1894,⁴⁷ for any "building, structure, or work which has been commenced before and is in progress at the commencement of this Act, or which is to be carried out under any contract entered into before the passing of this Act," was not, it was held, to be narrowed down to specific structural works in progress, but applied to a case where a contract had been made for the erection of a number of houses by certain dates year by year for several years.⁴⁸

In a later case a local Act provided that the deposit of any plan of a street or building should be void if the execution of the work were not commenced within a prescribed period from the date of the deposit. Two plans showing eleven houses and two stables were deposited in pursuance of byelaws for the time being in force, and were approved by the local authority. Some of the buildings were erected

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Time for carrying out plans.

Ownership of deposited plans.

Inspection.

New bye-laws during progress of work.

(39) *South Shields Cpn. v. Wilson*, ante, p. 385.

(40) *Post*, Part I., Div. III.

(41) *Gooding v. Ealing Loc. Bd.* (1884), 1 Cab. & Ell. 359; 1 T. L. R. 62.

(42) *Gibbon v. Pease* (C. A.), L. R. 1905, 1 K. B. 810; 74 L. J. K. B. 502; 92 L. T. 433; 3 L. G. R. 461; 69 J. P. 209.

(43) *Dover Picture Palace, Ltd. v. Dover Cpn.* (1913, C. A.), 11 L. G. R. 971. Further

as to this case, see *post*, p. 402.

(44) 11 & 12 Vict. c. 63, s. 72.

(45) *Felkin v. Berridge* (1863), 15 C. B. (N.S.) 257; 9 L. T. 333.

(46) *Withington U.D.C. v. Moore* (1896), 60 J. P. 408.

(47) 57 & 58 Vict. c. cxxiii., s. 212.

(48) *Tanner v. Oldman*, L. R. 1896, 1 Q. B. 60; 65 L. J. M. C. 10; 73 L. T. 404.

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within the prescribed period, and after its expiration the byelaws were repealed and superseded by others subject to a saving for any work commenced before the new byelaws came into operation, and for work not commenced but of which plans had been duly approved. On the builder commencing to erect another of the buildings, it was held that the two plans really constituted thirteen plans on two sheets of paper, and were void as regards the buildings which had not been commenced within the prescribed time; and the builder therefore could not proceed with the erection of those buildings without depositing fresh plans and otherwise complying with the new byelaws.⁴⁹ This was followed shortly afterwards in a case in which the circumstances were similar, except that there was no provision limiting a time after which the deposit of the plans should become void.⁵⁰

Res judicata.

Certain building byelaws did not come into force until after the concrete foundations had been laid for a block of cottages similar to a block already built, and the bricks for forming the footings of the walls had been laid at the corners, and a contract had been entered into for the work of building the cottages in accordance with certain plans. The byelaws were held not to apply to such cottages.⁵¹

A summons for deviating from the plans deposited in pursuance of the byelaws, in respect of one of several houses shown on the plans, was dismissed on the ground that the deviation was not substantial. A similar summons in respect of two of the other houses was subsequently dismissed by the justices on the ground that the matter was *res judicata*; but the court held that each house must be dealt with separately on its merits.⁵²

Abandonment of deposited plans.

There is nothing to prevent a person from abandoning plans which he has deposited in pursuance of the byelaws, instead of carrying them out. Thus, an owner sent in plans for a new street, showing a shop and garden set back so as to widen the street to the width required by the bye-laws, and endorsed with an undertaking to set back the road as shown by the plans; but he subsequently merely put in a new front to the existing shop and a porch to the existing doorway, and rebuilt the garden wall on its old site. It was held that he had not laid out a new street of less than the prescribed width in contravention of the byelaws.⁵³

Where a local Act enacted that every undertaking given by or on behalf of the owner of property on the passing of plans should be binding upon the owner of the property for the time being, and an undertaking was endorsed on building plans submitted for approval, but such plans were not passed by the local authority, it was held that the undertaking did not prevent other plans subsequently deposited and approved from being carried out in breach of the undertaking, there being nothing to connect the two sets of plans.⁵⁴

Power to pull down Work.

Validity of bye-law.

In a case in which the quality of the mortar used in the erection of certain buildings contravened a byelaw, but the deposited plans had been approved, so that the provisions of sect. 158 with respect to pulling down work were not applicable, it was held that the buildings could be pulled down under a byelaw giving power to pull down the work in such a case, the words "subject to the provisions of this Act" in the present section merely meaning "not being contrary to the provisions of the Act."¹ And in a later case, where a person was convicted under sect. 306 for obstructing an officer of the local authority, who had been directed to pull down a new building erected in breach of a byelaw, the conviction was upheld, although no plans of the building had been deposited, or approved or disapproved within the month, as mentioned in sect. 158; the direction to pull down the building being justified under a byelaw, and the power to make byelaws given by the present section not being confined to cases coming within sect. 158.²

A local board, by a byelaw, imposed continuing pecuniary penalties upon any person who should "construct any works or do or omit to do any act, or to comply with any requirement of the board, or should make any alteration in any works after completion, or any deviation from or alteration in any plan approved by the

(49) *Harrogate Cpn. v. Dickinson* (C. A.), L. R. 1904, 1 K. B. 468; 73 L. J. K. B. 262; 90 L. T. 41; 68 J. P. 202; 2 L. G. R. 525.

(50) *White v. Sunderland Cpn.* (1903), 88 L. T. 592; 67 J. P. 199; 1 L. G. R. 483.

(51) *Hubbard v. Bromley R.D.C.* (1905, K. B. D.), 69 J. P. 437; 3 L. G. R. 1377.

(52) *Balby-with-Hexthorpe U.D.C. v. Mil-lard* (1903), 68 J. P. 81; 2 L. G. R. 330.

(53) *Sunderland Cpn. v. Skinner* (1889), 53 J. P. 660.

(54) *Hall v. Eastbourne Cpn.* (1905, K. B. D.), 69 J. P. 369. See also *Crane v. Wallasey Cpn.*, post, p. 403.

(1) *Shaw v. Solihull*, *Times*, 4th July, 1890.

(2) *Fairbrass v. Canterbury Cpn.* (1902), 67 J. P. 181; 1 L. G. R. 181.

board, whether in new or existing buildings, contrary to the provisions therein contained, or do any act, matter, or thing contrary to the byelaws, or omit, neglect, or fail to perform and execute any of the matters or things required by such byelaws, or in any manner transgress the same byelaws, or any of them;" and the board, by the same byelaw, were empowered to remove, pull down, or otherwise deal with such works as the case might require. This byelaw was held to be beyond the authority conferred on the local board.³

A local board made a byelaw requiring a person intending to erect a new building to give a month's notice to the board of his intention so to do, and to deposit plans; and a person, who had given notice, commenced to build within the month and without approval of the plans by the board. He was convicted of contravening the byelaw; but it was held that the board had no power to make such a proceeding an offence by their byelaw, and that the person so giving notice had a right to commence building when he pleased, subject to the right of the local board to pull down or alter his building, if built in contravention of their byelaws. *Per* Martin, B. : "The power given is to make byelaws as to the structure of walls and the sufficiency of space, and for the observance of the same to make provisions as to giving notice and the deposit of plans, the inspection by the board, and the removing, altering, or pulling down of buildings that contravene the byelaws. It seems to me that a man may be compelled to deposit plans and give notices, but there is no power to prevent him beginning his building the next day, subject to his liability to have it pulled down if it contravenes the byelaws;" and *per* Pollock, C.B. : "This section is a restriction on a man's common law right, and must not receive a vexatious interpretation."⁴

But a byelaw directing persons about to erect new buildings to give fourteen days' notice by leaving such notice, with plans, etc., at the surveyor's office on the Tuesday before the fortnightly meeting of the committee, under a penalty of forty shillings, while another byelaw empowered the board to pull down work erected contrary to the byelaws, was held reasonable and not *ultra vires*, notwithstanding the second byelaw.⁵ So also a byelaw empowering an urban authority to pull down or alter works, in respect of which the notices required by another byelaw had not been given, was held valid.⁶ A byelaw requiring the extent of yard space belonging to new buildings, and the situation of the water-closet, ashpit, etc., to be shown on the plans, was held to be valid, but one which imposed a continuing penalty for neglect to send in plans of a new building, was held to be *ultra vires*.⁷

The Metropolis Management Act, 1855,⁸ empowers the district board to alter or demolish a house where the builder has neglected to give notice of his intention to build seven days before proceeding to lay or dig the foundation; but this does not empower the district board to demolish the building without first giving the party guilty of the omission an opportunity of being heard; this is on the principle which has been repeatedly recognised by the courts,⁹ that no man is to be deprived of his property without an opportunity of being heard. *Per* Erle, C.J. : "I think the board ought to have given notice to the plaintiff and to have allowed him to be heard. The default in sending notice to the board of the intention to build is a default which may be explained. . . . The party may have actually conformed to all the regulations . . . though by accident his notice may have miscarried;" and *per* Willes, J. : "I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects is bound to give such subject an opportunity of being heard before it proceeds; and that that rule is of universal application, and founded upon the plainest principles of justice."¹⁰ This principle is equally applicable to a district council acting under the present Act.¹¹

Where a byelaw in the model form provided that when a person erecting a new building or doing other work to which the byelaws were applicable received notice

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Validity of
bye-law—
continued.

Notice to
show cause.

(3) *Young v. Edwards* (1864), 13 L. J. M. C. 227; 11 L. T. 424. A similar decision had been given in *Brown v. Holyhead Loc. Bd.*, ante, p. 383 (9).

(4) *Hattersley v. Burr* (1866), 14 L. T. 565; 12 Jur. (N.S.) 894; 4 H. & C. 523 (questioned in *Hall v. Nixon*, infra).

(5) *Hall v. Nixon* (1875), L. R. 10 Q. B. 152; 44 L. J. M. C. 51; 32 L. T. 87; 39 J. P. 341; *Young v. Edwards* and *Hattersley v. Burr*, supra, discussed.

(6) *Baker v. Portsmouth Cpn.* (1878), L. R. 3 Ex. D. 157; 47 L. J. Ex. 223; 37 L. T. 822; 42 J. P. 278.

(7) *Reay v. Gateshead Cpn.* (1886), 55 L. T. 92; 34 W. R. 682; 50 J. P. 805.

(8) 18 & 19 Vict. c. 120, s. 76.

(9) See *Rex (Bentley) v. Cambridge Univ. Chancellor* (1722), 1 Str. 557, cited by Parke, B., in *In re Hammersmith Rent-Charge* (1849), 4 Ex. 87, at p. 96.

(10) *Cooper v. Wandsworth Bd. of Works* (1863), 14 C. B. (N.S.) 180; 32 L. J. C. P. 185; 8 L. T. 278; 9 Jur. (N.S.) 1155.

(11) *Masters v. Pontypool Loc. Bd.*; *Hopkins v. Smethwick Loc. Bd.*, post, p. 402.

Sect. 157, n. specifying any matters in respect of which the work was in contravention of any of the byelaws, he was to comply with the requirements of such notice, it was held that a notice that merely stated that a shed had been erected "contrary to Nos. 53 and 96" (which related to the open space in rear of new buildings and to notice and plans of new buildings) was sufficient without giving particulars of the breaches of those byelaws.¹²

Limitation of time. A local authority need not exercise the power to pull down within six months from the completion of the building.¹³

Proof of service. An action against a local authority for damages for unlawfully pulling down a bungalow was defended on the ground, among others, that it had been erected in breach of a bye-law. The plaintiff's answer to this was that no notice to show cause had been served on the person by whom such work had been "begun or done." It was held that the notice to the plaintiff was of no use because the building had been erected by a predecessor in title, and that the notice to that person had not been properly proved because secondary evidence of its contents was inadmissible.¹⁴

Negligence in pulling down work. The power to pull down work must be exercised with reasonable care. Where the council have power to pull down an erection which has been constructed in contravention of their bye-laws, they may pull down the offending erection even though it may cause the fall of the rest of the building; and although they may not pull it down in a dangerous way, they may effect their object in the most convenient way to themselves that is consistent with safety.¹⁵

Exemptions.

Exemptions in model bye-laws. The model bye-laws framed under the present section exempt from the operation of such bye-laws the following buildings:—(a) buildings in possession of, or used for the purposes of the Crown; (b) county and borough lunatic asylums and buildings for detention of prisoners; (c) prisons, and buildings for the use of prison officers; (d) buildings (other than dwelling-houses) belonging to statutory bodies authorised to navigate on or use or to take tolls for the navigation or use of rivers, canals, docks, harbours, or basins; (e) buildings (other than dwelling-houses) for use in connection with mines; (f) buildings approved by the [Minister] of Agriculture and Fisheries under Acts for the improvement of land; (g) buildings approved by the Secretary of State under statute; (h) plant-houses, green-houses, or conservatories; (i) orchard-houses, summer-houses, poultry-houses, boat-houses, coal-sheds, garden tool houses, potting sheds, cycle sheds, or aviaries, not exceeding in extent 600 cubic feet, "or which if exceeding in extent 600 cubic feet or if used or intended to be used as a poultry-house or aviary shall be wholly detached, and at a distance of 10 feet at least from any other building";¹⁷ (j) buildings which are not more than 30 feet high, not of more than 125,000 cubic feet capacity, not public buildings,¹⁶ and not constructed or adapted for habitation or employment in manufacture, trade or business, but are 8 feet distant from the nearest street and 30 feet from the nearest building¹⁷ and from the boundary of the adjoining premises; (k) similar buildings exceeding the dimensions mentioned in the last exception, which are 30 feet distant from the nearest street and 60 feet from the nearest building¹⁷ and the boundary of the adjoining premises; and (l) temporary hospitals for infectious cases. Further clauses may be added to allow the use of galvanised, corrugated, or sheet iron buildings, subject to precautions being taken as to the uses to which such buildings are to be put, and for the prevention of fire.

Buildings connected with mines. A building, described as a brick kiln, near the entrance to a mine, from which fireclay and coal were obtained for the brick works, was held to come within the exemption (in the same terms as those of the model bye law No. 2 (e)) of any building (not being a dwelling-house) "erected in connection with a mine, and used or intended to be used exclusively for the working of such mine."¹⁸

Stables. A stable, in which horses belonging to a builder were kept, and in which they were fed and groomed, was held not to be a building "adapted to be used as a

(12) *Dickinson or Dickenson v. Forsyth* (1903), 90 L. T. 30; 68 J. P. 170; 2 L. G. R. 1199.

(13) *Fairbrass v. Canterbury Cpn.*, ante, p. 396.

(14) *Andrews v. Wirrall R.D.C.*, per Atkin, J., 14 L. G. R. at p. 62. Reversed in C. A., on another point, see Note to P.H. Am. Act, 1907, s. 27, post, Part I., Div. III.

(15) *Jagger v. Doncaster R.S.A.* (1890),

54 J. P. 438. In the *Wirrall Case*, supra, it was held that "no excessive force" had been used, per Atkin, J., 14 L. G. R. at p. 60.

(16) See the definition of this expression, ante, p. 386.

(17) "Not being a building exempt under paragraphs (h) (i) (j) or (k)."

(18) *Tylecote v. Morton* (1901), 85 L. T. 692; 66 J. P. 136.

place of habitual employment for any person in any manufacture, trade or business," and was therefore within an exemption from building bye-laws similar to bye-law No. 2 (i) of the model bye-laws of the Local Government Board.¹⁸

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The last clause of the present section, exempting buildings of railway companies, which are used for the purposes of the railway, from the provisions of sects. 155-157, follows the precedent of the Metropolitan Building Act, 1855¹⁹; and the London Building Act, 1894,²⁰ which has replaced that Act, contains, like the model bye-laws, many other additional exemptions of buildings. With reference to the Act of 1855, it was held that arches of a railway viaduct, having the ends filled in and being let to a tenant of the company for his private use, were within the exemption, the arches themselves having been erected for the purposes of the railway, and being used for those purposes.²¹ But a building erected by a canal company on one of their wharves and let to tenants, who arranged that all materials which they required should be carried to the wharves by barges on the canal, was held not to be "used for the purpose of the canal" so as to be exempt from the operation of the first part of the same Act.²²

Railway buildings.

Cottages erected by a railway company on land belonging to them, adjoining their line and 200 yards from their station, for persons in their employment whose duties required them to be on the spot, were held not to be within the exemption in the present section. An objection that the bye-laws did not refer to this exemption amongst certain specified exemptions, and that they therefore purported to apply to the buildings exempted by the present section, was overruled; and a conviction of the company for not depositing plans of the cottages in accordance with the bye-laws was affirmed.²³

A wooden building erected in the coal-yard of a railway company with their permission by coal merchants, who used it as an office in connection with their wharf at which coal was consigned to them by rail, was held to be "used for the purposes of or in connection with the traffic of such railway company" so as to be exempt from certain provisions of the London Building Act, 1894,²⁴ the magistrate having found that it was convenient to the coal merchants and to the company for the proper conduct and management of the business transacted between them, that the former should have, in close proximity to the point where the company deliver the coal, a structure in the nature of an office wherein they could dispose of their clerical business in connection with the delivery of coal to them, and the clearing of coal from the wharf near the company's sidings.²⁵

A covenant, made by a railway company on purchasing lands, that they would reconvey any part of the premises which should not at a certain time be *bonâ fide* used for the purposes of their "station works and conveniences necessary and convenient for passenger and goods traffic," was held not to require the reconveyance by the company of land used as a stationmaster's and porters' gardens, or of coal sheds let to a dealer: this being a fair user of the ground for the reasonable convenience of the station.²⁶

By sect. 166 of the Education Act, 1921,²⁷ "The provisions of any bye-laws made by any local authority under" the present section "as amended by any other Act, with respect to new buildings (including provisions as to the giving of notices and deposit of plans and sections), and any provisions in any local Act dealing with the construction of new buildings, and any bye-laws made with respect to new buildings under any local Act, shall not apply in the case of any new buildings being school premises to be erected, or erected, according to plans which are under any regulations relating to the payment of grants required to be, and have been, approved by the Board of Education."

School buildings.

It was held that the corresponding exemption in the Education (Administrative Provisions) Act, 1911,²⁸ rendered unnecessary the service of building notices with

(18) *Linzell v. Felixstowe and Walton U.D.C.* (1904), 90 L. T. 388; 68 J. P. 208; 2 L. G. R. 372.

(19) 18 & 19 Vict. c. 122, s. 6.

(20) 57 & 58 Vict. c. cxxiii. s. 201.

(21) *In re Badger* (1858), 8 E. & B. 728; s.c. *nom. North Kent Ry. Co. v. Badger*, 27 L. J. M. C. 106; 4 Jur. (N.S.) 454; 6 W. R. 246.

(22) *Coole v. Lovegrove*, L. R. 1893, 2 Q. B. 44; 62 L. J. M. C. 153; 69 L. T. 19; 57 J. P. 647.

(23) *Manchester, Sheffield, and Lincolnshire*

Ry. Co. v. Barnsley R.S.A. (1892), MS., and 67 L. T. 119; 56 J. P. 679.

(24) 57 & 58 Vict. c. cxxiii., ss. 84, 86.

(25) *Elliott v. London C.C.*, L. R. 1899, 2 Q. B. 277; 68 L. J. Q. B. 837; 81 L. T. 155; 63 J. P. 645. See also *London C.C. v. Coal Co-op. Soc.* (1907), 98 L. T. 580; 72 J. P. 68; 6 L. G. R. 387.

(26) *Harris v. London and South Western Ry. Co.* (1889), 60 L. T. 392.

(27) 11 & 12 Geo. V. c. 51, s. 166.

(28) 1 & 2 Geo. V. c. 32, s. 3, repealed by Act of 1921.

Sect. 157, n. | respect to new buildings on the district surveyor under the London Building Act, 1894.²⁹ But such a notice was held to be necessary in the case of alterations or additions to old buildings, such as the re-modelling of the infants' department.³⁰

As to commencement of works and removal of works made contrary to byelaws.

P.H. 1874, ss. 41, 42, 43.

Sect. 158. Where a notice plan or description of any work is required by any byelaw made by an urban authority to be laid before that authority, the urban authority shall, within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed.

Where an urban authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary manner the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion.

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken.

Note.

Rural districts.

The present section is in force in rural districts where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted,¹ as well as in districts where it has been put in force by order of the Local Government Board or Minister of Health under sect. 276.

Commencement of work.

The Local Government Board did not consider a bye-law, to the effect that the approval of plans shall be inoperative unless the works in question are commenced within a specified time, to be authorised. But see sect. 15 of the Public Health Acts Amendment Act, 1907.²

The local authority need not, as a rule, approve of plans of a building after it has been built.³

Right to disapprove of plans.

The urban district council have no power under the present Act, nor could they by a bye-law give themselves the right, to disapprove of and prohibit the erection of a building at their own discretion, or for any other reason than that the erection would be in contravention of some valid bye-law or other provision of the law.⁴

But where a local Act gave a right of appeal to quarter sessions against any determination of the corporation, a bye-law, made under that Act, and imposing a penalty on a person erecting a new building without giving twenty-one days' notice, or without having his plans approved by the corporation, or erecting the building contrary to plans which had been approved, was held to be valid and reasonable; and a conviction under it was upheld, although it did not appear that the buildings, which had been erected, themselves contravened the provisions of the Act.⁵

Right to approve of plans.

The local authority have no power, except in certain cases, to sanction plans which contravene their bye-laws—see Note to sect. 157 as to waiver and relaxation of bye-laws.⁶

Obligation to approve of plans.

A rule nisi for a prerogative writ of *mandamus* directing a local authority to approve of building plans was granted, where the plans had been disapproved on the ground that the intending builder had no right to build on the land at all.⁷

(29) 57 & 58 Vict. c. ccxiii., s. 145. *Holiday & Greenwood, Ltd. v. District Surveyor's Assoc. and Dicksee*, L. R. 1914, 2 K. B. 803; 83 L. J. K. B. 1482; 110 L. T. 983; 78 J. P. 262; 12 L. G. R. 633.

(30) *Akers v. Daubney* (1915, K. B. D.), 85 L. J. K. B. 315; 114 L. T. 160; 79 J. P. 516; 13 L. G. R. 1201.

(1) See last par. of s. 23 (3), *post*, Part I., Div. II.

(2) *Post*, Part I., Div. III.

(3) *Rex v. Bexhill Cpn.*, *post*, p. 401 (15).

(4) *Reg. v. Newcastle-on-Tyne Cpn.* (1889), 60 L. T. 963; 53 J. P. 788. And see the remarks of Lord Blackburn in *Robinson v. Barton Eccles Loc. Bd.* (1883), L. R. 8 A. C. at p. 810.

(5) *Cook v. Hainsworth*, L. R. 1896, 2 Q. B. 85; 65 L. J. M. C. 190; 75 L. T. 51; 60 J. P. 439.

(6) *Ante*, pp. 374, 375.

(7) *Ex parte Crosby* (1877, Q. B. D.), 41 J. P. 740, n.

But, as pointed out in a subsequent case, there is no record of what happened to the rule, and the decision was not regarded as binding, and a similar rule, which had been granted because the authority had disapproved of a plan on the ground that a restrictive covenant prevented the laying out of the proposed street, was discharged.⁸ *Per* Lord Alverstone, C.J., "Although a local authority may possess no right whatever to inquire into questions of title, yet I am clearly of opinion that they may take into their consideration such a question of practical difficulty in carrying out the works shown on the plan as arises here."

In the following cases the rules were either refused or discharged, the plans having been disapproved on the following grounds: that the proposed building would contravene the Public Health (Buildings in Streets) Act, 1888⁹; that an alleged highway would be interfered with¹⁰; and that a restrictive covenant applicable to the land would be infringed.¹¹

In the following cases the rules were made absolute, the plans having been disapproved on the following grounds: that the proposed building was unsuitable to the locality and would depreciate the character of the neighbouring property¹²; that the proposed building would contravene the Public Health (Buildings in Streets) Act, 1888¹³; that the plans showed the house drains ending in the middle of the street and no street sewers, and that the owner refused to construct a street and an outfall sewer¹⁴; that the proposed house and its slop water cesspool were so near the sea shore that at spring tides the sea water would fill the cesspool¹⁵; that a barn proposed to be attached to the back wall of a kitchen in the rear of a dwelling-house, with no door between the barn and the kitchen, was a separate new building which obstructed the air space in breach of a bye-law¹⁶; that the building owner would not, in consideration of the passing of his plans, which showed an intention to contravene the Public Health (Building in Streets) Act, 1888, give up a strip of land five feet in width for the purpose of widening the street¹⁷; that certain alterations to an old building rendered the whole structure a "new building," the Court of Appeal overruling a previous decision of the Divisional Court to the contrary on a case stated,¹⁸ and holding that only the new part was a new building¹⁹; and that, by reason of the narrowness of the adjoining streets, a proposed cinematograph theatre would not be provided with the "ample, safe, and convenient means of egress" required by sect. 36 of the Public Health Acts Amendment Act, 1890.²⁰

In the case cited below,²¹ a rule nisi was granted on the ground that the plan had been disapproved because the local authority were considering a town planning scheme which might affect the proposed building, but at the next meeting after the rule was obtained the plans were passed.

In a Scottish case,²² a local authority were ordered to approve a plan which they had disapproved because a new street shown on it was a *cul de sac*.

It was held that as the present section imposed on the council the obligation of signifying their approval or disapproval of plans within one month, they could not

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Obligation to approve of plans—cont.

Limitation of time for disapproval of plans.

(8) *Rex (Cowper) v. Tynemouth Cpn.*, L. R. 1911, 2 K. B. 361; 80 L. J. K. B. 892; 105 L. T. 217; 75 J. P. 420; 9 L. G. R. 953.

(9) See the *Eastbourne and Chiswick Cases*, ante, p. 368 (33) (32).

(10) *Rex (Richardson) v. West Hartlepool Cpn.* (1901), 18 T. L. R. 1; Loc. Gov. Chron. 1102.

(11) *Rex v. Tynemouth Cpn.*, supra.

(12) *Reg. v. Newcastle-upon-Tyne Cpn.*, ante, p. 400.

(13) See the *Fulwood and Middlesbrough Cases*, ante, pp. 369 (39) and 368 (36).

(14) *Reg. v. Tynemouth R.D.C.*, L. R. 1896, 2 Q. B. 451; 65 L. J. Q. B. 545; 75 L. T. 86; 60 J. P. 804.

(15) *Rex (Cornell) v. Bexhill Cpn.* (1911), 75 J. P. 385; 9 L. G. R. 640. In this case the rule was made absolute after the building had been completed, though Lord Alverstone, C.J., said (9 L. G. R. at p. 644): "There is no *prima facie* duty upon an urban authority to approve plans after a house has been built."

(16) *Rex (Longworth) v. Preston R.D.C.* (1911, K. B. D.), 106 L. T. 37; 76 J. P. 65; 10 L. G. R. 238. *Per* Lord Alverstone, C.J. (76 J. P. at p. 66): "Unless, on the face of

those plans, this can fairly be described in law as two buildings, the local authority cannot decline to approve the plans by calling it two buildings."

(17) *Rex (White) v. Newcastle-upon-Tyne Cpn.* (1912, K. B. D.), 76 J. P. Jo. 176, 256; Loc. Gov. Chron. 317; 3 Glen's Loc. Gov. Case Law 152.

(18) *Leonard v. Hoare & Co.*, L. R. 1914, 2 K. B. 789; 83 L. J. K. B. 1361; 111 L. T. 69; 78 J. P. 287; 12 L. G. R. 844.

(19) *Rex (Hoare & Co.) v. Foots Cray U.D.C.*, L. R. 1916, 1 K. B. 246; 85 L. J. K. B. 191; 113 L. T. 705; 79 J. P. 521; 13 L. G. R. 1027. Further as to this and the overruled case, see the Note to P. H. Act, 1907, s. 23, post, Part I., Div. III.

(20) *Rex (Cambridge Picture Playhouses, Ltd.) v. Cambridge Cpn.*, L. R. 1912, 1 K. B. 250; 91 L. J. K. B. 118; 126 L. T. 365; 86 J. P. 13; 20 L. G. R. 67. Further as to this case, see Note to s. 36 of Act of 1890, post, Part I., Div. II.

(21) *Rex (Owners of Connaught Gardens Estate) v. West Ham B.C.* (1911, K. B. D.), 2 Glen's Loc. Gov. Case Law 206.

(22) See the *Kirkcaldy Case*, ante, p. 382.

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make a bye-law at variance with this enactment and going beyond it; and that where a bye-law prohibited erections on open spaces belonging to buildings from being made without the approval of the urban authority, but specified no time within which approval or disapproval of the erections was to be given, and the council had not signified their approval or disapproval within a month after the deposit of plans, proceedings could not be taken for the recovery of a penalty for breach of the bye-law after the month had elapsed.²³ It was also held that where a local board had not during the month prescribed by the present section signified their disapproval of plans, they could not afterwards object to the building being erected according to the line laid down on the plan.²⁴

Procedure
for compelling
approval.

An action for damages will not lie for refusal to approve building plans even where the local authority are alleged to have acted wilfully and maliciously, having only made a pretence of exercising their discretion, and having in fact never addressed their minds to the question really before them, an application for the prerogative writ of *mandamus* to hear and determine the matter being the proper remedy.²⁵

A local authority disapproved of the deposited plans of a proposed new street on the ground that it was not of the width prescribed by their bye-laws. The landowner brought an action for a *mandamus* to compel them to approve of the plans, and the jury found that his proposed erections did not amount to laying out a new street. On further consideration Kennedy, J., gave judgment for the defendants, on the ground that the plaintiff had no right of action on which to found a right to ancillary relief by *mandamus*, and that his remedy, if any, was by application for the prerogative writ of *mandamus*. On appeal to the Court of Appeal this judgment was affirmed on the ground that the question whether the plaintiff's building operations would constitute the laying out of a new street was a matter within the jurisdiction of the local authority, on which they had *bonâ fide* exercised their discretion, and that the court would, therefore, not interfere with their decision.²⁶

Restraining
approval and
execution of
plans.

Certain ratepayers issued a writ claiming an injunction to restrain (1) the local authority from approving certain deposited plans; (2) the local authority from refusing to allow the plaintiffs to inspect these plans; and (3) the persons who had deposited the plans from carrying them out. They then applied unsuccessfully to a judge in chambers for interim injunctions claiming the above relief. It was held by the Court of Appeal (1) with regard to the approval of the plans by the local authority, that as at the time of the hearing these had in fact been approved, though only on the day when the appeal was opened, no interlocutory injunction could be granted; and (2) with regard to the local authority's refusal to allow inspection of the plans, that the injunction to restrain the refusal to allow inspection was equivalent to a mandatory order to allow inspection, and that such an order could not be made on an interlocutory application.²⁷ The third point is dealt with elsewhere.²⁸

Inspection
of plans.

Conditional
approval.

By a local Act,²⁹ "every undertaking or agreement in writing, given" to the local authority by an owner of property "on the passing of plans or for the removal of obstructions, or otherwise in connection with the property of such an owner, shall be binding" and enforceable summarily. In 1892 an owner of property agreed with the local authority that on his plans being passed he would, "whenever required" by the local authority, set back his fence for the purpose of widening the road in front of his property. In 1910 a prospective purchaser of the property asked the local authority (1) "are the streets roads and passages adjoining or used in connection with the property adopted by the local authority"; and (2) "are there any payments due to the local authority on account of the property and

(23) *Clark v. Bloomfield* (1885, Q. B. D.), 1 T. L. R. 323.

(24) *Masters v. Pontypool Loc. Bd.* (1878), L. R. 9 Ch. D. 677; 47 L. J. Ch. 797; *Hopkins v. Smethwick Loc. Bd.* (1890, C. A.), L. R. 24 Q. B. D. 712; 59 L. J. Q. B. 250; 62 L. T. 783; 54 J. P. 693.

(25) *Davis v. Bromley Cpn.* (C. A.), L. R. 1908, 1 K. B. 170; 77 L. J. K. B. 51; 97 L. T. 705; 71 J. P. 513; 5 L. G. R. 1229.

(26) *Smith v. Chorley R.D.C.*, L. R. 1897;

1 Q. B. 532, 678; 66 L. J. Q. B. 427; 76 L. T. 637; 61 J. P. 198, 340. Followed in the *Eastbourne Case*, ante, p. 368 (33).

(27) *Dover Picture Palace, Ltd., and Pessers v. Dover Cpn., and Crundall* (1913, C. A.), 11 L. G. R. 971; 4 Glen's Loc. Gov. Case Law 131, 132. See also the *Pudsey Case*, ante, p. 381.

(28) *Ante*, p. 210.

(29) *Wallasey*, 1890 (53 & 54 Vict. c. cxxi.), s. 32.

have any notices to effect sanitary improvements been served that have not as yet been complied with?" The local authority replied that the road was "a highway repairable by the inhabitants at large," and that they had "no outstanding charges for private improvement expenses against the property," adding that "if at any future time the land upon which the Drill Hall is erected is developed and a passage formed along the boundary of the premises referred to, this property will be charged with a proportion of the costs of the work." This purchaser thereupon bought the property, and did not become aware of the above agreement until 1911, when the local authority required him to widen the road in pursuance thereof. He refused to do so, summary proceedings under the Act were taken, and the justices ordered the work to be done. It was contended by the purchaser (1) that the local Act did not authorise an agreement of this kind, but only referred to such obstructions as shades over footways and entrances into hotels; (2) that the local authority were estopped by their letter, which led the appellant to believe that there were no road charges of any kind except the possible one in the event of the adjoining property being developed; and (3) that the agreement, being one to transfer an interest in land "whenever required" infringed the rule against perpetuities. It was held that, even if the third point was good (as to which *quære*), the local Act prevented the rule applying, and that there was no estoppel. The order of the justices was accordingly upheld.³⁰

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Conditional
approval—
continued.

It was held that the Tribunal of Appeal had no jurisdiction to enquire into the reasonableness of a condition, as to the provision of means of escape in case of fire, which had been attached by the London County Council to their approval of certain plans.³¹

In the last-cited case it was held that the local board could not under the present section pull down a building without giving the owner an opportunity of showing cause why it should not be pulled down; and that it was too late to object that no plans had been deposited when an action was brought to restrain the authority from pulling down the building.³²

Pulling down
work.

With regard to the power to pull down work contravening the bye-laws, see also the Note to sect. 157.³³

The court granted the costs of a *certiorari* to quash an order of justices for payment of the expenses of pulling down a building under the present section, as it was a civil and not a criminal proceeding.³⁴

Costs.

The power to impose penalties for contravention of the bye-laws is given by sect. 183.

Penalties.

The present section makes the continued existence of works originally constructed in contravention of the bye-laws a continuation of the offence of so constructing them and not a separate offence; and therefore a person who is responsible for maintaining the works in the state and condition in which they were so constructed, may be convicted in daily penalties for a continuing offence (under a bye-law imposing such penalties after notice in the case of a continuing offence), on an information charging him only with constructing the works in contravention of the bye-laws.³⁵

Continuing
offence.

Further with regard to the meaning of a "continuing offence," see the cases cited in the Notes to sects. 183 and 251, *post*.

Sect. 159. For the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

What to be
deemed a new
building.
L.G., s. 34.

(30) *Crane v. Wallasey Cpn.* (1912, K. B. D.), 107 L. T. 150; 76 J. P. 326; 10 L. G. R. 523. But see *Rex v. Newcastle-upon-Tyne Cpn.*, *ante*, p. 401 (17), where there was no local Act to assist the local authority.

(31) *London C.C. v. Clark*, L. R. 1912, 1 K. B. 511; 81 L. J. K. B. 225; 105 L. T. 713; 76 J. P. 60; 10 L. G. R. 59.

(32) See the *Pontypool Case*, *ante*, p. 402.

(33) *Ante*, p. 396.

(34) *Reg. v. Morris* (1883, Q. B. D.), 31 W. R. 609.

(35) *Airey v. Smith*, L. R. 1907, 2 K. B. 273; 76 L. J. K. B. 766; 96 L. T. 691; 71 J. P. 285; 5 L. G. R. 713.

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Alteration
of building.

Note.

The definition of "the erection of a new building" in the present section is not exclusive; and a new building may be erected by making other alterations to an old building than those mentioned in the section.¹

The effect of the definition in the present section is that the converted building is to be treated, for the purposes of the Act and the bye-laws as to new buildings, as though it were an entirely new building erected for the first time. A person, therefore, who converted a dismantled railway carriage (previously used for workmen to take meals in) into a dwelling by removing the seats and cutting a door through a partition, and used one part as a sleeping room and the other as a kitchen, was unsuccessful in an action which he brought against the district council, who, after calling upon him to show cause, had demolished the structure and removed the materials. It was held by the Court of Appeal, affirming the Divisional Court, that the council were not confined to dealing with the alterations which had the effect of converting the structure into a dwelling-house; but the Divisional Court expressed the opinion that conversion here meant structural conversion and not conversion merely by use of the building as a dwelling-house.²

Between 1909 and April, 1912, the appellant occupied two vans placed at right angles to each other, one as a living room and the other as a sleeping room. In April, 1912, he removed the vans to an adjoining field, built on the ground where they had stood a brick wall twelve inches high, brought the vans back, placed them side by side, and rested the side of one van on the wall and the other portions of the vans on blocks of wood and dummy wheels. He then removed a portion of the side of one van and built tight into it a brick chimney stack with a new flue, and made a mortar joint between the van walls and the blocks. He made such alterations without previously depositing a plan with the local authority, and occupied the altered vans as a dwelling-house without previously obtaining from the local authority a certificate that they were fit for human habitation. It was held that he had been properly convicted of offences against bye-laws made under sect. 157.³

With respect to certain building operations adjoining and connected with an old inn, in a special case stated by a magistrate, it was found as follows: the structure is an expensive one, and is in fact a comfortable, good-looking dwelling-house, which it previously was not; the old building was partly pulled down to the ground-floor, and the buildings erected on the site thereof are a new building intended for occupation by men and women, and they were not adapted for personal occupation previously. The magistrate added that he found as a fact that the building came within the definition of a new building in the present section. The court held that the question whether the erection was a new building within the bye-law was a question of fact for the exclusive determination of the magistrate. *Per* Lord Coleridge, C.J.: "It is impossible to lay down any abstract definition of a new building. There are so many degrees as to which each particular case must be judged."⁴ This was followed in a case in which the justices had held that a new building was erected when considerable alterations had been made to an old building, although a wall and part of the roof had been left standing; the court expressly deciding that the present section does not give an exhaustive definition of what constitutes the erection of a new building.⁵ It was also followed in a case in which an old tumbledown wooden building had been almost entirely reconstructed, and was held to be a "new building," Lord Alverstone, C.J., saying "if the justices had found as a fact that this was not a new building we might have had a difficulty in dealing with the matter, assuming that there was some evidence before them upon which they could come to the conclusion that so much of the old building was left that it was not a new building, and that the old building remains. . . . The justices have not decided as a fact, but they stated

(1) See, in addition to the cases cited below, *P. H. Am. Act*, 1907, s. 23, and the cases there cited, *post*, Part I., Div. III. See also *P. H. Am. Act*, 1890, s. 33, *post*, Part I., Div. II., under which a mere change of user, without any structural alteration, may be an offence.

(2) *Hanrahan v. Leigh-on-Sea U.D.C.*, L. R. 1909, 1 K. B. 263, 2 K. B. 257; 73 J. P. 263,

338; 7 L. G. R. 199, 644.

(3) *James v. Tudor* (1912, K. B. D.), 77 J. P. 130; 11 L. G. R. 452.

(4) *James v. Wyrill* (1884), 51 L. T. 237; 48 J. P. 725; see also *post*, p. 508 (14), as to the penalties imposed in this case.

(5) *Redruth Brewery Co. v. Redruth U.D.C.* (1904), 69 J. P. 78; 3 L. G. R. 130.

in their opinion that it was not a new building within the meaning of the statute and bye-laws." ⁶ **Sect. 159, n.**

As to the distinction, for the purposes of sect. 209 of the London Building Act, 1894, between "alterations" and "repairs," see the case cited below.⁷

A bye-law directed that "every building to be erected and used as a dwelling-house shall have an open space exclusively belonging thereto, to an extent of one-third of the entire area of the ground on which the dwelling-house shall stand"; and by another bye-law, under a general heading of width and level of new streets, provided for the width of new streets, dividing them into front, cross, and back streets, and in a subsequent separate paragraph stipulated that "no dwelling-house should be built immediately adjoining any back street." The proprietor of a house, yard, and coach-house and stables erected before the constitution of a local board of health for the district, pulled down the coach-house and stable below the ground-floor, and erected a building partly upon their site and partly upon the yard, with rooms over, the ground-floor opening into the yard, and also into an old back street immediately adjoining; but the access to the rooms was by a covered way from the old house, the object of the new building being to increase the accommodation of the old house, which had been converted into an hotel. Treating the old and new buildings either as one building or as separate buildings, the space left in the yard was insufficient under the bye-law. It was held that there was no violation of the bye-laws either in respect of an insufficiency of space or the building of a dwelling-house adjoining a back street; as, first, the facts showed that there was no new building erected within the statute and bye-laws, but only an addition to the old building; and, secondly, that the words "back street" must be read as "new back street." *Per Pollock, C.B.*: "I do not think that the principle is applicable to the merely adding a bedroom or two to an old house already built, and although this may be done on the first occasion a little in excess, and a very great many bedrooms added and the building run up to the height of three or four stories, I do not think that makes any difference." But *semble, per Martin, B.*, the bye-laws might have been lawfully framed so as to include the existing buildings.⁸

Addition to old buildings.

On the other hand, a stable, pulled down and re-erected with a new roof and two new walls in a different place, was held by the court to be a newly erected building within the bye-law requiring notice and deposit of plans. The magistrates had decided that it was not a new building, but the court held that this was not simply a finding of fact, and could be questioned on a special case.⁹

Re-erection of building.

A local Act enacted that when any part of the front wall of a building standing in a row of buildings or within 10 feet of the carriage or footway of a street should be taken down to be rebuilt or repaired, the entire front of the building should be rebuilt or repaired so as to range on the general line of the front walls of the buildings in the row or street or otherwise as the surveyor, with the concurrence of the improvement committee, should approve of; subject to a proviso that the front need not be taken down where only plastering was repaired or door or window-frames altered or repaired. The owners of a licensed beerhouse directed a builder to take out and alter the sashes of a front window; but the builder, without their knowledge or instructions, removed not only the window and its frame, but also a wooden sill on which it rested and a stone sill below that, and made a new wooden sill and substituted two courses of brickwork for the stone sill. The court held that as the owners never intended the additional work to be done, they had not offended against the provision in the local Act.¹⁰

Under a provision in the London Building Act, 1894,¹¹ excepting the re-erection of a building on the site of an old building from the prohibition against erecting new buildings within a certain distance from the centre of the street, it was held that the erection of two factories 52 feet in height on the site of six small dwelling-

(6) *Lee v. Barton* (1909, K. B. D.), 101 L. T. 600; 73 J. P. 509; 7 L. G. R. 1145.

(7) 57 & 58 Vict. c. ccxiii., s. 209. *Goddard v. Greig*, L. R. 1917, 2 K. B. 397; 86 L. J. K. B. 1485; 117 L. T. 277; 81 J. P. 214; 15 L. G. R. 552.

(8) *Shiel v. Sunderland Cpn.* (1861), 6 H. & N. 796; 30 L. J. M. C. 215; 25 J. P. 647. See also, as to "additions," *Akers v. Daub-*

ney, ante, p. 400; and *Repton School Governors v. Repton R.D.C.*, cited in Note to P. H. Act, 1907, s. 23, *post*, Part I., Div. III.

(9) *Hobbs v. Dance* (1873), L. R. 9 C. P. 30; 43 L. J. M. C. 21; 29 L. T. 687; 38 J. P. 56.

(10) *Yabbicom v. Bristol Brewery, Ltd.* (1903), 67 J. P. 261; 1 L. G. R. 477.

(11) 57 & 58 Vict. c. ccxiii., s. 13 (1, 5).

Sect. 159, n. houses 28 feet in height, was, having regard to the object of the enactment, such a re-erection.¹²

The conversion of a conservatory of wood and glass into a bedroom with brick walls, was held to be the "making of an addition to an existing building by raising part thereof" within the meaning of a bye-law, although the bedroom only occupied the same space that the conservatory had previously occupied.¹³

Where Part III. of the Public Health Acts Amendment Act, 1890,¹⁴ has been adopted, the council may make bye-laws to prevent buildings, which have been erected in accordance with bye-laws made under the Public Health Acts, from being altered in such a way that if at first so constructed they would have contravened the bye-laws.

Date of erection. As to when a building can be said to "begin to be erected," see the case cited below.¹⁵

Incorporation of certain provisions of 10 & 11 Vict. c. 34. L.G., s. 45.

Sect. 160. The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters; that is to say,

- (1.) With respect to naming the streets and numbering the houses¹; and
- (2.) With respect to improving the line of the streets and removing obstructions²; and
- (3.) With respect to ruinous or dangerous buildings³; and
- (4.) With respect to precautions during the construction and repair of the sewers streets and houses,⁴

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

L.G. Am., s. 11. Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on owners instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act.

Note.

Incorporated clauses. With regard to the construction of the incorporated provisions, see sect. 316.
Notices. Sects. 266, 267, contain general provisions with regard to the authentication and service of notices.

Recovery of expenses. With regard to the recovery of the expenses of works, see sect. 257; and with regard to the deduction of the amount of a private improvement rate from the rent, see sect. 214.

(12) *London C.C. v. Patman* (1903), 67 J. P. 285; 1 L. G. R. 519.

(13) *Meadows v. Taylor* (1890), L. R. 24 Q. B. D. 717; 59 L. J. M. C. 99; 62 L. T. 659; 54 J. P. 757.

(14) See s. 23 (4), *post*, Part I., Div. II.

(15) *Richardson v. Brown*, *ante*, p. 383 (4).

(1) See ss. 64, 65, *post*, Vol. II., p. 1620.

(2) See ss. 66-74, *post*, Vol. II., p. 1621.

(3) See ss. 75-78, *post*, Vol. II., p. 1627.

(4) See ss. 79-83, *post*, Vol. II., p. 1627.

Sect. 161.

LIGHTING STREETS, ETC. .

Sect. 161. Any urban authority may contract with any person for the supply of gas, or other means of lighting the streets markets and public buildings in their district, and may provide such lamps lamp posts and other materials and apparatus as they may think necessary for lighting the same.

Powers of urban authorities for lighting their district.
12 & 13 Vict., c. 94, s. 8.

Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Waterworks Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the [*Local Government Board*] shall throughout the said Act be deemed to be substituted for the Board of Trade.¹

Note.

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Supply of Gas.

Trustees under any local Act for supplying gas in a borough may transfer their powers to the council under sect. 136 of the Municipal Corporations Act, 1882,² and under sect. 137 of the same Act borough councils may extend the area, subject to local lighting Acts.³

Borough councils.

The present section does not apply to a rural district council, except so far as it may be applied to them by an order under sect. 276.

Rural district councils.

Where the lighting of streets is carried out in a rural district, it is usually carried out, independently of the district council, under the Lighting and Watching Act, 1833, mentioned in sect. 163, and the Note to that section.

But the first clause of the present section may be applied by the Minister of Health so as to allow a rural district council to provide lamps, etc., and contract for the supply of gas or other illuminant.

With reference, however, to the application of the latter part of the section to a rural district council, the Local Government Board pointed out that, unless an existing gas company possess Parliamentary powers which can be transferred to them under sect. 162, there are practical difficulties which preclude a rural district council from carrying on a gas undertaking, even if they are invested with power to purchase. The difficulty arises, not in conferring powers under sects. 161 and 162, but from the fact that, in addition to such powers, an urban authority in ordinary cases require the powers given by a provisional order under the Gas and Waterworks Facilities Acts before they can themselves manufacture and supply gas; and in the case of a rural district council there is no express statutory authority enabling them to apply for such an order. For these reasons the Board regarded themselves as unable to entertain the application of a rural district council for urban powers under the latter part of the present section.

The Gas Regulation Act, 1920,⁴ does not appear to alter this position.

The supply of gas to a district council by a company, with whose special Act the Gasworks Clauses Act, 1871, is incorporated, is regulated by sects. 24 to 29 of that Act.⁵

Contracts for supply of gas.

(1) This proviso has not been repealed, but the Board of Trade is the Department now responsible, and not the Minister of Health—see footnote (23), *post*, p. 409.

(2) *Post*, Vol. II., p. 1828.
(3) *Post*, Vol. II., p. 1829.
(4) Quoted in full below in this Note.
(5) *Post*, Vol. II., p. 1258.

Sect. 161, n.
Contracts for
supplying
gas—cont.

Sect. 174 of the present Act contains regulations with respect to the mode in which contracts by urban district councils are to be made. Formerly, under the Public Health Supplemental Act, 1849,⁶ a local board could only contract for lighting their district for a period not exceeding three years.

The word "person" includes a company, or other corporate or unincorporate body.⁷

The performance of the covenants of a contract to supply gas to a metropolitan vestry, and (subject to a penalty) to light the street lamps and keep them lighted between certain hours, was held not to be a condition precedent to the right of the company to recover the price of gas supplied.⁸

As to what is included in the "actual cost" of lighting streets, see the case cited below.⁹

A gas company were held to be entitled to recover from the local authority the full charge fixed by their special Act of £4 5s. per street lamp, although in consequence of frost some of the lamps had not been kept lighted from sunset to sunrise, and some had been supplied with less than the prescribed quantity of gas: the only remedy of the local authority for the deficiency in the supply being the remedy prescribed by the Act.¹⁰

As to the effect of the war restrictions upon contracts for the supply of gas, see the cases cited in the Note to sect. 24 of the Gasworks Clauses Act, 1871.¹¹

As to the "place of supply," see the cases cited in the Note to s. 58.¹²

Conspiracy.

As to the breaking of contracts of service under gas undertakers, see the Act of 1875 quoted in the Note to sect. 189.^{12a}

Damage from
lamp not
being lighted.

The present section does not impose any obligation upon a local authority to light their district, and it was accordingly held that, where the defendants had lighted a dangerous footway which had not been taken over by them, but from motives of economy extinguished the lamp at an earlier hour than usual, they were not liable to a passenger who was injured after that hour.¹³

A taxicab was damaged by collision with a refuge at the entrance to a railway station. The refuge was lighted, but, owing to the war-time restrictions, not sufficiently to render it conspicuous. A statute had authorised its retention in the position in which it had previously been erected. The House of Lords reversed the decision of the Court of Appeal, which was in favour of the plaintiff.¹⁴ But where a local authority knew that the lamp on the refuge with which a similar collision occurred was erratic the plaintiff succeeded.¹⁵ So also did a plaintiff who drove into an inadequately lighted archway at the end of a street¹⁶; and one whose eye came in contact with the spike of a tree guard which had been insufficiently lighted¹⁷; and others who drove their cars into an improperly lighted street excavation¹⁸; and a ravine between two streets which were in a line with each other, and so lighted as to appear continuous.¹⁹

Removal of
pipes.

Where the gasworks do not belong to the urban district council, and it is necessary for the purposes of the present Act to alter the situation of the pipes, etc., the council have power, under sect. 153, to require the owners to move them, and, if the owners fail to do so, to move them themselves.

Rateable
occupation
of pipes.

The corporation of a borough were empowered by an Improvement Act to supply gas in a neighbouring district, and the local board of that district had

(6) 12 & 13 Vict. c. 94, s. 8, repealed by s. 343, *post*.

(7) See s. 4 and Note, *ante*, p. 14.

(8) *London Gas Light Co. v. Chelsea Vestry* (1860), 8 C. B. (N.S.) 215; 8 W. R. 416; 2 L. T. 217.

(9) *Bulawayo Municipality v. Bulawayo Water Co.*, L. R. 1908 A. C. 241.

(10) *Richmond Gas Co. v. Richmond Cpn.*, L. R. 1893, 1 Q. B. 56; 62 L. J. Q. B. 172; 67 L. T. 554; 56 J. P. 776. As to effect of war-time lighting restrictions on such charges, see cases cited *post*, Vol. II., p. 1258 (3).

(11) *Post*, Vol. II., p. 1258.

(12) *Ante*, p. 146.

(12a) *Post*, p. 531.

(13) *Sheppard v. Glossop Cpn.* (C. A.), L. R. 1921, 3 K. B. 132; 90 L. J. K. B. 994; 125 L. T. 520; 85 J. P. 205; 19 L. G. R. 357. *Lamley v. East Retford Cpn.* (1891, C. A.), 55 J. P. 133, distinguished; *Mellor v. Heywood Cpn.* (1848), 48 J. P. 148, and *Young*

v. Islington Vestry (1896), 60 J. P. 821, followed. See also *Harris v. Baker* (1815), 4 M. & S. 27.

(14) 2 Edw. VII. c. cxxxv. s. 31. *Great Central Ry. Co. v. Hewlett*, L. R. 1916, 2 A. C. 511; 85 L. J. K. B. 1705; 115 L. T. 349; 80 J. P. 361; 14 L. G. R. 1015. See also *Brown v. Lambeth B.C.* (1915), 32 T. L. R. 61.

(15) *Baldock v. Westminster City Cpn.*, *post*, Vol. II., p. 1903.

(16) *Carpenter v. Finsbury B.C.*, L. R. 1920, 2 K. B. 195; 89 L. J. K. B. 554; 123 L. T. 299; 84 J. P. 107; 18 L. G. R. 370.

(17) *Morrison v. Sheffield Cpn.*, cited in Note to P.H. Am. Act, 1890, s. 43, *post*, Part I., Div. II.

(18) *Donaldson v. Woolwich B.C.*, *post*, Vol. II., p. 1903.

(19) *McClelland v. Manchester Cpn.*, cited in Note to s. 308 (under heading "Action for Damages"), *post*.

by the same Act the exclusive right of laying the gas mains and pipes, but were required to afford the corporation the use of them on payment of sums proportionate to the quantity of gas supplied. The local board accordingly laid gas mains and pipes and kept them in repair, affording the use of them to the corporation, who provided, laid, and maintained the service pipes at the cost of the consumers. Under these circumstances the Court of Appeal held that the corporation were not the rateable occupiers of the mains and pipes.²⁰

In connection with the subject of gas, reference may here be made generally to the Acts for regulating measures used in the sale of gas.²¹ These Acts, however, do not cast upon district councils any duty in regard to the regulation of such measures.

Sect. 161, n.

Regulation
of measures
for gas.

Standard of Calorific Power.

The Gas (Standard of Calorific Power) Act, 1916,²² of which the title is, "An Act to authorise as respects gas undertakings the substitution of a standard of calorific power for a standard of illuminating power," enacted as follows :

Gas standard.

" 1.—(1) Where, by virtue of any Act or order confirmed by Act of Parliament regulating the undertaking of any company, authority, or person authorised to supply gas in any area in the United Kingdom (hereinafter referred to as the undertakers), the gas supplied by the undertakers is required to be of a prescribed illuminating power, and the undertakers are liable to penalties in the case of the illuminating power of the gas provided by them being less than, or being less by a prescribed extent than, such prescribed illuminating power, then on application being made by the undertakers the appropriate Government department may, if they think it expedient, and subject to such conditions, if any, as they consider proper, including such variation as they may think desirable of the prescribed pressure at which the gas is to be supplied, by order—(a) substitute for the prescribed standard of illuminating power a prescribed standard of calorific power; (b) exempt the undertakers from penalties in respect of a deficiency in illuminating power and substitute for the provisions imposing such penalties provisions imposing penalties in the case of deficiency in calorific power; and (c) substitute for the provisions as to testing for illuminating power provisions as to testing for calorific power; and on the making of such an order the Act or order regulating the undertaking shall have effect as amended by the order.

" (2) In considering the expediency of making such an order the department shall have special regard to whether the undertakers have erected and worked, or are prepared to erect and work, suitable crude benzol recovery plant for the production of benzol and toluol.

" (3) Before making an order under this section the appropriate Government department shall require the undertakers to give public notice, in such manner as the department may consider best adapted for informing persons affected, of the application for an order under this section, and of the calorific standard proposed to be adopted, and as to the manner in which and time within which objections may be made, and shall consider any objections which may be duly made, and shall, where they think it expedient to do so, hold an inquiry, and the costs (if any) incurred by the department in connection with the inquiry shall be borne by the undertakers.

" (4) For the purposes of this section 'the appropriate Government department' means—(a) in cases where the undertakers are a local authority, the [Local Government Board], or [Scotland and Ireland]; and (b) in any other case, the Board of Trade." ²³

(20) *Southport Cpn. v. Ormskirk U.A.C.*, L. R. 1894, 1 Q. B. 196; 63 L. J. Q. B. 250; 69 L. T. 852; 58 J. P. 212.

(21) 22 & 23 Vict. c. 66; 23 & 24 Vict. c. 146; 24 & 25 Vict. c. 79; and Act of 1920, *post*, p. 410. And see L.G. Act, 1888, s. 3 (xiii.), *post*, Vol. II., p. 1890.

(22) 6 & 7 Geo. V. c. 25, s. 1. Passed on Aug. 3, 1916.

(23) The powers and duties of the Minister of Health (formerly the Local Government Board) in relation to gas undertakings were transferred to the Board of Trade by an Order in Council which is dated the 9th December, 1920, and was made under the

Ministry of Health Act, 1919, s. 3 (3) (set out *post*, Vol. II., p. 2306). The provisions of the above Act of 1916, and of the Gas and Water Facilities Act, 1870 (set out *post*, Vol. II., p. 1246), must therefore be read in the light of this alteration. The obtaining of gas provisional orders under the last-mentioned Act is, however, likely to be superseded by the provisions of the Gas Regulation Act, 1920 (set out *infra*), under s. 10 of which special orders may be obtained conferring (*inter alia*) the powers as to gas undertakings obtainable by provisional orders under the Act of 1870.

Sect. 161, n.

*The Gas Regulation Act, 1920.*Price and
quality of
gas.

The Gas Regulation Act, 1920,¹ of which the title is, "An Act to amend the law with respect to the supply of gas," enacts as follows:

"1.—(1) The Board of Trade may, on the application of any gas undertakers, by order, provide for the repeal of any enactments or other provisions requiring the undertakers to supply gas of any particular illuminating or calorific value, and for substituting power to charge for thermal units supplied in the form of gas.

"(2) An order under this section may provide for modifying the statutory or other provisions affecting the charges which may be made by the undertakers, by substituting for the standard or maximum price authorised under those provisions a standard or maximum price for each hundred thousand British thermal units (in this Act referred to as 'a therm').

"(3) The standard or maximum price per therm fixed by the order shall be a price corresponding as nearly as may be to that fixed by those provisions for each thousand cubic feet, but with such addition as appears to the Board reasonably required in order to meet the increases (if any) due to circumstances beyond the control of, or which could not reasonably have been avoided by, the undertakers, which have occurred since the thirtieth day of June nineteen hundred and fourteen in the costs and charges of and incidental to the production and supply of gas by the undertakers; and the order may make such modifications of any provisions whereby the rate of dividend payable by the undertakers or any other payment is dependent on the price of gas supplied as appear to the Board to be necessary: Provided that, if at any time it is shown to the satisfaction of the Board of Trade that the costs and charges of and incidental to the production and supply of gas have substantially altered from circumstances beyond the control of, or which could not reasonably have been avoided by the undertakers, the Board may, if they think fit, on the application of the undertakers or of the local authority, or, where the local authority are the undertakers, of twenty consumers, make an amending order correspondingly revising the powers of charging authorised by the original order.

"(4) An order under this section—(a) shall prescribe the time when and the manner in which the undertakers are to give notice of the calorific value of the gas which they intend to supply (in this Act referred to as the declared calorific value), and shall require that such notice shall at the same time be published in the London, or Edinburgh, or Dublin Gazette; and (b) shall require the undertakers, in the case of alteration in the declared calorific value, to take at their own expense such steps as may be necessary to alter, adjust, or replace the burners in consumers' appliances in such manner as to secure that the gas can be burned with safety and efficiency, except in the case of any consumer who objects to such alteration, adjustment, or replacement by the undertakers; and (c) may prescribe, subject to such conditions as the Board may think necessary, the additional charge per therm which the undertakers may make in respect of gas supplied by means of prepayment meters; and (d) may make such supplemental and consequential provisions as appear necessary to give full effect to the order; and (e) shall come into operation on such date as may be fixed by the order; and (f) shall have effect as if enacted in this Act.

"(5) If within two years after the passing of this Act any undertakers have not applied to the Board of Trade for an order under this section, the Board of Trade may, after giving not less than three months' notice to the undertakers, make an order applying to those undertakings, which shall have the same effect as an order made on the application of the undertakers.

"(6) Before making any order under this section, the Board of Trade shall, where the order is made on the application of undertakers, require the undertakers to give, and in any other case shall themselves give public notice in the London or Edinburgh or Dublin Gazette as the case may be and in such other manner as the Board may consider best adapted for informing persons affected, of the application for or proposal to make an order, and of the maximum or standard price per therm proposed, and as to the manner in which and time within which objections may be made, and shall consider any objection which may be duly made, and shall, where they think it expedient to do so, cause an inquiry to be held. The notice to be given under this section shall include notice to the local authority.

"(7) The calorific value of gas means, for the purposes of this Act, the number

(1) 10 & 11 Geo. V. c. 28, ss. 1-3. The above short title is given by s. 22.

of British thermal units (gross) produced by the combustion of one cubic foot of the gas measured at sixty degrees Fahrenheit under a pressure of thirty inches of mercury and saturated with water vapour." ²

" 2.—(1) Where an order under this Act has been made affecting any undertakers, the gas supplied by those undertakers, in addition to conforming to the conditions prescribed in the order, shall comply with the following conditions, that is to say:—(i) it shall not contain any trace of sulphuretted hydrogen when tested in accordance with this Act; (ii) it shall be supplied at not less than the minimum permissible pressure: Provided that the foregoing requirements shall not apply as respects a separate supply of gas by any undertakers for industrial purposes only, but an order may impose such other conditions with regard to gas supplied by those undertakers for those purposes as appear necessary to the Board of Trade.

" (2) The minimum permissible pressure shall be such pressure in any main, or in any pipe laid between the main and the meter having an internal diameter of two inches and upwards, as to balance a column of water not less than two inches in height except as may be otherwise provided by the order relating to any undertaking, and different minima may be specified for different parts of an undertaking, or for gas of different calorific values.

" (3) Where any undertakers are, at the time when an order is made with respect to them under this Act, under a statutory obligation to comply with conditions in relation to pressure which are in excess of the provisions as to pressure contained in this section, the order shall make such provisions as appear necessary to the Board of Trade for preserving these conditions, and this Act shall, in its application to those undertakers, have effect as though such last-mentioned provisions were substituted for the provisions of this section as to pressure.

" (4) The Board of Trade shall, as soon as may be after the passing of this Act, cause inquiries to be held into the question whether it is necessary or desirable to prescribe any limitations of the proportion of carbon monoxide which may be supplied in gas used for domestic purposes, and into the question whether it is necessary or desirable to prescribe any limitations of the proportion of incom-bustible constituents which may be supplied in gas and may, if on any such inquiry it appears desirable, make one or more special orders under this Act prescribing the permissible proportion in either case, and any such special order may have effect either generally or as regards particular classes of undertakings, and the provisions of the special order shall have effect as if they were enacted in this section." ³

" 3. It shall not be lawful for any person to charge for the supply of gas according to the number of British thermal units supplied unless authorised to do so under this Act or by special Act of Parliament." ⁴

Sects. 4 to 7 of the same Act ⁵ provide as follows:—

" 4.—(1) The Board of Trade shall appoint three persons, at least one of whom shall be a person having practical knowledge and experience in the manufacture and supply of gas, to act as gas referees. The Board of Trade shall also appoint a competent and impartial person to be chief gas examiner. The gas referees and the chief gas examiner shall hold office for such time and on such conditions as the Board of Trade may direct, and may, with the consent of the Board of Trade, appoint such assistants as may be necessary for the proper discharge of their duties.

" (2) Two of the gas referees shall be a quorum and at least two of the gas referees shall concur in every act or determination of the gas referees.

" (3) The local authority may, unless they are themselves the undertakers, appoint a competent and impartial person to be a gas examiner, and subject to the prescription of the gas referees to test the gas and the pressure at which the gas is supplied: Provided that—(a) for the purposes of this section, a gas examiner may be appointed to act on behalf of any number of local authorities, and the local authorities may enter into such arrangements as they think fit in

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Composition and pressure of gas to be supplied.

Thermal units.

Testing of gas.

(2) Marginal Note to s. 1 is: "Power to substitute new basis of charges." Rules of 1920 (S.R.O. No. 1826) as to applications under this section were replaced by Rules of 1922 (S.R.O. No. 380, set out in "Loc. Gov. 1922," pp. 276-278).

(3) Marginal Note to s. 2 is: "Composition and pressure of gas to be supplied." A B. of T. Order of Feb. 16, 1922 (set out in 20

L. G. R. (Orders) 190) made under subsect. (4) provides that no gas undertakers may "supply any gas for domestic purposes containing carbon monoxide unless such gas possesses the distinctive pungent smell of coal gas."

(4) Marginal Note to s. 3 is: "Restriction on power to charge for thermal units."

(5) *Ibid.*, ss. 4-7.

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Testing of
gas—*cont.*

regard to the joint appointment and employment of such gas examiner; and (b) any county council may, if they think fit, with the consent of any other local authority within the county, appoint a gas examiner, who shall have the same powers as if he were appointed by that local authority.

“(4) Where no gas examiner is appointed by the local authority, or where the testing of gas is imperfectly attended to, quarter sessions, on the application of not less than five consumers, may appoint a competent and impartial person to act as gas examiner, who shall have the same powers and perform the same duties as if he were appointed by the local authority, and the remuneration and expenses of the gas examiner up to an amount approved by quarter sessions, shall be paid by the local authority.”⁶

“5.—(1) The gas referees shall prescribe—(a) the places and times at which and the apparatus and method by which tests, whether continuous or intermittent, shall be made to ascertain whether any undertakers with respect to whom an order has been made under this Act are supplying gas in accordance with their obligations; and (b) the method by which any such apparatus shall be verified; and (c) the time and form of the reports to be made by the gas examiner to the gas referees and the local authority or quarter sessions by whom he is appointed, and to the undertakers, and the means by which the results of the tests shall be made available to the public: Provided that, unless otherwise agreed between the undertakers and the authority by whom the gas examiner is appointed, any testing place provided by the undertakers in pursuance of any special or other Act of Parliament relating to the undertaking shall be deemed to be a prescribed testing place under this section, but the gas referees may, if they think fit, prescribe any additional testing place in respect of that undertaking.

“(2) The prescribed apparatus shall, in the case of any undertakers who have sold in the preceding year more than one hundred million cubic feet of gas, and in any other case in which it appears necessary to the gas referees, include a calorimeter for the production of a continuous record of the calorific value of the gas which is being supplied.

“(3) Any undertakers with respect to whom an order has been made under this Act shall provide and maintain to the satisfaction of the referees the prescribed testing places and apparatus, and shall give any gas examiner access to any testing place for the proper execution of his duty.

“(4) A representative of the undertakers may be present on any occasion on which the gas examiner inspects, or alters, adjusts or replaces the testing apparatus or tests the gas, but shall not interfere with the inspection, alteration, adjustment or replacement, or test. For the purposes of this sub-section, the gas examiner shall, in cases where the testing place is situated elsewhere than on the works of the undertakers, give to the undertakers reasonable notice of the time at which he will attend at the testing place.

“(5) The gas referees may, at any time where it appears to them necessary for the proper execution of their duties, enter upon and inspect any of the works of the undertakers, and the undertakers shall afford them and their assistants full facilities for this purpose, and shall furnish the referees with such information with regard to the position of the mains and pipes of the undertakers, and with regard to any other matter as the referees may reasonably require.”⁷

“6.—(1) If the undertakers or the local authority think themselves aggrieved by any prescription of the gas referees, they may, within one month from the making of such prescription, appeal to the chief gas examiner, who, after hearing the parties and any other body or person appearing to him to be interested, may confirm, with or without amendment, or annul the prescription, and the decision of the chief gas examiner shall be final and conclusive.

“(2) If the undertakers think themselves aggrieved by any report of a gas examiner, they may, within seven days, appeal to the chief gas examiner, who may confirm, with or without amendment, or annul the report, and whose decision, after hearing the parties, shall be final and conclusive.

“(3) The report of a gas examiner (including any such report as amended by the chief gas examiner) showing any failure to comply with the provisions of this Act or any order thereunder as to the calorific value, purity, pressure, or composition of gas, shall be conclusive evidence of the liability of the undertakers to a forfeiture in respect thereof.

(6) Marginal Note to s. 4 is: “Appointment of gas referees and examiners.”

(7) Marginal Note to s. 5 is: “Power to prescribe tests.”

" (4) Any decision of the chief gas examiner purporting to have been signed by him shall, for all purposes and to all intents, be *prima facie* evidence of the due making and signing thereof without proof of such signature." ⁸

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Testing of
gas—cont.

" 7.—(1) The salaries, remuneration, pensions, and gratuities of the chief gas examiner and the gas referees and their assistants shall be such as the Board of Trade with the consent of the Treasury may fix.

" (2) (a) Any such salaries, remuneration, pensions, or gratuities; and (b) any expenses of the chief gas examiner and the gas referees in the execution of their duties or powers under this Act; and (c) any expenses of the Board of Trade which in the opinion of the Treasury are directly attributable to the execution of their powers and duties under this Act; shall be paid out of the fund established under this section; Provided that during the first two years after the passing of this Act the expenditure for the purposes aforesaid shall to the extent that may be necessary be paid out of moneys provided by Parliament, but such payments shall be treated as advances, and shall be repaid out of that fund, with interest at such rate and by such instalments, as the Treasury may fix, in the next three succeeding years.

" (3) Any undertakers with respect to whom an order under this Act has been made, shall, on or before the first day of April in each year, pay to a fund (to be called the gas fund) a contribution not being at the rate of more than three shillings for each million cubic feet of gas sold by them in the preceding year and the Treasury may determine that that fund shall be a public fund within the meaning of the Superannuation Act, 1892.⁹

" (4) The Board of Trade shall, not later than the fifteenth day of January in each year, prescribe the rate at which such contribution shall be payable for that year (which shall not exceed the rate reasonably required to meet the estimated expenditure for the year), and the manner in which and the account to which the contribution shall be paid, and the amount payable by the undertakers shall be a debt due by the undertakers to the Crown, and shall be recoverable accordingly with costs.¹⁰

" (5) The Board of Trade shall, as soon as may be after the thirty-first day of March in every year, cause the accounts of the gas fund for the preceding year to be laid before Parliament."¹¹

Sects. 8 and 9 of the same Act ¹² provide as follows:—

" 8. If the undertakers fail to comply with any lawful prescription of the gas referees, or to provide or maintain any testing place, apparatus or materials, or any other matter or thing prescribed therein, or to afford to the gas examiner or gas referees access to any testing place or works in accordance with the requirements of this Act, or to afford or furnish any facilities or information in accordance with the requirements of this Act, the undertakers shall be liable on summary conviction to a fine not exceeding twenty-five pounds, or in the case of a continuing offence twenty-five pounds for each day after such conviction during which such offence continues: Provided that no proceedings under this section shall be taken— (a) unless the Board of Trade, after giving the undertakers an opportunity of being heard, consent thereto; and (b) in the case of the failure to comply with any lawful prescription, until after the expiration of the period within which the undertakers may under this Act appeal against the prescription; or (c) if the undertakers have appealed as aforesaid, unless or until either such appeal is withdrawn or the chief gas examiner has given a decision thereon."¹³

Forfeiture
and penalties.

" 9.—(1) If on any day for a period of two hours or upwards the calorific value of gas supplied by any undertakers, ascertained in accordance with the provisions of this Act, is more than five per cent. below the declared calorific value, the undertakers shall be liable on summary conviction to a forfeiture not exceeding five pounds for every complete one per cent. by which the calorific value is deficient in excess of such five per cent.: Provided that, where there is no continuous record of the calorific value of the gas supplied by any undertakers, if on any occasion of testing the calorific value at any testing-place is found to be more than five per cent. below the declared calorific value a second testing shall be made on

(8) Marginal Note to s. 6 is: "Appeals to chief gas examiner." See the Gas Regulation Act (Appeal Procedure) Rules, 1922 ("Loc. Gov. 1922," pp. 274-276).

(9) 55 & 56 Vict. c. 40.

(10) The rate for the year 1921 was fixed at 3s. for each million cubic feet of gas sold during 1920. See B. of T. Order, Jan. 13,

1921, 19 L. G. R. (Orders) 259. A similar order was made in 1922.

(11) Marginal Note to s. 7 is: "Remuneration and expenses of gas referees."

(12) 10 & 11 Geo. V. c. 28, ss. 8, 9.

(13) Marginal Note to s. 8 is: "Penalties for failure to comply with prescription of gas referees."

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Forfeiture
and penalties
—continued.

the same day after an interval of not less than one hour and the mean of the two testings shall be deemed, for the purposes of this subsection, to be the calorific value of the gas supplied by the undertakers at that testing-place for a period of two hours ascertained as aforesaid.

“(2) If on any occasion the gas does not conform to the provisions of this Act or any order made thereunder as to purity or pressure, the undertakers shall be liable on summary conviction to a forfeiture not exceeding ten pounds.

“(3) The undertakers shall not be liable to any forfeiture under this section in any case where they show that the deficiency or failure was due to circumstances not within their control, nor shall the undertakers be liable for more than one forfeiture in respect of any one day for any deficiency in calorific value, composition, or pressure of gas supplied from any one works.

“(4) If in any quarter the average calorific value of the gas supplied by any undertakers, ascertained in manner prescribed by the gas referees, is less than the declared calorific value, a sum which the chief gas examiner shall determine to be as nearly as may be the amount by which the revenue of the undertakers has been improperly increased shall,—(a) if the undertakers are a local authority, be applied towards a reduction in the price of gas in the next or some succeeding quarter; and (b) in any other case, be deducted from the amount applicable to payment of dividend on the ordinary capital of the undertakers for the year or half-year in which such quarter occurs, and carried forward to the credit of the revenue account for the next following year or half-year in addition to any other amount which would otherwise have been so carried forward, and the dividend which the undertakers may pay on their ordinary capital in respect of such first-mentioned year or half-year shall be correspondingly reduced; and (c) in every case the amount so ascertained shall be shown in the accounts of the undertakers as a separate item until the undertakers have shown to the satisfaction of the Board of Trade that it has been applied to a reduction in the price of gas. For the purposes of this provision, the expression “quarter” means the three months commencing on the first day of January, the first day of April, the first day of July, and the first day of October in any year.

“(5) Proceedings against the undertakers in respect of any forfeiture incurred under this Act may be commenced at any time within three months after the date of the report of the gas examiner, or after the date of the report of the chief gas examiner on appeal, or, in the event of the undertakers duly appealing to the chief gas examiner and withdrawing the appeal, within three months after the date of the receipt of notice of such withdrawal.

“(6) If, on an appeal to the chief gas examiner, he certifies that the default of the undertakers is not substantial or not due to the careless conduct of the undertakers or of their servants, no summary proceedings shall be taken in respect of the default, but the chief gas examiner may by order determine the amount (not exceeding the amount prescribed by subsection (1) or subsection (2) of this section as the forfeiture for the default) of the forfeiture to be paid by the undertakers, and any such order shall have effect as if it were an order of a court of summary jurisdiction.”¹⁴

Power to
make special
orders.

Sect. 10 of the same Act¹⁵ provides as follows:—

“10.—(1) Anything which under the Gas and Water Works Facilities Act, 1870, or any Act amending the same, may be effected by a provisional order confirmed by Parliament may, so far as those enactments relate to gas, be effected by a special order made on the application of any local authority, company, or person by the Board of Trade under and in accordance with the provisions of this section, and for the purposes of the powers conferred by this section the Gas and Waterworks Facilities Act, 1870,¹⁶ shall have effect as though sect. 15 thereof, which excludes the Metropolis from the operation of the Act, were omitted therefrom.

“(2) Without prejudice to the generality of the powers conferred by this section, the Board of Trade may, by any such special order—(a) empower any undertakers to obtain a supply of gas in bulk from any source whether situated within or without their authorised limits of supply: (b) empower any undertakers to give a separate supply of gas for industrial purposes within their authorised limits of supply: (c) authorise any local authority which may be authorised to supply gas within their district to supply gas outside the district in any area which is not supplied with gas by any other undertakers or which is within the area of supply

(14) Marginal Note to s. 9 is: “Forfeiture for deficient calorific value, &c.”

(15) 10 & 11 Geo. V. c. 28, s. 10.

(16) Set out *post*, Vol. II., p. 1251.

of any undertakers whose undertaking has been acquired by such local authority : (d) authorise arrangements for the purchase by agreement, joint working or amalgamation of undertakings, including necessary provisions with regard to the capital of the combined undertaking, the vesting of the property and rights of the purchased or amalgamated undertakings, and other necessary incidents and consequences of purchase, amalgamation or joint working : (e) authorise the establishment of superannuation, pension and other like funds : (f) authorise the raising of capital or the borrowing of money for any of the purposes aforesaid : (g) make provision for the purchase or redemption (out of revenue or otherwise) and cancellation of debentures, debenture stock, mortgages or bonds, or of obsolete or unproductive capital, or capital not represented by available assets ; (h) modify or amend the provisions of any special Act or other provision relating to the undertaking affected by the special order as may be necessary to provide for the proper and efficient conduct of the undertaking : (i) make such supplemental and consequential provisions as appear necessary to give full effect to the order.

“(3) Sects. 80 and 81 of the Factory and Workshop Act, 1901,¹⁷ which relate to the making of regulations under that Act, as set out and adapted in the Schedule to this Act, shall apply to the making of special orders under this Act.

“(4) Before any special order under this Act is made, it shall be laid in draft before both Houses of Parliament, and such order shall not be made unless both Houses, by resolution, approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Board of Trade may make the order in the form in which it has been approved, and the order on being so made shall be of full force and effect.

“(5) For the purposes of any Act of Parliament, whether passed before or after this Act, which refers directly or indirectly to a special Act conferring powers on gas undertakers, a special order under this Act shall be deemed to be a special Act.”¹⁸

The following “general” provisions are contained in sects. 11 to 20 of the same Act¹⁹ :—

“11. The fees for the examination, comparison and testing, with or without stamping, of meters, shall be such as may be determined from time to time by the Board of Trade, and sect. 19 of the Sale of Gas Act, 1859,²⁰ is hereby repealed : Provided that the fees fixed by the said section shall, notwithstanding such repeal, continue to be chargeable unless and until altered by the Board of Trade under the powers conferred by this section.”

“12. The powers and duties of the Board of Trade under sects. 5 and 6 of the Weights and Measures Act, 1904,²¹ in relation to regulations with respect to measuring instruments and certificates of suitability for use of certain appliances, shall extend to instruments for measuring gas and patterns thereof, and those sections shall have effect accordingly : Provided that, for the purposes of the said sect. 6 as applied by this section, the expression “inspector” shall mean an inspector of gas meters under the Sale of Gas Act, 1859.”^{21a}

“13. All meters by means of which gas is supplied by any undertakers to any consumer shall be stamped in accordance with regulations made by the Board of Trade under their powers in that behalf, and if any undertakers supply gas by means of any meter which is not so stamped, they shall be liable on summary conviction to a fine not exceeding ten pounds.”

“14.—(1) The Board of Trade shall provide for the holding of examinations for the purpose of ascertaining whether applicants for the post of inspector of meters under sect. 4 of the Sale of Gas Act, 1859,²² nominated by the appointing authority, possess sufficient practical knowledge for the proper performance of the duties of that post, and for the grant of certificates to persons who satisfactorily pass such examination. (2) A person shall not, after the passing of this Act, be

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Fees for
examination
of meters.Measuring
instruments.Meters to be
stamped.Qualification
for appoint-
ment as
inspector of
meters.

(17) 1 Edw. VII. c. 22, ss. 80, 81. The Schedule to the present Act is practically identical with the Schedule to the Electricity (Supply) Act, 1919, which has been set out post, Vol. II., pp. 1347, 1348.

(18) Marginal Note to s. 10 is: “Power to make special orders.” The Gas (Special Orders) Rules, 1922 (S.R.O. No. 187, set out in “Loc. Gov. 1922,” pp. 269-273), made under this section on the 1st March, replaced those of 1920.

(19) 10 & 11 Geo. V. c. 28, ss. 11-20. S. 21

relates to Scotland and Ireland only.

(20) 22 & 23 Vict. c. 66, s. 19.

(21) 4 Edw. VII. c. 28, ss. 5, 6.

(21a) The Board of Trade “Gas Meter Regulations, 1920” (S. R. O. No. 2354), were made under this section on the 16th December. An order as to fees (S. R. O. No. 625, set out in “Loc. Gov. 1922,” p. 273), replacing S. R. O. 1920, No. 2058, was made 2nd June, 1922.

(22) 22 & 23 Vict. c. 66, s. 4.

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appointed to act as an inspector of meters as aforesaid unless he has obtained such certificate as aforesaid. (3) If any person, not being an inspector duly appointed under the Sale of Gas Act, 1859, acts as such inspector, he shall be liable to a fine not exceeding ten pounds, or, in the case of a second or subsequent offence, twenty pounds. (4) There shall be charged in respect of the examinations under this section such fees as the Board of Trade, with the concurrence of the Treasury, from time to time fix, and all such fees shall be dealt with in such manner as the Treasury from time to time direct.”²²

Accounts and returns.

“ 15.—(1) All gas undertakers shall furnish to the Board of Trade at such times and in such form and manner as the Board may direct an annual account, and such statistics and returns as the Board may require.

“ (2) Within seven days of the date on which the annual account is sent to the Board of Trade the undertakers shall furnish a copy thereof to the local authority, and shall place copies on sale at their principal office at a price not exceeding one shilling per copy.

“ (3) If any undertakers fail to comply with the provisions of this section, they shall be liable on summary conviction to a fine not exceeding forty shillings for each day during which the default continues.

“ (4) The provisions of this section shall be substituted for the provisions of sect. 38 of the Gasworks Clauses Act, 1847,²³ and of sect. 35 of the Gasworks Clauses Act, 1871,²⁴ in so far as such provisions are incorporated in the special Act of the undertakers.”

Power to make rules.

“ 16.—(1) The Board of Trade may make rules in relation to applications and other proceedings under this Act and to the payments to be made in respect thereof, and to the publication and service of notices and the publication of advertisements, and the manner in which and the time within which representations or objections with reference to any application or other proceeding are to be made, and to the holding of inquiries in such cases as they may think it advisable and to the costs of such inquiries, and to any other matters arising in relation to their powers and duties under this Act. (2) Any rules made in pursuance of this section shall be laid before Parliament as soon as may be after they are made and shall have the same effect as if enacted in this Act.”²⁵

Exercise of powers of Board of Trade.

“ 17. All things required or authorised under this Act to be done by the Board of Trade, may be done by the President or Secretary or Assistant Secretary of the Board, or any person authorised in that behalf by the President of the Board.”

Definitions.

“ 18. For the purposes of this Act—The expression “ local authority ” means the common council of the City of London and any county, county borough, or urban district council, and in relation to any gas undertaking means any such local authority the whole or any part of whose area is within or partly within the limits of supply of the undertakers; The expression “ gas undertakers ” or “ undertakers ” means any local authority, company, body or person authorised to supply gas by any Act of Parliament, or any order having the force of an Act of Parliament; The expression “ quarter sessions ” in relation to any undertaking means the court of quarter sessions for the county, division or place in which the gasworks of the undertaking are situate.”

Supersession of existing enactments.

“ 19. Any provisions of this Act or any order made thereunder shall have effect in lieu of any provisions to the same effect or inconsistent therewith in any Act relating to the testing of gas-measuring instruments, or in any Act or order having the force of an Act relating to an undertaking with respect to which an order has been made under this Act.”

Expenses of local authorities.

“ 20. The expenses of a local authority under this Act shall be defrayed, in the case of the common council of the City of London out of the general rate, in the case of a county council as payments for special county purposes made in respect of the parishes which are wholly or partly within the limits of supply of any gas undertakers in respect of which the county council have power to appoint a gas examiner, and in the case of other councils as expenses incurred in the administration of the Public Health Acts, 1875 to 1908.”

Provision of Lamps, etc.

It was held that an urban authority might erect poles and wires for electric lighting in a street vested in them without special powers for the purpose, and

(22) Fixed on 29th October, 1920, at 30s., by S. R. O. No. 2063.

(23) Set out *post*, Vol. II., p. 1210.

(24) Set out *post*, Vol. II., p. 1260.

(25) For Rules made by Board of Trade under this section, see footnotes (2), (18), and (21a), *ante*, pp. 411, 415, and footnote (22), *supra*.

against the will of the owner of the freehold of the street¹; but it is very doubtful whether this decision would now be followed.² They cannot fix gas lamps to houses in the district without the consent of the owners of such houses.³

With regard to sect. 7 of the Gasworks Clauses Act, 1847, prohibiting the undertakers from laying pipes, etc., "into, through, or against any building," without the consent of the owners and occupiers, it was decided that certain arches under a public footway and private carriage-way, which were used as storerooms, were "buildings" within the meaning of the prohibition.⁴

They may cause the dials of public clocks to be lighted at night under sect. 165.

In streets which are not highways repairable by the inhabitants at large, the urban district council may cause means of lighting the streets to be provided at the expense of the frontagers: see sect. 150, and the Private Street Works Act, 1892.⁵

Where, under a local Act, a summary remedy was provided against a person accidentally damaging a lamp, which was set up by any person at his private expense, or which belonged to the company supplying the gas, it was held that the Act applied to a lamp set up by the corporation, although the gas was provided by a contract between a company and the corporation.⁶

Further as to accidental injuries to gas lamps, see the cases cited in the Note to sect. 20 of the Gasworks Clauses Act, 1847.⁷

The absence of any evidence of authority for the erection of a lamp-post or standard on the edge of the pavement of a street by the owners of an adjoining shop was held to afford no defence to an action by the owners against the owners of a motor omnibus, whose servant negligently drove the omnibus against the lamp-post and broke it⁸; and shortly afterwards it was held that the mere fact that a motor omnibus, plying on its ordinary route, knocked down or damaged a lamp-post, was *prima facie* evidence of negligence, and was not rebutted by evidence that the omnibus was constructed in accordance with the requirements of the licensing authority, that the camber of the road varied at different places, and the lamp-posts were erected by the local authority at different distances from the edge of the kerb.⁹

Establishment of Gasworks.

Under the repealed Sanitary Acts an urban authority had no power to provide gasworks. The consequence was that, whenever it became necessary for them to undertake such works, they were compelled to apply to Parliament for a special Act for the purpose. The present section enabled them, in districts or parts of districts, where there was no company or person supplying gas under the authority of Parliament, to undertake such supply themselves, and for that purpose to obtain a provisional order, under the Gas and Waterworks Facilities Act, 1870,¹⁰ authorising a gas undertaking. Now, under sect. 10 of the Act of 1920, set out *supra*, they can obtain special orders having the effect of special Acts. The effect of these provisions is to place urban authorities on the same footing with respect to commencing and carrying on a gas undertaking as an ordinary gas company.

The fact that powers have been given to one body to supply gas within certain specified limits, and to another body to supply gas within other specified limits, does not give either of such bodies a monopoly of supply within their own limits, or confer on one of them a right of action against the other, if the latter supplies gas within the limits of the former.¹¹

By sect. 10 of the Gas and Waterworks Facilities Act, 1870,¹⁰ the Gasworks

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Affixing lamp
to houses.

Public clocks.
Lighting
private
streets.

Damage to
lamps.

Provisional
order.

No monopoly.

(1) *Fareham Loc. Bd. v. Smith*, ante, p. 293.

(2) See *Tunbridge Wells Cpn. v. Baird*, ante, p. 294.

(3) *Meek v. Langdon* (1862), 37 L. T. Jo. 181, col. i.

(4) *Thompson & Co. v. Sunderland Gas Co.* (1877), L. R. 2 Ex. D. 429; 46 L. J. Ex. 710; 37 L. T. 30. See also the *Taff Vale* and other cases, cited post, Vol. II., p. 1203.

(5) *Ante*, pp. 311, 336.

(6) *Hereford Cpn. v. Moreton* (1866), 15

L. T. 187; 15 W. R. 110.

(7) *Post*, Vol. II., p. 1207.

(8) *Isaac Walton & Co. v. Vanguard Motor Bus Co.* (1908, K. B. D.), 72 J. P. 505; 7 L. G. R. 349.

(9) *Barnes U.D.C. v. London General Omnibus Co.* (1908, K. B. D.), 100 L. T. 115; 73 J. P. 68; 7 L. G. R. 359.

(10) Set out, with amending Act of 1873, post, Vol. II., pp. 1246-1253.

(11) *Pudsey Gas Co. v. Bradford Cpn.* (1873), L. R. 15 Eq. 167.

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Gasworks
Clauses Acts.**

Clauses Act, 1847,¹² now amended by the Gasworks Clauses Act, 1871,¹³ is incorporated with every provisional order authorising a gas undertaking, and presumably the same result will follow with regard to special orders under sect. 10 of the Act of 1920. With regard to this incorporation, it should be mentioned that it was held that, as the Gasworks Clauses Act, 1871, was incorporated with the Act of 1847, which had been incorporated with the Metropolitan Gas Act, 1860, the Act of 1871 applied to a company established before it was passed, and not merely to companies subsequently established.¹⁴

The present section does not expressly render it necessary for the urban district council to procure a provisional order for the purpose of supplying their district with gas; but without the powers given by the Acts above mentioned, they would not appear to be entitled to establish gasworks, or to break up the streets to lay gas pipes.

**Redemption
of tithe rent-
charge.**

If the council take land which is charged with tithe rentcharge, for the purpose of the construction of gasworks, they must, as soon as they are in possession of the land, and before it is applied to that purpose, apply to the Minister of Agriculture and Fisheries to order the redemption of the tithe rentcharge at twenty-five times the amount of the annual charge.¹⁵

**Laying pipes
in street.**

It was held that town commissioners empowered by statute to light the public streets with gas, and to break up the footways and carriage-ways for laying down the gas pipes, and to enter into contracts with other companies to execute such works, could not confer on a private gas company, not having any parliamentary powers, authority to break up the footways or carriage-ways for the purpose of laying down service pipes for private houses, and connecting them with the main pipe; and that a householder who gave directions to have such work done for the purpose of lighting his house with gas was liable to be convicted as a principal in giving orders to commit a nuisance; for the acts could not be justified as having been done in the exercise of the right of each householder to make such a slight temporary obstruction on the highway as might be necessarily incidental to the enjoyment of his property¹⁶; and the owner of the soil of a highway was granted an injunction to restrain the laying therein, without his consent, of water pipes, which the defendant had no statutory power to lay, though the highway authority had given their consent.¹⁷ But an injunction to restrain a gas company and the improvement commissioners from breaking up the streets was refused on the ground that the nuisance was temporary and trivial, and also that the court had no jurisdiction to restrain anyone from breaking up the public ways of a town without parliamentary authority for the purpose of laying gas pipes in the ordinary way.¹⁸

A gas company's Act, after requiring the consent of certain commissioners to breaking up the pavements, provided that, where any consent was required and should be obtained by the company to break any pavement, to lay down pipes, or for any other purpose which might be required under the Act, nothing in the Act should (after consent obtained, and after twenty-four hours' notice) prevent the company from breaking up the pavement for the purpose of laying down pipes or for any other purpose which might be required under the Act. It was held that a construction *reddendo singula singulis* was not correct, and that the power to break the pavement was not to be confined to the particular purpose for which the consent had been expressly given, but might be exercised for the purpose of laying additional pipes at a subsequent time.¹⁹

In a case in which a highway board had agreed with a gas company that, if they should give the company a licence to open the highway within their jurisdiction, the latter would make good the surface of the road, and would pay to the board a shilling per yard of highway so broken up, it was held that the contract was valid; for the agreement of the board to allow the company to

(12) *Post*, Vol. II., p. 1201.

(13) *Post*, Vol. II., p. 1254.

(14) *Commercial Gas Co. v. Scott* (1875), L. R. 10 Q. B. 400; 44 L. J. M. C. 171; 32 L. T. 765.

(15) See *ante*, p. 95.

(16) *Reg. v. Longton Gas Co.* (1860), 2 E. & E. 651; 29 L. J. M. C. 118; 2 L. T. 14; 6 Jur. (N.S.) 601; 24 J. P. 214; s.c. *nom.*

Reg. v. Knight, 8 W. R. 293.

(17) *Goodson v. Richardson* (1874), L. R. 9 Ch. App. 221; 43 L. J. Ch. 790; 30 L. T. 142; 38 J. P. 436.

(18) *A.G. v. Cambridge Gas Consumers' Co.* (1868), L. R. 4 Ch. App. 71; 38 L. J. Ch. 101; 19 L. T. 508; 33 J. P. 147.

(19) *Dover Gas Co. v. Dover Cpn.* (1855), 7 De G. M. & G. 545; 1 Jur. (N.S.) 812.

interfere with the surface of the road was a good consideration, and the contract did not necessarily contemplate the creation of a nuisance.²⁰

On the other hand, an injunction was granted by North, J., to restrain an urban authority from breaking up the streets in a neighbouring urban district for the purpose of laying and repairing water mains, which it had laid under an alleged licence from the then surveyors of highways, on the ground that such surveyors had no power to grant any such licence, revocable or irrevocable, and that the authority could not acquire by prescription that which they could not take by grant.²¹

A local Act authorising the breaking up of streets was held not to be overridden by a subsequent general Act vesting the streets in the local authority, and imposing penalties on persons breaking them up.²²

An electric tramway company's Act gave them in general terms power to lay down, construct, erect, and maintain on, in, under, or over the surface or bed of any street, etc., such wires, etc., and apparatus as might be necessary or convenient for the working of the tramways or for forming connections with any generating stations, etc. It was held by Warrington, J., that this enabled them to lay a line of electric cables in streets outside the district in which the tramways were to be constructed for the purpose of obtaining a supply of electricity from another company.²³

The owner of foreshore of the sea, to which the public had been in the habit of resorting for recreation, was held to be entitled to recover in an action of trespass against a local board, who claimed the right to lay gas pipes under it as a "public place" within sect. 3 of the Gasworks Clauses Act, 1847; for that expression has reference to something *ejusdem generis* with "street or highway," and here there was no definite way.²⁴

A statutory right to lay gas pipes was held to give a right to adjacent support, which was the subject of compensation.²⁵ But now see the provisions on this subject of the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883.²⁶

Where an urban district council had laid gas pipes in a road over a railway bridge while it was used for public traffic, Buckley, J., refused to compel them to remove the pipes at the instance of the railway company, although he held that the company had no power to dedicate the road as a highway.²⁷

A gas company were not liable for an accident arising from the negligent manner in which an opening made by them in a street in London had been filled in and reinstated by the borough council, the borough council having exercised a power given to them by the Metropolis Management Act, 1855,^{27a} to execute the work of reinstatement themselves, instead of permitting the company to execute it.²⁸

An injunction to restrain a metropolitan borough council from erecting a lamp-post on the pavement near the kerb opposite the plaintiff's premises, so as to interfere with the loading of vans from such premises, was refused by Buckley, J., on the ground that such interference was an interference with the plaintiff's right as one of the public to use the highway, and not with his private right of access to and from his premises.²⁹

A rural authority, invested with urban powers under the first paragraph of the present section, treated their lighting expenses as general expenses. It was held by the House of Lords that a railway company were properly rated by a poor rate, made to defray such expenses, on the full rateable value of their property, and were not entitled to be rated on the fourth of the rateable value, as for special

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Laying pipes
in street—
*continued.*Laying pipes
in foreshore.Right of
support.Removal of
pipes from
road.Reinstatement
of
surface.Obstruction
of access to
premises.Rate for
lighting
purposes.

(20) *Edgware Highway Bd. v. Harrow Gas Co.* (1874), L. R. 10 Q. B. 92; 44 L. J. M. C. 16; 31 L. T. 402.

(21) *Preston Cpn. v. Fulwood Loc. Bd.* (1885), 53 L. T. 718; 34 W. R. 196; 50 J. P. 228.

(22) *Goldson v. Buck* (1812), 15 East 372.

(23) *Wandsworth B.C. v. London United Tramways Co.* (1905), 69 J. P. 340; 3 L. G. R. 836.

(24) *Maddock v. Wallasey Loc. Bd.* (1886), 55 L. J. Q. B. 267; 50 J. P. 404.

(25) *Normanton Gas Co. v. Pope and Pearson, Ltd.* (1883), 52 L. J. Q. B. 629; 49 L. T. 798; 32 W. R. 134.

(26) *Ante*, p. 63.

(27) *Taff Vale Ry. Co. v. Pontypridd U.D.C.* (1905), 93 L. T. 126; 69 J. P. 351.

(27a) 18 & 19 Vict. c. 120, s. 114.

(28) *Cressy v. South Metropolitan Gas Co.* (1906, K. B. D.), 94 L. T. 790; 70 J. P. 405; 4 L. G. R. 1049. But see *Braine's Case*, post, Vol. II., p. 1205.

(29) *Chaplin & Co. v. Westminster City Cpn.*, L. R. 1901, 2 Ch. 329; 85 L. T. 88; 65 J. P. 661. Cf. *Goldberg & Son v. Liverpool Cpn.*, cited in Note to s. 308 (under heading "Action for Damages"), post, p. 768; *Escott v. Newport Cpn.*, ante, p. 296.

Sect. 161, n.	expenses, or by reason of a suggested application of urban powers of rating under sect. 211. ³⁰
Nuisance from gas-works.	The fact that a gas company were empowered by statute to purchase certain defined land and to erect gasworks thereon was held not to authorise them to create a nuisance to adjoining property thereby. ³¹
Limitation of profits.	The value of the gas supplied by a local authority for public lighting was held not to be "profit" within the meaning of a statute which limited the amount of profit that they might make from their gas undertaking. ³²
Income tax.	A corporation were held not entitled to deduct from their profits from private consumers the expenses incurred in lighting the town with gas, such expenses not being money laid out or expended for the purposes of a trade within the meaning of the Income Tax Act, 1842. ³³
Larceny of gas.	Gas may be the subject of larceny. ³⁴
Electricity.	<i>Electric Lighting.</i> As to the supply of electricity by and to local authorities, see the Electricity (Supply) Acts, 1882 to 1922. ³⁵
Power for sale of undertaking of gas company to urban authority.	Sect. 162. For the purpose of supplying gas within their district or any part thereof either for public or private purposes any urban authority may (with the sanction of the [Board of Trade ³⁶] buy, and the directors of any gas company, in pursuance, in the case of a company registered under the Companies Act, 1862, ³⁷ of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights powers and privileges and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.
Transfer of gas undertaking.	Note. The powers of sale conferred on the directors of a gas company are similar to those given to the directors of a water company by sect. 63, and to the directors of a market company by sect. 168.
Supply beyond district.	Before the passing of the Gas Regulation Act, 1920, a provisional order in pursuance of the Gas and Waterworks Facilities Acts was requisite to enable a local authority to carry on any gas undertaking acquired under the present section, and this could not extend to the supply beyond the district. The Local Government Board, therefore, only entertained an application for such a provisional order, and for sanction to the acquisition of a gas undertaking if the purchase was restricted to the company's rights, etc., within the district. Now, however, under the Act of 1920, the powers may extend beyond the district. ³⁸
Special resolution.	With regard to the mode in which the "special resolution" mentioned in the present section is to be passed, see the Note to sect. 63. ³⁹
Value of goodwill.	The "franchise, goodwill, rights, and earning power" of a gas company were held by the Privy Council not to be matters to be taken into consideration by an arbitrator in settling the price to be paid for the company's property, works, plant, and appliances. ⁴⁰ But under an agreement for the sale of gasworks with all rights, powers, authorities, and privileges, the Court of Appeal held that goodwill was to be taken into consideration. ⁴¹

(30) *Lancashire and Yorkshire Ry. Co. v. Bolton U.A.C.* (1890), L. R. 15 A. C. 323; 60 L. J. Q. B. 118; 63 L. T. 358; 54 J. P. 532.

(31) *Jordeson v. Sutton Southcoates and Drypool Gas Co.*, L. R. 1898, 2 Ch. 614; 67 L. J. Ch. 666; 79 L. T. 478. See also *Wood v. Conway Cpn.*, *post*, Vol. II., p. 1255.

(32) *Chadderton Loc. Bd. v. Oldham Cpn.*, 1892 Loc. Gov. Chron. 48.

(33) 5 & 6 Vict. c. 35, s. 100, Sched. D., Rule 1. *Dillon v. Haverfordwest Cpn.*, L. R. 1891, 1 Q. B. 575; 60 L. J. Q. B. 477; 64 L. T. 202; 55 J. P. 392.

(34) *Reg. v. White* (1853, C. C. R.), 1 Dears.

C. C. 203; 22 L. J. M. C. 123.

(35) Set out *post*, Vol. II., pp. 1276-1348, 2364-2373.

(36) See footnote (23), *ante*, p. 416.

(37) See, now, the Act of 1908 (8 Edw. VII. c. 69), s. 69, *ante*, p. 150.

(38) See s. 10 (2), *ante*, p. 414.

(39) *Ante*, p. 150.

(40) *Kingston Light, etc., Co. v. Kingston Cpn.* (1904), 20 T. L. R. 448.

(41) *In re Hucknall - under - Huthwaite U.D.C. and South Normanton Gas Co.* (1905), 69 J. P. 329; 3 L. G. R. 704.

An agreement for the purchase of a light railway by a local authority from a company at a price to be settled by a referee was confirmed by an order under the Light Railways Act, 1896. The House of Lords held that the basis of valuation must be that of a railway *in situ* capable of earning a profit, and not the value of the railway to the company as an income-earning concern.⁴²

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The price payable by a local authority for the purchase of the gas mains and other works which formed part of the gas undertaking of a neighbouring local authority was, by the special Act authorising the purchase, to be determined in accordance with the Lands Clauses Acts. It was held that this did not entitle the vendors to compensation for severance of such gas mains and works from the remainder of the undertaking, or for loss of revenue in consequence of the cessation of their power to supply gas within the district of the purchasers.⁴³

An agreement by an urban district council to purchase a gas company's undertaking at a price to be fixed by arbitration, the council to pay all the costs, charges, and expenses of the company preliminary and incidental to the negotiations for the sale and the arbitration, the same to be taxed in case the parties should differ, was held to entitle the company to their costs taxed as between solicitor and client.⁴⁴

Costs.

Sect. 163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board [or Minister of Health] becomes subject to this enactment, the [Lighting and Watching Act, 1833,⁴⁵] has been adopted, the said Act shall be superseded by this Act, and all lamps lamp posts gas pipes fire engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

Watching and Lighting Act (3 & 4 Wm. 4, c. 90) to be superseded by this Act. L.G., s. 46.

Note.

A rural district council may obtain some of the powers given to urban authorities by sect. 161 : see the Note to that section.

Rural district councils.

Under the Local Government Act, 1894,⁴⁶ the power of adopting the Lighting and Watching Act for the whole or part of a parish is given to the parish meeting of such parish or part. Where it has been adopted for the whole of a parish for which there is a parish council, and also where a parish meeting adopt it for the whole or part of such a parish, the powers of the lighting inspectors under the Act are to be exercised by the parish council. Where it was adopted before that Act for a part only of such a parish, either the parish meeting or the inspectors themselves are at liberty to transfer the inspectors' powers to the parish council. In some exceptional cases the Act is required to be carried out by a joint committee.⁴⁷

Lighting and Watching Act.

The Local Government Board stated that, if a rural district council, invested with urban powers as to lighting under the first paragraph of sect. 161, had not exercised those powers, and the parish meeting of a parish had adopted the Lighting and Watching Act, 1833, the parish council might light the parish and the Board would entertain an application to them to sanction a loan for the purpose.

(42) *Dudley Cpn. v. Dudley Electric Traction Co.* (1907), 97 L. T. 556; 71 J. P. 481; 4 L. G. R. 1077. See also *ante*, p. 150 (10), and *Hamilton Gas Co. v. Hamilton Cpn.* (1910, P. C.), L. R. 1910 A. C. 300; 79 L. J. P. C. 76; 102 L. T. 372; 74 J. P. 185, which was distinguished in *Berlin and Waterloo Street Ry. Co. v. Berlin (Ontario) Cpn.* (1910, P. C.), *Times*, July 16th, 1910, p. 4; 1 Glen's Loc. Gov. Case Law 12.

(43) *Re Wolstanton United U.D.C. and*

Burslem Cpn. (1907, Bray, J.), 72 J. P. 28; 6 L. G. R. 523.

(44) *Malvern U.D.C. v. Malvern Link Gas Co.* (1900), 83 L. T. 326.

(45) 3 & 4 Wm. IV. c. 90. This Act will be found with notes in "Jenkin's Law relating to Parish Councils," second edition. The above short title was given by the Short Titles Act, 1896.

(46) See s. 7, *post*, Vol. II., p. 2002.

(47) *Ibid.*, s. 53, *post*, Vol. II., p. 2087.

PUBLIC PLEASURE GROUNDS, ETC.

Urban authority
may provide
places of public
recreation.
P.H., s. 74.

Sect. 164. Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable.

Note.

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Establishment of Pleasure Ground.

Public Health
Act, 1907.

County
councils.

Rural
districts.

Grounds
outside
district.

Gifts.

Leases.

Purchase.

Where sects. 76 and 77 of the Public Health Acts Amendment Act, 1907,¹ are in force, the district council have various additional powers in connection with public pleasure grounds, subject to such rules as the Minister of Health may make, and to certain restrictions imposed by the Act itself.

Similar powers to those given by the present section were conferred on county councils by the Open Spaces Act, 1906.²

Apart from an order under sect. 276, the present section does not apply in rural districts. As to village greens, see below in this Note.

The Local Government Board pointed out that local authorities who purchase land for public pleasure grounds outside their district may find a difficulty in enforcing bye-laws, having regard to sect. 253, *post*.

In the opinion of the Local Government Board, as the word “ purchase ” includes “ gifts,” it is unnecessary for district councils to obtain parish council powers under sect. 8 (1) (h) of the Local Government Act, 1894,³ before they can accept gifts of land for public pleasure grounds under the present section, though they advised formal conveyances in all cases.

A local authority, in pursuance of the present section, took a lease of land for thirty years for the purpose of providing a public pleasure ground, with a covenant by the lessor giving them an option to purchase at any time during the term. Warrington, J., held that, by reason of the rule against perpetuities, the court could not compel specific performance of the covenant, although the purpose for which the land was to be used was a charitable purpose, but that damages were recoverable for breach of the covenant.⁴

If land required by the district council in order to provide a public walk or pleasure ground under the present section cannot be purchased by agreement, the council may apply to the Minister of Health under sect. 176 for a provisional order authorising them to take it compulsorily under the Lands Clauses Consolidation Act, 1845.

As to the purchase of such a ground “ by deputy,” see the case cited below.⁵

A local authority purchased a public pleasure ground in the following peculiar circumstances. In an action by creditors for administration by the court of the estate of an intestate the personal estate was insufficient, and the real estate was ordered to be sold to meet the deficiency. The deceased possessed a farm near a public pleasure ground. The farm had been valued for probate purposes at £1,200. An expert valuer gave as its “ full and fair value ” £1,500. A private purchaser offered £1,500. The receiver entered into a contract accepting this offer, subject to the approval of the court. The master in chambers purported to make an order confirming the contract. The local authority then heard about the proposed sale, and offered the purchaser £2,500. The offer was declined. The local authority, who happened to be creditors of the estate in respect of unpaid rates, then took

(1) *Post*, Part I., Div. III.

(2) See ss. 14 and 15, *post*, Vol. II., p. 1483.

(3) *Post*, Vol. II., p. 2004.

(4) *Worthing Cpn. v. Heather*, L. R. 1906,

2 Ch. 532; 75 L. J. Ch. 761; 4 L. G. R. 1179.

(5) *Longfield P.C. v. Robson*, *post*, p. 466 (18).

out a summons asking for liberty to attend the proceedings. The purchaser took out a summons asking for an order that the sale to him be carried into effect. Both summonses were adjourned into court, confirmation of the contract was refused, and an order was made directing that the farm be sold by auction, that the local authority commence with a bid of £2,800 and pay their own costs, and that the costs of the purchaser be paid out of the intestate's estate.⁵

From 1858 to 1888 an island of five acres formed a part of a military reserve vested in the Crown. In 1888 the island was given by the Crown into the control of the local authority for use as a pleasure ground on condition that it was kept in repair by them and handed over to the Dominion Government when required. The local authority spent a large sum of money in laying it out and connecting it with the adjacent land by a bridge. In 1899 the Crown granted a twenty-five years' lease of the island to a lumber company at a yearly rent of \$500. In litigation between parties interested it was held that the island belonged to the Crown. The company then claimed possession of the island. It was held that they were entitled to it under the lease of 1899, and that the local authority's claim to a possessory title was bad.⁶

As to the exemption of gifts and bequests of land, or of personal estate to be applied to the purchase of land, for a public park or museum, from the provisions of the Mortmain Acts, see the Note to sect. 13 of the Public Libraries Act, 1892.⁷

As to the use of churchyards and disused burial grounds as open spaces and for widening highways, see the Note to the re-enacted provision of the Local Government Act (1858) Amendment Act, 1861, in Sched. V., Part III., *post*.

The owner of the land on which Regency Square, Brighton, is built, had let it on building leases, reserving the space in the centre for an enclosed square for the common use and enjoyment of himself and the owners and occupiers of the houses. On the corporation taking over the control of the enclosure under a local Act, it was held that the owner was not entitled to let the railings for advertisements, and therefore could not claim compensation for the loss of the right to let them.⁸

A railway company gave notice to treat for land which was used as a public recreation ground under a lease to the local authority containing a proviso for re-entry by the lessor in the event of the land being purchased under compulsory powers. It was held that the compensation payable by the company might be assessed as if the land were building land, although no actual re-entry had been made by the lessor.⁹

The owner of premises adjoining an esplanade, which after being used as a highway for some years had been purchased by a local board as a public walk, was held to have a right of access to it from his premises.¹⁰

The Local Government Board considered that band stands and seats may be regarded as adjuncts to a public pleasure ground laid out under the present section which may properly be provided by the district council, though they are not authorised to charge the expense of a band of musicians on the rates under the present Act. They may, however, do so when Part VI. of the Public Health Acts Amendment Act, 1907,¹¹ has been put in force in their district.

Lessors covenanted with the lessee of a house that they would not lease certain land between the house and the sea for the erection of any building "other than public baths with or without reading rooms or libraries," or permit any part of "any such building" to be erected thereon above a certain specified height. The lessors subsequently let this land to a local authority, subject to the provision that the local authority were to keep a bandstand on it in repair. The local authority removed the old bandstand, and erected a new one of greater height than that specified in the lessors' covenant. The assignee of the lease of the house sued the local authority for damages and an injunction. It was held that, on a strict construction of the covenant, there had been no breach of its provisions.¹²

As to public pleasure grounds on settled estates, see below.¹³

Sect. 164, n.

Possessory title.

Mortmain.

Burial grounds.

Compensation to owner.

Access from adjoining premises.

Band stand.

Settled estates.

(5) *Bartley v. Thomas* (Ch. D.), L. R. 1911, 2 Ch. 389; 80 L. J. Ch. 617; 105 L. T. 59. Ultimately the local authority secured the farm for £5,000 (information supplied by Town Clerk of Llandudno, Nov. 20, 1919).

(6) *Vancouver City Cpn. v. Vancouver Lumber Co.*, L. R. 1911 A. C. 711; 81 L. J. P. C. 69; 105 L. T. 464. But see *Bobbett's Case*, *post*, p. 469 (13), and the *Canterbury Case*, *post*, p. 482 (22).

(7) *Post*, Vol. II., p. 1407.

(8) *Reg. v. Brighton Cpn.* (1885), 1 T. L. R.

576.

(9) *In re Morgan and London and North Western Ry. Co.* (1896), 66 L. J. Q. B. 30.

(10) *Ramuz v. Southend Loc. Bd.* (1892), 67 L. T. 169.

(11) See s. 76 (d), *post*, Part I., Div. III.

(12) *Palliser v. Dover Cpn.* (1914, Ch. D.), 110 L. T. 619; 58 Sol. J. & W. R. 379; 5 Glen's Loc. Gov. Case Law 6. For a similar covenant, see *Stourcliffe Estate Co. v. Bournemouth Cpn.*, *ante*, p. 114.

(13) *Ante*, p. 279, and *post*, Vol. II., p. 2357.

Sect. 164, n.
Monument's
defamatory
inscription.

A metropolitan borough council accepted the offer made by a society through its secretary to erect, in such place in the borough as the council might deem suitable, a drinking fountain to bear an inscription in memory of a brown dog and a number of other dogs alleged to have been vivisected in the laboratories of a certain college. The fountain was erected, with the inscription on it, in a public recreation ground of the council, the secretary of the society having entered into an agreement containing a covenant of indemnity and providing for the deposit of a sum of money to answer any litigation that might be caused by the inscription, the agreement reciting that the council had agreed to erect and maintain the fountain. The council subsequently removed the fountain, and an action by the secretary and two members on behalf of the society to enforce the re-erection of the fountain was dismissed on the ground that the inscription was defamatory and its publication calculated to lead to a breach of the peace and therefore contrary to the public interest. It was also held that no estoppel as between the council and the society was created by the agreement with the secretary. As the fluctuation of opinion on the part of the council had caused some hardship to the plaintiffs, the action was dismissed without costs.¹³

Pleasure
grounds under
other Acts.

Public recreation grounds may be established and regulated under various other Acts, namely, certain Inclosure Acts,¹⁴ the Commons Acts,¹⁵ the Open Spaces Act, 1906,¹⁶ the Recreation Grounds Act, 1859,¹⁷ the Public Improvements Act, 1860,¹⁸ the Town Gardens Protection Act, 1863,¹⁹ and the Housing Acts.²⁰ For a summary of these enactments, see "Glen's District Councillor's Guide," Chap. V., § 16, pp. 155-169.

With regard to laying out portions of settled estates, for squares, gardens, open spaces, etc., under the Settled Estates Acts, 1856 and 1876, see Note to sect. 146, and the Law of Property Act, 1922.²¹

Various special Acts, of which a list is given in the second schedule to the Metropolitan Board of Works (Money) Act, 1884,²² have been passed with reference to the parks and open spaces in the metropolis.

With regard to the preservation of the River Thames for purposes of public recreation, see the provisions of the Port of London (Consolidation) Act, 1920.²³

Right of
recreation.

A right of recreation by custom upon the land of another cannot exist as a right to the public generally, but must be confined to the inhabitants of a particular district.²⁴ A custom must be confined to a district which is a particular division of the country defined by the law.²⁵

With regard to the evidence required in Scotland to establish the fact that a piece of land is a public recreation ground, see the case cited below.²⁶

Village
greens.

By the Local Government Act, 1894,²⁷ the powers, duties, and liabilities of the overseers or churchwardens and overseers with respect to the holding or management of village greens, or of allotments whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants, are transferred to the parish councils. And by the same Act the parish councils have additional powers to acquire land by agreement for a recreation ground and for public walks, and to exercise the powers of an urban authority under the present section or sect. 44 of the Public Health Acts Amendment Act, 1890, as well as to acquire by agreement rights-of-way for the benefit of the inhabitants of their parish.²⁸ They may also apply to the Minister of Agriculture and Fisheries with reference to the regulation or inclosure of a common under the Commons Act, 1876.²⁹

See also sect. 1 of the Open Spaces Act, 1906.³⁰

(13) *Woodward v. Battersea B.C.* (1911, Ch. D.), 104 L. T. 51; 75 J. P. 193; 9 L. G. R. 248.
(14) *Post*, Vol. II., p. 1462.
(15) *Post*, Vol. II., p. 1447.
(16) *Post*, Vol. II., p. 1476.
(17) *Post*, Vol. II., p. 1444.
(18) *Post*, Vol. II., p. 2003.
(19) *Post*, Vol. II., p. 1443.
(20) See s. 11 of Act of 1903, *post*, Part II., Div. III.
(21) *Ante*, p. 279, and *post*, Vol. II., p. 2355.
(22) 47 & 48 Vict. c. 50, Sched. II.
(23) Mentioned in footnote (11), *post*, p. 442. Further as to the protection of the Thames,

see *ante*, p. 67, and *post*, Vol. II., p. 1754.
(24) *Bourke v. Davis* (1889), L. R. 44 Ch. D. 110; 62 L. T. 34; 38 W. R. 167.
(25) *Edwards v. Jenkins*, L. R. 1896, 1 Ch. 308; 65 L. J. Ch. 222; 73 L. T. 574; 60 J. P. 167.
(26) *Montgomerie & Co. v. Wallace-James*, L. R. 1904 A. C. 73; 73 L. J. P. C. 25; 90 L. T. 1.
(27) See s. 6 (1, c), *post*, Vol. II., p. 2000.
(28) See ss. 8 (1, b, d, g), 9 (15), *post*, Vol. II., p. 2004.
(29) *Ibid.*, s. 8 (1, c), and Act of 1876, s. 9, *post*, Vol. II., p. 1454.
(30) *Post*, Vol. II., p. 1476.

Appropriation of Land acquired.

Sect. 164, n.

Generally as to the use of land purchased under statutory powers for unauthorised purposes, and as to the sale of superfluous land, see the Note to sect. 175, *post*.

Recreation grounds, when provided, cannot be diverted to any other purposes than those contemplated by the statute.

Thus, where by an Act of Parliament a corporation were directed to cause a piece of land to be drained and levelled, and kept in proper condition for the purposes of public recreation, the corporation were restrained from permitting a cattle fair to be held on it.³⁰

The Vice-Chancellor of the Palatine Court of Lancaster granted an injunction to restrain a local authority from organising or promoting motor races on a seaside parade which by a local Act was to be used "exclusively for purposes of recreation by persons on foot and with or without carriages in respect of which toll is authorised to be taken" (tolls were only authorised for carriages "driven by human power" and for foot-passengers), on the ground that it was an abuse of the parade to allow it to be used for either horses or carriages driven by horses or mechanical power and *a fortiori* for motor races.³¹

In another case a municipal corporation had purchased land to be added to a public park, and some years afterwards determined to use a small portion of the added land as a site for town buildings and offices, as well as for a museum, public library, school of art, and conservatory. On an information praying that the corporation might be restrained from appropriating any portion of the park as a site for town buildings or for any erection or building not needed for or incidental to the maintenance of the parks as public walks or pleasure grounds, Bacon, V.-C., held that no portion of the land could be appropriated for any of the above-mentioned objects, except the museum and conservatory. On appeal, however, it was held that a free library was also allowable, as being conducive to the better enjoyment of the public walks and grounds as such; and the injunction did not extend to "a free public library, museum, or conservatory, open for the use, convenience, and recreation of the persons frequenting such walks and pleasure grounds."³²

In 1870 the corporation of a borough in which provisions of the old Public Health and Local Government Acts³³ were in force, enabling them to purchase land for public parks, accepted an offer of fifty-three acres of park land at half its market value on condition that they should leave at least forty acres of it open for the use and enjoyment of the public, and the conveyance of the land to them embodied the condition in the form of a covenant. In 1911, the whole of the fifty-three acres having in the meantime been used as a public park, the corporation proposed to throw a long strip of the land, containing about one acre, into an adjoining street to widen it. In an action for an injunction to restrain the corporation from using this portion of the park for the purpose of improving the street, Eve, J., held that, having regard to the condition and covenant under which the land was acquired, and to the fact that in the "year books" of the corporation, which were obtainable by the public, it was stated that they had a power of sale over thirteen out of the fifty-three acres, the strip in question had not been definitely appropriated to the purposes of a public park, and might therefore be applied to other purposes, and, moreover, that on the evidence the proposed works would effect an improvement of the park as well as of the street.³⁴

The Local Government Board sanctioned a loan for laying out land as a public pleasure ground and constructing a bowling green therein, but pointed out that the council would have no authority to make a charge, which they proposed to make, for the use of such bowling green.

An action was brought to restrain the closing against the public, in favour of persons paying for admission, of a park provided under a local Act authorising the purchase of lands for the purpose of providing additional places for public amusement or recreation. Jessel, M.R., considered that this park was appropriated for public use and recreation; that this meant for free and gratuitous use; and that, if payments were imposed on any person for the right of entering the park, the

Use of land for other purposes.

Cattle fair.

Motor races.

Public library, museum, etc.

Street improvement.

Bowling green.

Charge for admission.

(30) *A.G. v. Southampton Cpn.* (1859), 1 Giff. 363; 29 L. J. Ch. 282; 6 Jur. (N.S.) 36; 1 L. T. 155.

(31) *A.G. v. Blackpool Cpn.* (1907), 71 J. P. 478.

(32) *A.G. v. Sunderland Cpn.* (1876), L. R. 2 Ch. D. 634; 45 L. J. Ch. 839; 34 L. T. 921; 40 J. P. 564. As to the establishment of

free public libraries and museums in towns. see the Public Libraries Acts, *post*, Vol. II., p. 1401.

(33) 11 & 12 Vict. c. 63, s. 74; 21 & 22 Vict. c. 98, s. 8.

(34) *A.G. (Harrison) v. Bradford Cpn* (1911), 75 J. P. 553; 9 L. G. R. 1190.

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public were excluded from such use. He held, however, that certain other provisions of the local Act gave authority to close the park and also to make a profit by its use, and refused the injunction.³⁵

An injunction was granted by Hall, V.-C., restraining a local board from letting a recreation ground belonging to them to an athletic and football club, or to any persons on their behalf on a certain day on which they had intended to let the club have the exclusive use of the ground. The Vice-Chancellor said that it appeared to him that the ground in question—though it might have been sometimes used for special objects, as, for example, an annual fair—had been acquired by the board as a recreation ground for the people of their district, and that it was not competent to them to exclude the general public therefrom, even for a single day.³⁶

But the owner of a house in a square, having in his purchase deed an implied covenant that the square should be kept private, obtained an injunction to restrain the urban sanitary authority, who had subsequently purchased the square garden from the trustees in whom it had been vested, from throwing the garden open to the public.³⁷

Public Health Act, 1890.

It will be seen from the cases above cited that under the present section the pleasure ground must be "public," that is, open to the public without charge. If, however, the urban district council adopt Part III. of the Public Health Acts Amendment Act, 1890,³⁸ they will have a limited power of charging for admission. And if there is a lake in the ground, they may provide and let pleasure boats, or licence any person to let such boats, and make bye-laws with respect to them.³⁹ The same Act expressly enables the urban authority to contribute to the cost of purchasing or laying out a pleasure ground or public walk provided by any person.⁴⁰

As to the power to use for advertising health resorts money received for admission, etc., see the Act of 1921.^{40a}

Public baths.

As to the use of public baths for cinematograph entertainments, see the case cited below.⁴¹

Charitable trust.

By his will a landowner devised to his son a pleasure ground and museum, which he had provided and maintained for the benefit of the public, but with respect to which he had reserved to himself his private rights. He also bequeathed to his son an annuity for the maintenance of the grounds and museum, and it was found as a fact that he intended his son to maintain them and allow the public to have access to them, and that the son accepted them with the assurance that this should be done; but as it was found that the testator intended that the public should acquire no rights over the property, it was held by the Court of Appeal that there was no secret trust in favour of the public, and that no charitable trust had been created.⁴²

Protective clauses.

Recreation grounds, common or commonable land, village greens, and other open spaces dedicated to the use of the public, also land forming "part of any park, garden, or pleasure ground," and disused burial grounds, have been protected from acquisition under numerous statutes mentioned in the Note at the commencement of the Commons Act, 1876.⁴³

Bye-laws.

As to the making and confirmation of bye-laws, see sects. 182-186.

Model bye-laws.

The Local Government Board issued Model Bye-laws for the purpose of Pleasure Grounds (Series X.), Pleasure Boats and Vessels (Series XII.), Public Bathing (Series VIII.), Open Bathing Places (Series IX.), and Horses Ponies Mules or Asses standing for Hire (Series XI.).

Penalties.

Sect. 183 enables the council to impose penalties, recoverable summarily under sect. 251, for breach of the bye-laws.

The breach of bye-laws made by the managers of recreation grounds under the Recreation Ground Act, 1859,¹ was held to be an indictable offence, no special procedure for enforcing such bye-laws being prescribed by the Act.²

(35) *A.G. v. Leeds Cpn.* (1880), 24 S. J. 539.

(36) *A.G. v. Loughborough Loc. Bd.*, *Times*, 31st May, 1881.

(37) *Dean v. Ramsgate Cpn.*, 1892 Loc. Gov. Chron. 68; 8 T. L. R. 199.

(38) See s. 44 (1), *post*, Part I., Div. II.

(39) *Ibid.*, s. 44 (2).

(40) *Ibid.*, s. 45.

(40a) *Post*, p. 571.

(41) *A.G. v. Shoreditch B.C.*, *post*, Vol. II., p. 1394.

(42) *Re Pitt Rivers, Scott v. Pitt Rivers*, L. R. 1902, 1 Ch. 403; 71 L. J. Ch. 225; 80 L. T. 6; 66 J. P. 275.

(43) *Post*, Vol. II., p. 1447.

(1) See s. 6, *post*, Vol. II., p. 1445.

(2) *Reg. v. Hambly* (1879, Surrey Q.S.) 43 J. P. 495.

A bye-law imposing a penalty on the owners of any fowls, ducks, geese, etc., which should enter the pleasure grounds, was held to be *ultra vires*.³

But one prohibiting the driving of motor vehicles in a public park was held valid, even as against a person who had a right of way for "carriages" through the park.^{3a}

Under the Metropolitan Commons Supplemental Act, 1877, a bye-law prohibiting the delivery of any sermon without the written consent of the Metropolitan Board of Works was held valid.⁴ In this case it was also laid down that a right on the part of the public to hold meetings on a common is not known to the law. As to the right to hold meetings on highways, see the cases cited below.⁵

Where the Crown rights in the foreshore had been leased to an urban district council, the court made a declaration that the defendant was not entitled to hold services and deliver addresses on the foreshore without the consent of the council, although no obstruction or breach of the peace was caused. An injunction was, however, refused on the ground that the matter was too trivial.⁶ A similar declaration to that made in the foregoing case was made by Warrington, J., with reference to the foreshore at Brighton, and an injunction to restrain the holding of mission meetings was granted in an action by the corporation, in whom the foreshore was vested.⁷

As to bathing on the seashore, see the Note to sect. 69 of the Town Police Clauses Act, 1847.⁸

An urban authority that had purchased the sea-beach and foreshore in their district for the purposes of an esplanade and public walk or pleasure ground, made a bye-law prohibiting persons from selling any articles, letting for hire any chair, etc., except by direction of the authority. The justices considered that the bye-law enabled the authority either to legalise a nuisance or to forbid a lawful act which was not a nuisance, and refused to convict under it. The court, however, drew a distinction between a bye-law for the good government of a town and a bye-law for the regulation of an esplanade, and upheld the bye-law as not being more extensive than the circumstances of the case required.⁹

A bye-law made in pursuance of a scheme for regulating a metropolitan common prohibited grazing on the common by unauthorised persons. Neville, J., and afterwards Swinfen Eady, J., granted injunctions restraining such grazing.¹⁰

The conservators of a metropolitan common, who had acquired the manorial rights in the common, were empowered by a local Act to set apart a portion of it for games and to make bye-laws (subject to confirmation by the Local Government Board) for the regulation of such games. A bye-law, duly confirmed, provided that no person should play any game except at such times and under such regulations as the conservators might from time to time prescribe. Regulations so made, and not submitted to the Local Government Board, prohibited the playing of golf (1) on any part of the common except on either of the two courses laid out by a golf club and called Prince's Golf Course and Prince's Ladies' Golf Course, (2) without a caddie, licensed by the conservators or the club and entitled to make a certain charge per round, (3) on Saturdays, except in the case of members of the club, or (on the ladies' course only) in the case of persons holding permits from the conservators, and (4) on any day, except in the case of members of the club or of the ladies' club, or of inhabitants of Mitcham holding permits. Informations against two inhabitants of Mitcham, not members of the club, who played without caddies on Prince's Golf Course, one on a Friday and the other on a Saturday, having been dismissed by the justices, it was held that the regulation as to playing without caddies was valid and that therefore both persons ought to have been convicted. Scrutton, J., considered the whole of the regulations to be *intra vires* and reasonable;

Sect. 164, n.

Straying
fowls.

Motors.

Sermons.

Bathing.

Sale of goods.

Grazing.

Golf.

(3) *Torquay Loc. Bd. v. Bridle* (1882), 47 J. P. 183.

(3a) *A.G. v. Hodgson*, L. R. 1922, 2 Ch. 429; 91 L. J. Ch. 426; 127 L. T. 329; 20 L. G. R. 425.

(4) *De Morgan v. Metropolitan Bd. of Works* (1880), L. R. 5 Q. B. D. 155; 49 L. J. M. C. 51; 42 L. T. 238; 44 J. P. 296.

(5) *Burden v. Riglar*, L. R. 1911, 1 K. B. 337; *M'Ara v. Edinburgh City Cpn.*, 1913 S. C. (S.) 1059; 4 Glen's Loc. Gov. Case Law 76; *Hampstead Garden Suburb Trust, Ltd. v. Denbow* (1913, K. B. D.), 77 J. P. 318; fully noted in "Blackwell's Law of Meetings," 6th ed., at pp. 12, 13.

(6) *Llandudno U.D.C. v. Woods*, L. R. 1899, 2 Ch. 705; 68 L. J. Ch. 623; 81 L. T. 170.

(7) *Brighton Cpn. v. Packham* (1908), 72 J. P. 318; 6 L. G. R. 702. See also *Ramsgate Cpn. v. Debling* (1906, Ch. D.), 4 L. G. R. 495, and *Slee v. Meadows*, post, p. 500 (45).

(8) *Post*, Vol. II., pp. 1671, 1672.

(9) *Gray v. Silvester or Sylvester* (1897), 46 W. R. 63; 61 J. P. 807. But see *Parker v. Bournemouth Cpn.* and other cases cited in the Note to s. 182, post, p. 501.

(10) *Mitcham Common Conservators v. Harvey* (1910), 74 J. P. Jo. 137; 1 Glen's Loc. Gov. Case Law 1; *Mitcham Common Conservators v. Banks* (1912), 76 J. P. 413; 10 L. G. R. 183.

Sect. 164, n.

but Phillimore and Hamilton, JJ., were of opinion that those, which excluded absolutely and at all times persons who were not members of the club or inhabitants of Mitcham, could not be justified, though some preference might be given to those who made and kept up the course.¹¹

Falconry.

Releasing a tame pigeon and a falcon on a common and running after them for half a mile was held to be a breach of a bye-law against shooting or chasing game or other birds or animals on the common.¹²

Advertisements.

As to bye-laws for regulating restricting and preventing the exhibition of advertisements to the detriment of a public park or pleasure ground or so as to disfigure a landscape, see the Advertisements Regulation Act, 1907.¹³

Telegraph wires.

As to telegraph wires over recreation grounds, see the Note to sect. 149.¹⁴

*Offences.***Nuisances.**

As to nuisances from steam organs, etc., on a public pleasure ground, see the case cited below.¹⁵

Street offences.

Where Part VII. of the Public Health Acts Amendment Act, 1907,¹⁶ is in force, certain provisions of the Town Police Clauses and Vagrancy Acts, with respect to various offences committed in "streets" and "open and public places" are extended to all places of public resort or recreation grounds belonging to or under the control of the council, and to any unfenced ground adjoining a street.

Public walks and pleasure grounds established under the present section are "public places" for the purpose of the Street Betting Act, 1906.¹⁷

Offences by children.

The Children Act, 1908,¹⁸ provides as follows:—"It shall be the duty of a constable and of a park-keeper, being in uniform, to seize any cigarettes or cigarette papers in the possession of any person apparently under the age of sixteen whom he finds smoking in any street or public place, and any cigarettes or cigarette papers so seized shall be disposed of, if seized by a constable in such manner as the police authority may direct, and if seized by a park-keeper in such manner as the authority or person by whom he was appointed may direct, and such constable or park-keeper shall be authorised to search any boy so found smoking, but not a girl." But there may be no such seizure "where the person . . . in whose possession they are found, was at the time employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business, or was a boy messenger in uniform in the employment of a messenger company and employed as such at the time."¹⁹ In this Act the "expression 'street' includes any highway and any public bridge, road, lane, footway, square, court, ally, or passage, whether a thoroughfare or not"; and "the expression 'public place' includes any public park, garden, sea beach, or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise."²⁰

Sect. 14 of the same Act²¹ makes it an offence "if any person causes or procures any" person under sixteen, "or, having the custody, charge or care of" such a person, "allows" such person "to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise"; and provides that if a child is allowed to be there it will be presumed that it was so allowed for the purpose in question.

As to street trading, etc., by children, see the Education Act, 1921.²²

Larceny.

With regard to larceny of things attached to public pleasure grounds, by sect. 8 of the Larceny Act, 1916,²³ "Every person who (1) steals, or with intent to steal, rips cuts severs or breaks—(a) any glass or woodwork belonging to any building; or (b) any metal or utensil or fixture, fixed in or to any building; or (c) anything made of metal fixed in any land being private property, or as a fence to any dwelling house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground: (2) Steals, or, with intent to steal, cuts, breaks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub, or underwood growing—(a) in any place whatsoever, the value of the article or the injury done being to the amount of one shilling at

(11) *Mitcham Common Conservators v. Cox and Cole*, L. R. 1911, 2 K. B. 854; 80 L. J. K. B. 1188; 104 L. T. 824; 75 J. P. 471; 9 L. G. R. 843. See also *Harris v. Harrison*, cited in Note to s. 182, *post*, p. 502 (75).

(12) *Harper v. Mitchell* (1879), 44 J. P. 378.

(13) *Post*, Vol. II., p. 2203.

(14) *Ante*, pp. 308 (31), 311 (54).

(15) *Bedford v. Leeds Cpn.*, *post*, Vol. II.,

p. 1472.

(16) See s. 81, *post*, Part I., Div. III.

(17) *Post*, Vol. II., p. 1656.

(18) 8 Edw. VII. c. 67, s. 40.

(19) *Ibid.*, s. 42.

(20) *Ibid.*, s. 131.

(21) *Ibid.*, s. 14.

(22) 11 & 12 Geo. V. c. 51, ss. 91, 92, 100.

(23) 6 & 7 Geo. V. c. 50, s. 8.

the least, after two previous summary convictions of any such offence; or (b) in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, the value of the article stolen or the injury done exceeding the amount of one pound; or (c) in any place whatsoever, the value of the article stolen or the injury done exceeding the amount of five pounds: (3) Steals, or with intent to steal, destroys or damages any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery-ground, hothouse, greenhouse, or conservatory, after a previous summary conviction of any such offence; shall be guilty of felony, and on conviction thereof liable to be punished as in the case of simple larceny."

Sect. 164, n.

Under the Malicious Damage Act, 1861, a person who unlawfully and maliciously cuts breaks throws down or in anywise destroys any fence of any description whatsoever, or any wall, stile or gate, or any part thereof, is liable to a penalty not exceeding £5 over and above the amount of the injury done, and for a second offence to imprisonment.²⁴ Under the same Act unlawful and malicious damage to any real or personal property whatsoever, either of a public or private nature, for which no special punishment is provided by the Act, is a misdemeanour, if the amount of the damage exceeds £5, and in other cases subjects the offender to a penalty not exceeding £5 beyond the amount of the damage.²⁵ The last-mentioned penalty is expressly applied to cases of wilful or malicious injury to any tree, sapling, shrub, or underwood, for which no other punishment is provided.²⁶

Malicious damage.

By sect. 61 of the same Act,²⁷ "any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law." Mere "suspicion" is not enough.^{27a}

Powers of arrest.

Sect. 14 of the Criminal Justice Administration Act, 1914,²⁸ provides as follows:—"(1) If any person wilfully or maliciously commits any damage to any real or personal property whatsoever, either of a public or private nature, and the amount of the damage does not, in the opinion of the court, exceed £20, he shall be liable on summary conviction—(a) if the amount of the damage, in the opinion of the court, exceeds £5, to imprisonment for a term not exceeding three months or to a fine not exceeding £20; and (b) if the amount of the damage is, in the opinion of the court, £5 or less, to imprisonment for a term not exceeding two months or to a fine not exceeding £5; and in either case to the payment of such further amount as appears to the court reasonable compensation for the damage so committed which last mentioned amount shall be paid to the party aggrieved: Provided that this provision shall not apply where the alleged offender acted under a fair and reasonable supposition that he had a right to do the act complained of. (2) So much of the sect. 51 of the Malicious Damage Act, 1861,²⁹ as limits the cases which may be dealt with under that section to cases where the damage, injury or spoil exceeds £5, shall be repealed but a court of summary jurisdiction shall not commit any person for trial for an offence under that section unless it is of opinion that the damage, injury or spoil exceeds £5. (3) Except so far as otherwise provided in the last foregoing subsection, nothing in this section shall be construed as preventing a court of summary jurisdiction from committing a person for trial for an offence notwithstanding that the offence is an offence which the court has power to deal with summarily under this section."

Penalties.

"A man is said to do an act 'maliciously' when he intended to do the very unlawful act with which he is charged, or if such act is the necessary consequence of some other criminal act in which he was engaged, or where the act charged was the probable result of the act contemplated by the defendant, who either foresaw or ought to have foreseen the consequence and yet persisted in the unlawful act in which he was engaged. An act done out of mischief without any formal design of injuring anyone, but wantonly or recklessly, may be malicious. It is also not a necessary ingredient of any of the offences under the "Act of 1861" "that the act charged should have been committed from malice conceived against the owner of the property in respect of which the offence is committed. Malice in its legal import does not mean spite or ill-will, but the wilful doing of an illegal act." ³⁰

Meaning of "malicious."

(24) 24 & 25 Vict. c. 97, s. 25.

(25) *Ibid.*, s. 52.(26) *Ibid.*, p. 53.(27) *Ibid.*, p. 61.(27a) *Holmes v. Hargreaves* (1923, Leeds),

(28) 4 & 5 Geo. V. c. 58, s. 14.

(29) 24 & 25 Vict. c. 97, s. 51.

(30) See Lord Halsbury's "Laws of England," Vol. IX., at pp. 768, 769, and cases there cited.

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If more damage is wilfully done than is necessary to assert a *bonâ fide* claim of right, the act is malicious.³¹

The case cited below dealt with malicious damage to a statue.³²

See also sect. 306 and Note, *post*.

*Liability for Accidents.*Obstruction
by cricket
pitch post.

The London County Council were held by Kennedy, J., not to be liable for an accident to a boy who was playing cricket on ground reserved for that purpose on an open space vested in the council, and who ran against one of the iron posts provided by the council to mark the cricket pitches, the post having for the purposes of play been removed from its place in the middle of the pitch by a member of the cricket club, and there being no evidence that the council required it to be kept upright during play, and therefore no evidence of negligence on their part.³³

Poisonous
berries.

The father of a child who died after eating poisonous berries in a public pleasure ground was held by the House of Lords to have a cause of action for damages against the local authority as owners and custodians of the ground.³⁴

Drowned
children.

But a similar action in respect of the death of a child by falling into a public pleasure-ground pond was dismissed³⁵; and so was one where a child fell into a swollen stream running through a public pleasure ground, the court holding that the local authority were under no obligation to fence such places.³⁶

Flood from
paddling
pond.

In laying out a public park a local authority in Scotland constructed a concrete paddling pond for children in the bed of a stream, altered the course of the stream, and obstructed its natural flow. Owing to a rainfall of extraordinary violence, the stream overflowed at the pond and damaged property of the plaintiffs. It was held by the House of Lords that *vis major* afforded no defence.³⁷

*Rateability of Pleasure Ground.*Brockwell
Park case.

Brockwell Park, the land for which had been purchased by the London County Council under an Act casting upon them the perpetual obligation to maintain it as a park for the use of the public for exercise and recreation, was held by the House of Lords not to be rateable. Lord Halsbury, L.C., pointed out that "the public" was not a rateable occupier, and said that he could not distinguish the case from that of Putney Bridge,³⁸ an artificial structure with a road over it for the use of the public, and that there was no possibility of beneficial occupation to the county council. Lord Herschell distinguished the case from that of the sewage pumping stations at Erith,³⁹ in which it was held that the county council ought to be considered as possible hypothetical tenants, on the ground that the site of the pumping stations was not by statute dedicated to that use.⁴⁰ This was followed in a case in which it was held that a corporation were not rateable in respect of land purchased and laid out as a public park under an Act enabling them to purchase lands within certain limits, to be appropriated and devoted for the purposes of public resort and recreation.⁴¹ It was also followed by the Court of Appeal in a case in which the local authority had power to sell any part of the lands acquired for the purpose of a public park, and also to make bye-laws for closing the park to the public on not more than seven days in the year, and for making charges for admission on the days when it was closed; and the opinion was expressed that the actual appropriation as public park of land acquired for the purpose prevented the power of sale from being exercised.⁴²

It has not been followed in Scotland,⁴³ and in England it was distinguished in

(31) *Reg. v. Clemens*, L. R. 1893, 1 Q. B. 556; 76 L. J. Q. B. 482; 78 L. T. 205. As to such claims of right, see Note to s. 251, *post*, p. 653.

(32) *Farnham v. Cavan C.C.*, *post*, Vol. II., p. 1530.

(33) *Giles v. London C.C.* (1903), 68 J. P. 10; 2 L. G. R. 326.

(34) *Glasgow Cpn. v. Taylor*, L. R. 1922, 1 A. C. 44; 91 L. J. P. C. 49; 126 L. T. 262; 86 J. P. 89; 20 L. G. R. 205.

(35) *Hastie v. Edinburgh Magistrates*, 1907 S. C. (S.) 1102.

(36) *Stevenson v. Glasgow Cpn.*, 1908 S. C. (S.) 1039.

(37) *Greenock Cpn. v. Caledonian Ry. Co.*, L. R. 1917 A. C. 556; 86 L. J. P. C. 185; 117 L. T. 483; 81 J. P. 269; 15 L. G. R. 749; *Nichols v. Marsland*, *ante*, p. 80 (6), and *post*, p. 769 (63), distinguished; see also

Baldwins, Ltd. v. Halifax Cpn., *ibid*.

(38) *Hare v. Putney Overseers* (1880), L. R. 7 Q. B. D. 223; 50 L. J. M. C. 81; 45 L. T. 337.

(39) *London C.C. v. Erith Overseers*, *ante*, p. 57.

(40) *Lambeth Overseers v. London C.C.*, L. R. 1897 A. C. 625; 66 L. J. Q. B. 806; 76 L. T. 795; 61 J. P. 580.

(41) *Manchester Cpn. v. Chorlton Union*, 1899 Loc. Gov. Chron. 607; 15 T. L. R. 327.

(42) *Liverpool Cpn. v. West Derby U.A.C.* (No. 2), L. R. 1908, 2 K. B. 647; 77 L. J. K. B. 1032; 99 L. T. 435; 72 J. P. 397; 6 L. G. R. 706.

(43) *Glasgow P.C. v. Glasgow and Lanarkshire Assessors*, 1912 S. C. (S.) 818; 49 Sc. L. R. 315; 3 Glen's Loc. Gov. Case Law 173.

the case of the Soane Museum, the court holding that a museum established under an Act conferring certain rights on the public might nevertheless be capable of beneficial occupation on the part of the trustees.⁴⁴ It was also distinguished by the Divisional Court, in a case in which the *Manchester Case* (*supra*, ⁴¹) was not cited, with reference to a public library established under a local Act ⁴⁵; and, in the case of land purchased under the present section for the purposes of a public recreation ground, the Divisional Court has held that such recreation ground, although the district council had no authority to put it to any other use, was not *extra commercium* so as to be exempt from its share of the expenses of making up an adjoining street under the Private Street Works Act, 1892.⁴⁶

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A local authority in Scotland, under statutory powers, obtained a forty years' lease of land at a rent of £523, and laid it out and maintained it as a golf course for the inhabitants of the locality. The cost of upkeep exceeded the charges made to players. It was held that the course was rateable, and that the local authority and not the general public were the occupiers thereof.⁴⁷

Municipal golf course.

A local authority owned portions of foreshore, and granted the right to erect a permanent structure thereon, and also certain bathing rights. The assignee of the grantee erected staging supported by iron uprights bedded into concrete foundations, and constructed bathing cubicles on part of such staging. The public had the right to use the rest of the staging for passage without charge, but charges were made for the use of the cubicles and chairs and for donkey rides on the foreshore. It was held that the assignee was in rateable occupation of the foreshore.⁴⁸

Bathing cubicles.

A park was vested in trustees for certain purposes, and declared exempt from poor rates by a local Act. The fact that part of the land was used for purposes unauthorised by the Act was held not to destroy the exemption, even as regards that part. A subsequent local Act made the park liable for all rates imposed by the corporation; but it was held that, inasmuch as assessment to the poor rate must, by sect. 211 of the present Act, precede assessment to the general district rate, the exemption was not destroyed as regards the latter rate.⁴⁹

Exemption under local Act.

Sect. 165. Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time alter and remove any such clocks to such other like situation as they may consider expedient.

Urban authority may provide public clocks.
L.G., s. 45.
T.I., s. 143.

Note.

An urban district council may not maintain a clock which does not belong to them, unless they have adopted sect. 46 of the Public Health Acts Amendment Act, 1890.⁵⁰

Maintenance of clocks.

A rural district council were invested by the Local Government Board with urban powers under the present section and sect. 46; and as two contributory places would derive equal benefit from the clock which they proposed to maintain, the expenses were declared to be special expenses, and, as such, chargeable on those places.

The Local Government Board considered that the present section did not authorise the erection of elaborate clock towers, but only a necessary receptacle for the clock.

Clock towers.

Clocks may be erected on town halls, public libraries, baths and washhouses, etc.

Clocks on public buildings.

If the council desire to place a clock in a church tower, they must first obtain a faculty from the Ordinary. Having obtained such faculty, they may provide the clock, and defray the expenses in the same manner as their general expenses under the Act.

Church clocks.

(41) *Manchester Cpn. v. Chorlton U.A.C.*, ante, p. 430.
(44) *Sir John Soane's Museum Trustees v. Bloomsbury Vestry* (1900), 83 L. T. 248.
(45) *Liverpool Cpn. v. West Derby U.A.C.* (No. 1), post, p. 588 (99).
(46) *Herne Bay U.D.C. v. Payne & Wood*, ante, p. 17.
(47) *Edinburgh City P.C. v. Leith B.C.*, 1912 S. C. (S.) 812; 49 Sc. L. R. 336; 3 Glen's
Loc. Gov. Case Law 174. Cf. *Carlisle Golf Club v. Smith* (as to income tax), L. R. 1912, 2 K. B. 177; 81 L. J. K. B. 581; 106 L. T. 573.
(48) *Margate Cpn. v. Pettman* (1912, K. B. D.), 106 L. T. 104; 76 J. P. 145; 10 L. G. R. 147; 28 T. L. R. 192.
(49) *Pontefract U.A.C. v. Hartley* (1898), 78 L. T. 738.
(50) *Post*, Part I., Div. II.

Sect. 166.

MARKETS AND SLAUGHTER-HOUSES.

Urban authority
may provide
markets.
L.G., s. 50.

Sect. 166. Where an urban authority are a local board or improvement commissioners they shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by Schedule III. to this Act, and where the urban authority are a town council they shall have power, with the consent of two thirds of their number, to do the following things, or any of them, within their district :

To provide a market place, and construct a market house and other conveniences, for the purpose of holding markets :

To provide houses and places for weighing carts :

To make convenient approaches to such market :

To provide all such matters and things as may be necessary for the convenient use of such market :

To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes :

To take stallages rents and tolls in respect of the use by any person of such market :

But no market shall be established in pursuance of this section so as to interfere with any rights powers or privileges enjoyed within the district by any person without his consent.

Note.

Rural
districts.

The Public Health Act, 1908,¹ provides as follows :—" A rural district council may, with the consent of the [Minister of Health], exercise with respect to the provision or regulation of markets any powers which an urban district council may exercise with the consent of owners and ratepayers under " the present section, and sects. 167 and 168 " shall apply with respect to the exercise of those powers by a rural district council as they apply with respect to the exercise of those powers by an urban district council."

In 1922 the Minister of Health refused to allow a rural district council to establish a market on the ground that a borough market already existed seven miles away and the council of the borough objected.

Purchase of
land.

If a site for the market cannot be purchased by agreement, application may be made under sect. 176 for a provisional order authorising its compulsory purchase under the Lands Clauses Act, 1845.²

Borrowing
money.

The district council may borrow the money required for purchasing the site and establishing the market, with the sanction of the Minister of Health, under sect. 233, subject to the restrictions contained in sect. 234. Upon an application for such sanction being made to them, the Local Government Board required to be furnished with (1) the requisition on which the meeting of owners and ratepayers was held, (2) a copy of the notice of the meeting, (3) a certificate that such notice was duly posted on the principal door of every church and chapel in the district, (4) a copy of each of the newspapers containing the advertisement of the notice, (5) a copy of the resolution passed at the meeting, (6) a certificate of the posting of such copy, and (7) a copy of each of the newspapers containing the advertisement for three weeks of the resolution.

When a market was vested in a borough council in their capacity of municipal corporation, and the council applied to the Local Government Board to sanction a loan for the improvement of the market, the Board suggested that the market should first be brought within the provisions of the present Act by a resolution passed under the present section. For the present Act contains the only express enactment of the general law relating to the provision and regulation of markets by borough councils, and by the incorporation of the more material sections of the Markets and Fairs Clauses Act, 1847, enables the council (*inter alia*) to levy tolls and make bye-laws with respect to markets; and the Board held the view that it is undesirable that matters for which express provision is made should be dealt

(1) 8 Edw. VII., c. 6, s. 1. By s. 2, " (1) This Act shall be construed as one with the Public Health Act, 1875. (2) This Act may be cited as the Public Health Act, 1908, and this Act and the Public Health Acts may together be cited as the Public Health Acts."

(2) *Post*, Vol. II., p. 1565. For a case as to the validity of a notice to treat in respect of a market, see *London City Cpn. v. Horner* (1914, C. A.), 111 L. T. 512; 78 J. P. 229; 12 L. G. R. 832.

with under the less specific powers given by the Municipal Corporations Act, 1882. When this suggestion was acted upon, the Board required to be furnished with a copy of the resolution passed under the present section, indorsed to the effect that it was passed by a majority of not less than two-thirds in number of the council. The resolution should specify, in terms of the section, the actual proposals of the council; and the Board suggested, as a convenient course, with a view to future if not to present requirements, that it should extend to all the matters mentioned in the section.

Sect. 167 incorporates certain sections of the Markets and Fairs Clauses Act, 1847, for the purpose of enabling local authorities to carry these powers into effect; and sect. 168 enables them to purchase the undertaking of a market company.

As to the method of obtaining the consent of owners and ratepayers under the present section, see the Rules enacted in Sched. III. of the present Act, *post*.

With regard to the provision of buildings, machines, and conveniences for the weighing of cattle in markets, see the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.³ It was held that these enactments did not require the provision of weighing facilities for an auction mart. The enclosed portion of a local authority's market was leased for the exclusive use of auctioneers as a mart. All cattle sold at the mart had to pass through the market gate, where tolls were paid in respect of them. There was a weighbridge in the market itself.⁴

More than one "market house" may be provided if necessary.⁵

In pursuance of the Diseases of Animals Acts, 1894 and 1896, the Board of Agriculture in 1910 issued an order providing for the cleansing, paving, etc., of market-places, highways, saleyards, and other premises in or upon which markets or sales are habitually held.⁶

As to the construction of a covenant to repair the pillars, etc., supporting a market over an underground railway station, see the case cited below.⁷

Damages were awarded against the owners of a market for the sale of cattle for the loss of a cow that had tried to jump the railings round a statue in the market and had been killed.⁸

Where a market is held in the public streets, by ancient custom or by reason of the street having been dedicated to the use of the public subject to a reserved right to hold the market in it, the present section appears to enable the council to buy up and extinguish the existing market rights when they establish a new market in enclosed land; but it appears doubtful whether it enables them to buy up such rights for the purpose of carrying on the market in the highway.

A market may be held by custom in a public highway,⁹ and statutory provisions giving the local authority the control of the streets do not abrogate the right to hold the market. *Per* Lord Selborne, L.C., certain things, which in the absence of market rights might be nuisances in public streets, were treated as nuisances, which the local authorities might abate, in those Acts of Parliament¹⁰; but not a word was said about the market, not a word from which it could be inferred that it was meant to repeal market rights or to treat as nuisances things which could be justified as market rights.¹¹

In a case in which the right to hold an ancient manorial market in the High Street, Stepney, was held upon the evidence to extend to holding it in adjoining streets when the High Street was overcrowded, the Court of Appeal decided that this extension of the right applied to new streets made and dedicated as highways in pursuance of local Acts.¹²

In an Irish case¹³ the defendant was convicted by the justices of obstructing a

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Clauses Act.

Consent of
owners, &c.

Conveniences.

Market
houses.Paving of
market-place.Repair of
sub-structure.Injury to
cattle in
market.Markets
in streets.

(3) *Post*, Vol. II., p. 1440.

(4) *Knott v. Stride* (1913, K. B. D.), 109 L. T. 181; 77 J. P. 222; 11 L. G. R. 534; 23 Cox C. C. 505.

(5) *Richards v. Scarborough Market Co.* (1853), 23 L. J. Ch. 110.

(6) Set out *post*, Part V., under heading "Markets."

(7) *London City Cpn. v. G. W. & Metrop. Ry. Cos.*, L. R. 1910, 2 Ch. 314; 79 L. J. Ch. 622; 103 L. T. 20.

(8) *Lax v. Darlington Cpn.*, *post*, Vol. II., p. 1435.

(9) See *Rex v. Smith* (1802), 4 Esp. 110; *Elwood v. Bullock* (1844), 6 Q. B. 411; 13 L. J. Q. B. 330; 8 Jur. 1044.

(10) The Metropolitan Paving Acts, 12 Geo. III. c. 38; 28 Geo. III. c. lx.; 57 Geo. III. c. xxix.

(11) *Great Eastern Ry. Co. v. Goldsmid* (1884), L. R. 9 A. C. 927; 54 L. J. Ch. 162; 52 L. T. 270; 29 J. P. 260. See also *A.G. v. Horner* (1885), L. R. 11 A. C. 66; 55 L. J. Q. B. 193; 54 L. T. 281; *Horner v. White-chapel Dist. Bd.* (1885), 55 L. J. Ch. 289; 53 L. T. 842.

(12) *Gingell Son & Foskett v. Stepney B.C.*, L. R. 1908, 1 K. B. 115; 71 J. P. 486; 6 L. G. R. 180. An appeal to the House of Lords in this case turned upon the form of the order of the Court, and was dismissed; L. R. 1909 A. C. 245; 73 J. P. 273; 7 L. G. R. 613. Further as to this street market, see *Horner's Case*, *post*, Vol. II., p. 1430.

(13) *Rex (Kennedy) v. Cork County JJ.* (K. B. D., I.), 1913 Ir. K. B. 391; 45 Ir. L. T. 217; 4 Glen's Loc. Gov. Case Law 120.

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highway by exposing goods for sale thereon, though she *bonâ fide* claimed the right to do this as it had been done by members of the public for the previous twenty years. It was held that, as the highway might have been dedicated subject to market rights thereover, the conviction must be quashed, though the defendant might have exercised such rights in excess. *Per Palles, L.C.B.*¹⁴ :—"When a thing is done, as here, in the exercise of an alleged right, the existence of which the justices had no jurisdiction to negative, and there are questions of excess beyond that right, as there may have been here, as the magistrates have not jurisdiction to determine the existence of the right, neither have they jurisdiction to determine its extent." But a claim to leave fair wagons on a highway during the day before fair day was held to be impossible in law, and not to oust the jurisdiction of the justices.¹⁵

Sect. 50 of the London County Council (General Powers) Act, 1903,¹⁶ enables metropolitan borough councils to provide accommodation for retail street vendors. For a dispute as to whether a street market stall caused a nuisance to a shopkeeper, see the case cited below.¹⁷

Extinction of franchise.

A corporation purchased an ancient franchise, which was for holding a market on Saturdays in one of the townships of their borough. A local Act subsequently empowered them to hold markets on any day, at any place in the borough, and to charge tolls which were higher than the old accustomed tolls, and certain new tolls. It was held by the Court of Appeal that, as under the Act there was a change of time, place, and charges, an imposition of new charges, and an extension of the market from the township to the borough, the effect of the Act was to substitute the new market rights for the old and to extinguish the ancient franchise.¹⁸ And in a later case where an Act, reciting that a corporation were liable *ratione tenuræ* to repair a bridge, and were entitled to take certain customary tolls for passage over it, enacted that those tolls should be and remain vested in the corporation, the Act was held by the House of Lords to have abolished the prescriptive franchise or right to the tolls and to have substituted a statutory right for it, so that after the Act had been repealed by a subsequent temporary Act, which had lapsed and not been renewed, the corporation were not entitled to revive the original customary tolls.¹⁹

Change of site of market.

Where a corporation elect to proceed under the present Act, instead of asserting their common law right as a corporation, they will be bound to proceed according to the provisions of the Act. Thus, although there may be a clear right at law in the corporation of a borough to change the site of a market, yet if the corporation proceed under the Act to change such site, and transfer and regulate the market, they must not exceed the powers conferred upon them by the Act, although less extensive than their rights at common law.²⁰

Compensation for change of site.

From time immemorial a market had been held in the high street of a borough; the plaintiff in an action was the owner and occupier of a house in the high street, and he and others had from time immemorial erected stalls opposite their respective houses and exposed goods for sale, free of stallage. The defendants in the action were the lords of the manor and owners of the market; and they removed the market to another place under the Local Government Act, and so injured the plaintiff. It was held that there was sufficient connection between the enjoyment of the house of the plaintiff and the enjoyment of the stall to satisfy the rule of law ^{20a} that no right can be annexed to a house or land which is unconnected with the enjoyment or occupation thereof, and that, whatever was the origin of the plaintiff's right, he was entitled to compensation for the injury sustained by the removal of the market.²¹

Market outside district.

The present section does not empower a local authority to establish a market outside their district, and the Local Government Board stated that it did not authorise the extension of an existing market beyond a borough for the purpose of preventing the establishment of an opposition market just outside the boundary.

(14) 1913 Ir. K. B., at p. 396.

(15) *Twigdon v. Shillecock* (1898, Q. B. D.), *Times*, Jan. 28th, p. 10, col. i.; see also *Rex v. Turner* (1922, K. B. D.), 57 L. J. Jo. 443; *Times*, Dec. 16, p. 5, col. vi.

(16) 3 Edw. VII. c. clxxxvii., s. 50; set out in 1 L. G. R. (Statutes) 191.

(17) *Benjamin v. Bloomstein*, ante, p. 287 (38).

(18) *Manchester Cpn. v. Lyons Bros.* (1883), L. R. 22 Ch. D. 287; 47 L. T. 677.

(19) *New Windsor or Windsor Cpn. v.*

Taylor, L. R. 1899 A. C. 41; 68 L. J. Q. B. 87; 79 L. T. 450; 63 J. P. 164.

(20) *Ellis v. Bridgnorth Cpn.* (1861), 2 Jo. & Hemm. 67; 4 L. T. 112.

(20a) See *Ackroyd v. Smith* (1850), 10 C. B. (O.S.) 164; 19 L. J. C. P. 315; *Bailey v. Stephens* (1862), 12 C. B. (N.S.) 91; 31 L. J. C. P. 226; 6 L. T. 356.

(21) *Ellis v. Bridgnorth Cpn.* (1863), 15 C. B. (N.S.) 52; 32 L. J. C. P. 273; 9 Jur. (N.S.) 1678; 8 L. T. 668.

The mere fact that a person held a market previously to the establishment of one by the local authority does not give him a right, power, or privilege within the present section,²² even though he may hold his market on land leased to him for the purpose, and under covenant for quiet enjoyment, by the local authority, such authority having no power to covenant expressly or by implication that they will not establish a market.²³

The cases relating to the disturbance of markets have been collated in the Note to sect. 13 of the Act of 1847.²⁴

The provisions of the Markets and Fairs Clauses Act, 1847, incorporated by sect. 167, regulate the publication of the amounts of the stallages, rents, and tolls, the collection and recovery of them, and the settlement of disputes respecting them. As to the meaning of stallages and tolls, see the Note to sect. 33 of that Act.²⁵

The tolls must be approved by the Minister of Health under sect. 167 before payment of them can be enforced. But no such approval is required with regard to an increase of tolls in a charter market (M. H. decision, 1922).

Where an Act gave the lord of the manor a right to charge certain tolls, and alter the amounts from time to time, and it appeared that for sixty years a less toll than that prescribed by the Act had been charged, it was presumed that the alteration had been duly made by the lord of the manor, and that the lesser toll only could be charged until its amount should be duly altered again under the Act.²⁶

The secretary of a local market committee was ordered to account for the tolls collected by the committee before the lord of the manor withdrew their authority to act.²⁷

As regards the distinction between a market and a fair, see the Note to sect. 3 of the Act of 1847.²⁸

The present section contains no reference to fairs, and the incorporation of the Act of 1847 by sect. 167 is limited by the words "in so far as the same relate to markets." And the Local Government Board stated that they were advised by the Law Officers of the Crown that an urban authority could not legally purchase or take on lease a right of holding or taking tolls for fairs either with a view to the exercise of the right themselves or to the resale or releasing of the right; and further, that any conveyance or lease which purported to convey or grant to an urban authority the right of holding fairs as well as markets would be invalid unless the two parts relating to fairs and to markets respectively were severable, or unless it was clear that no portion of the consideration, if entire, were given for that which it was beyond the powers of the authority to purchase.

As to the abolition of fairs, and the alteration of the days for holding fairs, see the Note to sect. 3 of the Act of 1847.²⁹

For the 1923 Bill on this subject, see "Addenda et Corrigenda," *ante*.

Sect. 167. For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847, in so far as the same relate to markets: that is to say,

With respect to the holding of the market or fair, and the protection thereof ¹; and

With respect to the weighing goods and carts ²; and

With respect to the stallages rents and tolls ³:

Provided that all tolls leviable by an urban authority in pursuance of [this section ⁴] shall be approved by the [Minister of Health].

An urban authority may with respect to any market belonging to them make byelaws for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act, 1847,⁵ so far as those purposes relate to markets, and printed copies of any byelaws so made shall be conspicuously exhibited in the market.

(22) *Fearon v. Mitchell*, *post*, Vol. II., p. 1427; followed in *Woolwich B.C. v. Gibson* (1905), 92 L. T. 538; 69 J. P. 361; 3 L. G. R. 961.

(23) *Spurling v. Bantoft*, L. R. 1891, 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. 584; 56 J. P. 135.

(24) *Post*, Vol. II., p. 1429. And see *Morpeth Cpn. v. Northumberland Mart Co.*, L. R. 1921, 2 Ch. 154; 90 L. J. Ch. 420; 125 L. T. 659.

(25) *Post*, Vol. II., p. 1435.

(26) *Phillips v. Williams* (1903, C. A.), 19 T. L. R. 233.

(27) *Lord Redesdale v. Rouse* (1912, Warrington, J.), *Times*, Jan. 15th, p. 3; 3 *Glen's*

Loc. Gov. Case Law 66.

(28) *Post*, Vol. II., p. 1424. As to obstruction of highway by fair wagons, see footnote (15), *ante*, p. 434.

(29) *Post*, Vol. II., p. 1423.

(1) Namely, ss. 12—16, *post*, Vol. II., p. 1425. The unincorporated ss. 17—20 (*re* slaughterhouses) will also be found *ibid.*, p. 1431.

(2) Namely, ss. 21—30, *post*, Vol. II., p. 1431.

(3) Namely, ss. 31—41, *post*, Vol. II., p. 1434.

(4) Mistake for s. 166.

(5) *Post*, Vol. II., p. 1437.

Sect. 166, n.
Saving for
privileges.

Disturbance
of markets.

Power to
take tolls.

Approval of
tolls.

Alteration of
tolls.

Account
of tolls.

Fairs.

Abolition or
alteration of
fairs.

Incorporation
of provisions of
10 & 11 Vict.,
c. 14, as to
markets.
L.G., s. 50.

Sect. 167, n.

Note.

Rural districts. As to the application of the present section in rural districts, see the Act of 1908, quoted at the commencement of the Note to sect. 166, *ante*.
Bye-laws. Model bye-laws (series No. V.), framed under the present section, were issued by the Local Government Board. Further as to market bye-laws, see sect. 42 of the Act of 1847, and the cases, etc., cited in the Note thereto ⁴; and as to bye-laws in general, see sects. 182-185, *post*.
Diseased animals. Under the Diseases of Animals Act, 1894,⁵ which consolidates the repealed Contagious Diseases (Animals) Acts, the Ministry of Agriculture and Fisheries may from time to time make such orders as they think expedient for, amongst other things, prohibiting or regulating the holding of markets, fairs, exhibitions, or sales of animals.
As to Canadian store cattle, and other imported animals, see the Importation of Animals Act, 1922 (Session II.).⁶

Power for sale of undertaking of market company to urban authority. L.G., s. 53.

Sect. 168. Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies Act, 1862,⁷ of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any urban authority, on such terms as may be agreed on between the company and the urban authority, all the rights powers and privileges and all or any of the markets premises and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of such purchase.

Note.

Rural districts. As to the application of the present section in rural districts, see the Act of 1908, quoted at the commencement of the Note to sect. 166, *ante*.
Purchase of market. The powers of sale which were conferred on the directors of a market company by the Local Government Act, 1858,⁸ have been modified by the present section, so as to correspond with those which are given in the case of the sale of the undertaking of a water company by sect. 63, or of a gas company by sect. 162.
With regard to the purchase of other rights in markets, see sect. 166.
Special resolution. With regard to the mode of passing "special resolutions" by companies, see the Note to sect. 63.⁹

Power to provide slaughter-houses. P.H., s. 62. L.G., s. 45.

Sect. 169. Any urban authority may, if they think fit, provide slaughter-houses, and they shall make byelaws with respect to the management and charges for the use of any slaughter-houses so provided.
For the purpose of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847,¹⁰ with respect to slaughter-houses shall be incorporated with this Act.
Nothing in this section shall prejudice or affect any rights powers or privileges of any persons incorporated by any local Act passed before the passing of the Public Health Act, 1848, for the purpose of making and maintaining slaughter-houses.

Note.

Rural districts. Upon an application to the Local Government Board under sect. 276 by a rural district council for the issue of an order investing them with power to provide slaughter-houses, and make bye-laws with respect to the management and charges for the use of any slaughter-houses so provided, the Board stated that it was only in very exceptional circumstances that they deemed it expedient to confer on a rural district council the power to provide slaughter-houses. They therefore, before further considering the application, wished to be informed of the special grounds on which it was considered desirable that the council should be invested with the powers, and also of the nature of the arrangements which the council would propose to make for the provision of slaughter-houses if the powers were conferred upon

(4) *Post*, Vol. II., p. 1437.
(5) Noted under Milk and Dairies Acts, *post*, Part II., Div. II.
(6) 13 Geo. V. c. 5.
(7) See, now, Act of 1908.
(8) 21 & 22 Vict. c. 98, s. 53.
(9) *Ante*, p. 150.
(10) See ss. 125-131, *post*, Vol. II., p. 1630.

them, and whether the slaughter-houses to be provided would serve the whole district.

Sect. 169, n.

It was contrary to the practice of the Board to invest rural district councils with the powers as to slaughter-houses conferred upon urban district councils by the second and third paragraphs of the present section and by sect. 170, for the purpose of giving control over ordinary farm buildings in which cattle may occasionally be slaughtered. The Board were, however, willing to put these powers in force in particular contributory places in which regular slaughter-houses existed, or in which it was considered likely that such establishments would be provided.

It was not the practice of the Board to invest a rural authority with the powers given to an urban authority by sect. 170, otherwise than in conjunction with those given by the second and third paragraphs of the present section.

As to the meaning of the term "slaughter-house," see the Note to sect. 4.¹¹

As to the making, confirmation, and proof of bye-laws, see sects. 182-186, *post*.

The bye-laws to be made under the first clause of the present section are only to deal with slaughter-houses provided by the urban district council themselves.

Further as to such bye-laws, and the model series issued by the Local Government Board, see the Note to sect. 128 of the Act of 1847,¹² and the Memorandum quoted in the Note to s. 125 of that Act.¹³

The model bye-law as to humane slaughtering was withdrawn in consequence of the decision of the justices in the case cited below.^{13a}

With reference to a colonial Act which authorised a local authority to make the charges to be prescribed by bye-laws in respect of cattle intended for slaughter, the Privy Council held that the charges were not payable in respect of cattle slaughtered in private yards.¹⁴

As to the licensing,¹⁵ and registration,¹⁶ of slaughter-houses, see the provisions of the Act of 1847 referred to below. See also sects. 29 to 30 of the Public Health Acts Amendment Act, 1890.¹⁷

As to the inspection of such places, see sect. 131 of the Act of 1845.¹⁸

As to the slaughtering of animals not for food, see the Knackers Act, 1786, and the Acts cited therewith.¹⁹ The Act does not extend to curriers, tanners, etc., killing distempered animals.²⁰

A local authority were held liable for the loss of a pig's carcass stolen from their cooling room, for the use of which they made a charge under a local Act.²²

Meaning of slaughter-house.
Bye-laws.

Licences for slaughter-houses.
Inspection.
Knackers' yards.
Negligence.

Sect. 170. The owner or occupier of any slaughter-house licensed or registered under this Act shall, within one month after the licensing or registration of the premises, affix, and shall keep undefaced and legible on some conspicuous place on the premises, a notice with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Notice to be affixed on slaughter-houses.
P.H. 1874, s. 49.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding five pounds for every such offence, and of ten shillings for every day during which such offence continues after conviction.²¹

(11) *Ante*, p. 41.
(12) *Post*, Vol. II., p. 1632.
(13) *Post*, Vol. II., p. 1630.
(13a) *Dodd v. Venner*, *post*, p. 498 (29).
See M. H. Decision in "Loc. Gov. 1922," p. 456.
(14) *Sydney Municipal Cpn. v. Austral Freezing Works, Ltd.*, L. R. 1905 A. C. 161; 74 L. J. P. C. 33; 92 L. T. 280.
(15) See ss. 125, 126, 129, 130, *post*, Vol. II., p. 1630.
(16) See s. 127, *post*, Vol. II., p. 1632.
(17) *Post*, Part I., Div. II.
(18) *Post*, Vol. II., p. 1634.
(19) *Post*, Vol. II., p. 1680.
(20) 26 Geo. III. c. 71, s. 14.
(21) As to licensing, etc., of slaughter-houses, see Note to s. 169, *ante*.
(22) *Economic Stores v. Halifax Cpn.* (1923, C. A.), 87 J. P. 77; 21 L. G. R. 273.

Sect. 171.

POLICE REGULATIONS.

Incorporation of certain provisions of 10 & 11 Vict. c. 89. L.G., s. 44. * *Sic.* See note to s. 4 of Act of 1847, *post*, Vol. II., p. 1645.

Sect. 171. The provisions of the Towns* Police Clauses Act, 1847, with respect to the following matters, (namely,) (1.) With respect to obstructions and nuisances in the streets ¹; and (2.) With respect to fires ²; and (3.) With respect to places of public resort ³; and (4.) With respect to hackney carriages ⁴; and (5.) With respect to public bathing ⁵; shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

The expression in the provisions so incorporated “ the superintendent constable,” and the expression “ any constable or other officer appointed by virtue of this or the special Act,” shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority; and the expression “ within the prescribed distance ” shall for the purposes of this Act mean within any urban district.

Notwithstanding anything in the provisions so incorporated, a licence granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the licence, or until the next general licensing meeting where a day for such meeting is appointed.

Note.

Town police clauses.

The incorporated provisions of the Act of 1847 are set out as indicated in the first five footnotes below. They were modified and extended by the Town Police Clauses Act, 1889.⁶

Public Health Act, 1907.

With regard to the construction of incorporated Acts, see sect. 316, *post*. Where Part VII. of the Public Health Acts Amendment Act, 1907,⁷ is in force, the district council have additional powers with respect to street traffic (sect. 78), dangerous riding and driving (sect. 79), the leading and driving of animals (sect. 80), the seashore (sect. 82), esplanades and promenades (sect. 83), porters and messengers (sect. 84), registries for female domestic servants (sect. 85), and registers of dealers in old metal and marine store dealers (sect. 86). Sect. 81 of the same Act extends the provisions of the Town Police Clauses Act, 1847, with respect to certain offences committed in streets, and those of the Vagrancy Acts with respect to certain offences committed in “ open and public places,” to all places of public resort or recreation grounds belonging to or under the control of the council, and to any unfenced ground adjoining a street. Where sects. 92 and 93 in Part X. of that Act are in force, the power of the council to make bye-laws with respect to public bathing is extended, and power is given to provide life-saving apparatus.

Model bye-laws.

Model bye-laws with respect to hackney carriages (Series No. VII.), and with respect to public bathing (Series No. VIII.), were issued by the Local Government Board.

Fires.

By sect. 66 the duty of providing fire-plugs and other works, machinery, and assistance for securing a supply of water in case of fire, is imposed on urban district councils; and they may make bye-laws with respect to the structure of new buildings with a view to the prevention of fires under sect. 157. See also sects. 87 to 90 of the Public Health Acts Amendment Act, 1907,⁷ as to fire brigades and appliances.

The Local Government Board pointed out that a rural district council cannot, unless invested with urban powers with respect to fires, contribute to the cost of the provision of a fire engine by an urban district council. The Board stated that an application for such powers should be made by resolution of which a copy should be forwarded to them, with a copy of any proposed agreement with the

(1) See ss. 21—29, *post*, Vol. II., p. 1645. (5) See s. 69, *ibid.*, p. 1671.
(2) See ss. 30—33, *ibid.*, p. 1657. (6) *Post*, Vol. II., p. 1674.
(3) See ss. 34—36, *ibid.*, p. 1660. (7) *Post*, Part I., Div. III.
(4) See ss. 37—68, *ibid.*, p. 1661.

urban district council, and with full information as to any action taken by the parish councils or overseers,⁸ and as to the contemplated arrangements, showing that the use of a fire engine when needed will be secured to the several contributing places in the rural district.

Sect. 171, n.

Sect. 172. Any urban authority may license the proprietors drivers and conductors of horses ponies mules or asses standing for hire within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages, and may make byelaws for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge.

Urban authority may make bye-laws for licensing horses, boats, etc., for hire.
L.G. Am., s. 25.

Any urban authority may also license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and may make byelaws for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge.

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Horses and other Animals for Hire.

With regard to the making, confirmation, publication, and proof of bye-laws, see sects. 182-186.

Bye-laws.

The Local Government Board refused to confirm a bye-law which proposed to prohibit the standing for hire of horses, etc., on the public stands on Sundays.

The Board issued a series of model bye-laws (No. XI.) with respect to horses, etc., standing for hire.

In a memorandum dated the 28th May, 1879, and issued with these model bye-laws, the Board stated as follows:—" Having regard to the terms of the above enactment, the Board think that it may here be convenient to append a few observations upon the manner, incidents, and consequences of the licensing of the proprietors, drivers, and conductors of horses, ponies, mules, or asses standing for hire.

Memorandum of Local Government Board.

" To these matters the statutory provisions affecting the proprietors and drivers of hackney carriages are rendered applicable. These provisions will be found in the Towns Police Clauses Act, 1847,¹ and, as amended by sect. 171 of the Public Health Act, 1875, are in force in every urban district. The sections of the Towns Police Clauses Act, 1847, which, *mutatis mutandis*, may be considered as having reference, either wholly or in part, to the manner, incidents and consequences of the licensing of the proprietors, drivers, and conductors of horses, ponies, mules, or asses standing for hire are as follows, viz. : sects. 37, 39, 40, 41, 42, 43, 44, 45, 46 (as amended by sect. 171 of the Public Health Act, 1875), 47, 48, 49, 50, 53, 54, 55, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.

" With reference to these enactments it should be noticed that the effect of sects. 46 and 47 of the Towns Police Clauses Act, 1847, as applied to the case of a driver or conductor of a horse, pony, mule, or ass standing for hire, is to require every such driver or conductor to obtain a licence from the urban authority, and to render liable to penalty any person who acts as a driver or conductor without having obtained such licence or during the time that his licence is suspended, or who lends or parts with his licence except to the proprietor of the horse, pony, mule, or ass. The proprietor will also be liable to a penalty if he employ any person as a driver or conductor who has not obtained a licence or during the time that his licence is suspended. The Towns Police Clauses Act, 1847, sect. 50, empowers the urban authority, upon a conviction for the second time for any such offence as is therein mentioned, to suspend or revoke the licence; and, in accordance with the provision in the last paragraph of sect. 171 of the Public Health Act, 1875, the licence granted to a driver or conductor will be in force for one year only² from the date of the licence, or until the next general licensing

(8) See *ante*, p. 155.

(1) *Post*, Vol. II., p. 1661.

(2) Or less; see Act of 1889, s. 5, *post*, Vol. II., p. 1676.

Sect. 172, n. meeting where a day for such meeting is appointed. Although the Public Health Act, 1875, sect. 172, specifies the qualification of drivers and conductors as one of the subjects which may be regulated by bye-laws, the Board have deemed it unnecessary to include in the model series any clause with respect to this matter. It will be within the discretion of the urban authority to grant or refuse a licence; and before deciding upon any application they will doubtless satisfy themselves as to the qualification of the applicant for employment as a driver or conductor. A licence from the urban authority is a qualification which the statutory provisions above noticed recognise as indispensable in the case of every person who acts as a driver or conductor."

Cruelty. As to the punishment of overriding, overdriving, overloading, and otherwise ill-treating horses and other animals, see sects. 1 and 13 of the Protection of Animals Act, 1911.³

Pleasure Boats and Vessels for Hire.

Pleasure boats. The present section gives local authorities no power to provide pleasure boats themselves, but they may do so where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted.⁴ Where sect. 94 of the Public Health Acts Amendment Act, 1907,⁵ is in force, further provision is made with respect to the licensing of pleasure boats and boatmen, and under sect. 93 of that Act life-saving apparatus may be provided by the council. As to "plying for hire" with pleasure boats, see the case cited below.⁶

Steamboats. The latter clause of the present section extends to steamboats which make pleasure trips and take passengers for hire or reward, and by so doing come within the term "pleasure boats."⁷

Bye-laws. As to the making, confirmation, etc., of bye-laws, see sects. 182-186. The present section does not authorise the imposition by a bye-law of a penalty for letting an unlicensed boat for hire, nor can a municipal corporation justify such a bye-law under sect. 23 of the Municipal Corporations Act, 1882,⁸ since it would be in restraint of trade.⁹

Model bye-laws and memorandum of Local Government Board. The Local Government Board issued a series (No. XII.) of model bye-laws with respect to pleasure boats and vessels, and in a memorandum prefixed thereto and dated the 28th May, 1879, the Board stated as follows: "In the exercise of the powers thus conferred upon them, it may be assumed that the urban authority will deem it essential to adopt such a system of procedure as may be most conducive to the safety of passengers in pleasure boats and vessels. Diversity of local circumstances renders it inexpedient to recommend any particular system as suitable for uniform adoption by urban authorities, but, after consultation with the Board of Trade, it appears to the Local Government Board that, in relation to the above-cited enactment, there are several important considerations to which it is desirable that the attention of urban authorities should be specially drawn. In the first place, it should be observed that the grant or refusal of a licence under sect. 172 of the Public Health Act, 1875, is a matter entirely within the discretion of the urban authority. But the possession of a licence will doubtless be regarded as an indication that the urban authority, after careful investigation, have satisfied themselves that the licensed person may properly be allowed to follow his avocation within their district. It is, however, obviously desirable that the urban authority should guard against any misconstruction of their action in the matter of licensing. The limited powers conferred upon them by sect. 172 of the Public Health Act, 1875, do not enable the urban authority to control the proprietors and boatmen to such an extent as would justify the authority in assuming, by their licence, to warrant the safety of any boat or the competency of any boatman. They should therefore be careful to regulate their method of procedure so that the true significance of their licence may be clearly apparent, and so that it in no way tends to remove from the licensee the responsibilities which would otherwise fall upon him

(3) *Post*, Vol. II., p. 2223.
(4) See s. 44 (2), *post*, Part I., Div. II.
(5) *Post*, Part I., Div. III.
(6) *Fearon v. Warrenpoint U.D.C.*, cited in Note to P.H. Am. Act, 1907, s. 94, *post*, Part I., Div. III.
(7) *In re River Dee, Chester; Pringle v. Fenwick* (Q. B. D.), June 10, 1875, MS.
(8) *Post*, Vol. II., p. 1808.
(9) *Byrne v. Brown* (1893, Q. B. D.), 57 J. P. 741, n. See also *Londonderry Harbour Comrs. v. Londonderry Bridge Comrs.*, 1894 Ir. K. B. 384.

for wrongful acts or defaults, or for the employment of incompetent persons, or for the use of an unsafe or insufficiently equipped boat or vessel.

“ It may here be convenient to introduce a few remarks in explanation of the powers of the urban authority with regard to licensing and of the principles which should guide them in the exercise of those powers. In sect. 172 of the Public Health Act, 1875, there is no express provision as to the conditions under which a licence may be granted or refused, or as to its duration or revocation. These are apparently matters as to which the urban authority may adopt such rules as they may deem most expedient. But in order to obviate misconception of the real character of the licence, it is important that in these rules certain requirements should be regarded as indispensable. In every case where a person applies for a licence as a proprietor of a pleasure boat or vessel, the urban authority may be advised to insist upon the production by the applicant of evidence as to the soundness of the hull of the boat or vessel, as to its stability, as to the completeness and good condition of its equipments, and generally as to its sufficiency for use as a pleasure boat or vessel. He should, at the same time, be required to submit to the authority a declaration in writing to the effect that, to the best of his knowledge and belief, the evidence produced to them is a true statement of the several particulars to which it relates. The applicant should be made clearly to understand that, in accepting this evidence, the urban authority do not assume the responsibility of testing the accuracy of his representations. Moreover, the licence should expressly show that it has been granted upon the following terms,¹⁰ viz.:—1. That, at the time of licensing, the licensee undertakes that the hull of the boat or vessel is sound, that the boat or vessel is stable, that its equipments are complete and in good condition, and that it is generally sufficient for use as a pleasure boat or vessel; 2. That he undertakes that in all these respects the boat or vessel shall be maintained in an equal state of efficiency while it plies or is used for hire; 3. That he undertakes that the boat or vessel shall not carry passengers for hire unless a sufficient number of boatmen or other persons duly licensed by the urban authority to take charge of a pleasure boat or vessel be employed in the navigation and management thereof; 4. That if the urban authority shall, by notice in writing under the hand of their clerk and addressed to the licensee, signify their intention to revoke the licence, it shall from and after the date specified in the notice cease to be of any effect.

“ Every licence granted by the urban authority to the proprietor of a pleasure boat or vessel should specify the number which the boat or vessel is to bear, and also its name. As the number and name are mainly requisite as aids to identification, it is desirable that, in cases such as are mentioned in the proviso to the second bye-law of the model series, the name already borne by the boat or vessel should be recognised by the urban authority as sufficient. In such cases the form of licence may be modified to suit the special circumstances, and if the urban authority deem it expedient to keep a register of licensed pleasure boats and vessels, they will probably find it convenient to distinguish by the entries therein the instances in which the modified licence may have been granted. In every case where a person applies for a licence to act as a boatman or person in charge of a pleasure boat or vessel, the urban authority may be recommended to require the applicant to produce satisfactory evidence of good character and of experience in the navigation and management of similar craft. It will also be proper to distinguish in the licence the class of boat or vessel for which the licensee may be regarded as a qualified boatman. In the case of sailing boats or vessels, it is especially important that the licence should clearly indicate that the qualification of the person licensed entitles him to the responsible charge, or that he is only authorised to act in the capacity of an assistant to the boatman in charge. In the case of a steamer, no licence which would entitle the holder to take the responsible charge of the boat or vessel should be granted unless the applicant possess an engineer's certificate from the Board of Trade.

“ The terms of the licence should in every case show that it is granted subject to the condition that if the urban authority shall, by notice in writing under the

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Model bye-
laws and
memorandum
of Local
Government
Board—cont.

(10) With regard to the attachment of conditions to the grant of a licence, see the

Note to P.H. Acts Am. Act, 1890, s. 51, post, Part I., Div. II.

Sect. 172, n. hand of their clerk and addressed to the licensee, signify their intention to revoke the licence, it shall from and after the date specified in the notice cease to be of any effect."

River Thames. The Port of London (Consolidation) Act, 1920,¹⁰ which repealed the Thames Conservancy Act, 1894,¹¹ contains special provisions with regard to the regulation of the pleasure traffic on the River Thames.

Other Vessels.

Ships, and canal boats. As to nuisances, etc., from ships, see sect. 110 and Note ¹²; as to the registration, etc., of canal boats, see the Acts of 1877 and 1884 ¹³; and as to merchant shipping, see the Note to sect. 134.¹⁴

Customary Rights.

Beaching fishing-boats. Where the fishermen of a village had been used from time immemorial to beach their boats on certain ground, and the owner obtained a Harbour Act authorising him to take a toll for boats beached, it was held by the House of Lords that he could not exclude the fishing-boats from the ground without providing other ground equally well adapted for beaching them.¹⁵

Mooring fishing-boats. The Court of Appeal held that an immemorial user of the foreshore in tidal navigable waters by the owners of fishing-boats and other vessels, by fixing moorings in the soil, may be supported either as an ordinary incident of the navigation of such waters, or on a presumption of a legal origin by grant of the foreshore by the Crown subject to such user, or by concession by a former owner of the foreshore to all persons navigating the waters to use the foreshore for fixing moorings.¹⁶

Drying fishing nets. The same court have also held valid a custom for fishermen inhabitants of a parish to dry their nets on private land near the sea and on accretions to such land from the sea.¹⁷

(10) 10 & 11 Geo. V. c. clxxiii. See ss. 257-264 (piers and landing places), 276, 277 (steam launches), 278 (navigation of vessels), 279 (bye-laws), 280-290 (legal), 308 (firearms), 315-377 (watermen, pleasure boats, etc.). See also ss. 226-242, 297 (pollution), and 311 (exemptions from rates).

(11) 57 & 58 Vict. c. clxxxvii., ss. 138-154.

(12) *Ante*, p. 214.

(13) *Post*, Vol. II., p. 1763.

(14) *Ante*, p. 259.

(15) *Aiton v. Stephen* (1876), L. R. 1 A. C.

456.

(16) *A.G. v. Wright*, L. R. 1897, 2 Q. B. 318; 66 L. J. Q. B. 834; 77 L. T. 295.

(17) *Mercer v. Denne* (C. A.), L. R. 1905, 2 Ch. 538; 74 L. J. Ch. 723; 93 L. T. 412; 70 J. P. 65; 3 L. G. R. 1293. Considered in *A.G. for Ireland v. M'Carthy*, 1911 Ir. K. B. 260; 2 Glen's Loc. Gov. Case Law 7. See also *Johnson v. Grice* (1910, Warrington, J.), 74 J. P. Jo. 220; 1 Glen's Loc. Gov. Case Law 5.

PART V.

GENERAL PROVISIONS.

CONTRACTS.

Sect. 173. Any local authority may enter into any contracts necessary for carrying this Act into execution.

Power of local authorities to contract.
P.H., s. 85.

Note.

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Power to Contract.

Generally speaking, corporations are as much bound by their contracts as individuals, where the seal is affixed in a manner binding on them; and where a corporation is created by Act of Parliament for particular purposes with special powers, their contract will bind them, unless it appears, by the express provisions of the statute creating the corporation, or by necessary and reasonable inference from its enactments, that the contract was *ultra vires*, or that the Legislature meant that such a contract should not be made.¹ Respecting contracts by corporations which are *ultra vires* of the contracting parties, Cranworth, L.C., said ² : “ When the Legislature constitutes a corporation it gives to that body *primâ facie* an absolute right of contracting. But this *primâ facie* right does not exist in any case where the contract is one which, from the nature and object of incorporation, the corporate body is expressly or impliedly prohibited from making; such a contract is said to be *ultra vires*.” ³

Contracts
ultra vires.

Buckley, J., said that a municipal corporation, as a common law corporation, had *primâ facie* an absolute right of contracting (for the purposes for which it existed), but that that *primâ facie* right did not exist in a case in which the contract was one which the corporation was expressly or impliedly prohibited from making; and he held that neither the fact that the corporation in question were expressly authorised by statute to make certain contracts with reference to certain tramways, nor the fact that they would be tying their hands for the future, prevented them from agreeing with the tramway company that, if a tramway not dealt with by that statute should be made at a future time, they would give the company the option of constructing it at an ascertained price.⁴ In the case cited below,⁵ a local authority obtained a declaration that a contract which they had entered into was wholly *ultra vires*.

In 1909 the owner of land adjoining a highway (a main road which the district council had retained the right to maintain) entered into an agreement with the district council for straightening the boundary of the highway—he to enclose portions of dedicated roadside waste, and the council to make up and maintain as part of the highway portions of his private land. He performed his part of the agreement; but, as the new boundary was not that of which the county council approved, the district council declined to perform their part, and defended an action for specific performance on the ground that they had no power to agree

(1) *Bateman v. Ashton-under-Lyne Cpn.* (1858), 3 H. & N. 323; 27 L. J. Ex. 458.

(2) In *Shrewsbury and Birmingham Ry. Co. v. North Western Ry. Co.* (1857), 6 H. L. C. 113; 26 L. J. Ch. 482; 3 Jur. (N.S.) 775.

(3) On this point see also *London Dock Co. v. Sinnott* (1857), 8 E. & B. 347; 27 L. J. Q. B. 129; 4 Jur. (N.S.) 70.

(4) *A.G. v. Hastings Cpn.* (1902), 67 J. P. 165; 1 L. G. R. 41.

(5) *Longfield P.C. v. Dartford R.D.C.*, post, Vol. II., pp. 1508, 2007.

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to give up portions of the highway. Vice-Chancellor Leigh Clare reluctantly dismissed the action on this ground, but deprived the defendants of costs.⁶

If a contract "fetters the full performance" of a statutory body's "public duties," it is *ultra vires*.⁷

Other cases relating to the validity of contracts entered into by local authorities have been cited elsewhere.⁸

Contracts partly ultra vires.

A statutory body cannot by contract deprive themselves of their statutory powers with respect to land, which they are authorised to purchase for certain purposes, by a covenant in their purchase deed that they will not exercise some of those powers with respect to the land purchased.⁹ But the inclusion of such a clause in a contract does not necessarily render the whole contract void. Thus, a waterworks construction company entered into an agreement with a statutory waterworks company to construct works in the area of supply of the latter company, who undertook to supply water in bulk to the former company to be distributed by them. A clause in the agreement provided that while it was in force the statutory company would not distribute water in their area of supply. In an action by the statutory company, claiming a declaration that the agreement was *ultra vires* and void on the ground that it amounted to a delegation of their statutory powers, Warrington, J., said that it might well be that, if the defendants sought to enforce the clause referred to, the plaintiffs could maintain that it was not binding, but held that there was nothing in the clause as it stood to render the whole agreement void.¹⁰

Improvident contracts.

"An agreement made by a public corporation is not to be judged by the event. If on the face of it it is not entirely improvident or unreasonable or foreign to and unnecessary for the express or implied purposes of the corporation, or detrimental to the public welfare, it will not be held to be *ultra vires* merely because the bargain contained in it turns out to be a bad one for the corporation." In the case in which Sankey, J., made this observation,¹¹ it was held that a contract with an insurance company was not *ultra vires*, contentions based on the unreasonable period for which the local authority were bound and the alleged financial instability of the company being overruled.

Illegal contract.

Contracts are illegal at common law if one party agrees to commit either a crime or a tort or an act which is contrary to public policy. But, as embezzlement is a crime which injures the employer only, and he is under no duty in the public interest to give information to the police, an agreement not to prosecute if the money is returned is only *pactum illicitum* if the employer uses his knowledge of the crime to obtain something from his employee to which he is not entitled.¹² Where a contract is illegal "on its face," its illegality need not be pleaded.¹³

Contract recited in petition.

A petition to the Local Government Board for the alteration of the boundary between two adjoining urban districts, under the common seals of the two urban authorities, which contained a recital that they had agreed that one of them should cause a certain road to be "dedicated" as a highway repairable by the inhabitants at large, was held not to constitute a contract under seal binding that authority to take the requisite steps to carry out the recited agreement. And it was further held that a local authority had no power to enter into such an agreement so as to bind themselves to exercise their discretion under sect. 152 of the present Act in a particular manner.¹⁴

Common seal.

As to the necessity for affixing the common seal of a local authority to its contracts, and the other formalities to be complied with by such authorities in connection with their contracts, see sect. 174 and Note, *post*.

(6) *Croft v. Fulwood U.D.C.* (1912), 3 Glen's Loc. Gov. Case Law 6. During argument in C. A., court suggested settlement on basis of line approved by county council, and this course was adopted.

(7) See *per* McCardie, J., in *County Hotel & Wine Co. v. L. & N.W. Ry. Co.*, 17 L. G. R. at p. 286; affirmed in H. L. on another point (1920), 18 L. G. R. 597.

(8) See, e.g., the *New Windsor Case*, *ante*, p. 89; and the cases as to illegal expenditure of rates cited in Note to s. 210, *post*.

(9) *Ayr Harbour Trustees v. Oswald* and other cases cited *post*, p. 469 (11).

(10) *Ticehurst Water & Gas Co. v. Gas &*

Waterworks Supply and Construction Co. (1911, Warrington, J.), 55 Sol. J. & W. R. 459; 2 Glen's Loc. Gov. Case Law 246.

(11) *Municipal Mutual Insurance, Ltd. v. Pontefract Cpn.* (1917), 116 L. T. 671; 15 L. G. R. 299, at p. 305; 33 T. L. R. 234.

(12) *Macphail v. Lampson Paragon Supply Co.* (1913, Sc. S.), 51 Sc. L. R. 20; 5 Glen's Loc. Gov. Case Law 18.

(13) *Murphy & Co. v. Crean* (C. A., I.), 1915 Ir. Ch. 111.

(14) *Tunbridge Wells Improvement Comrs. v. Southborough Loc. Bd.*, 60 L. T. 172; 1888 W. N. 237.

Members, Officers, and Servants.

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As to the disqualification of members of local authorities by reason of interest in contracts with such authorities, and the cases on this subject, see sect. 46 of the Local Government Act, 1894, and Note.¹⁵

Members.

Officers of all urban or rural district councils are prohibited under penalties and disqualifications from being concerned or interested in bargains or contracts with their authorities for purposes of the Act.¹⁶ As to the validity of such prohibited contracts, see the Note to sect. 193.¹⁷

Officers.

As to contracts by officers, it was at one time laid down that a corporation would not be bound by a contract entered into by one of its servants on its behalf without evidence that it had given express authority to the servant to enter into the contract.¹⁸ But in a subsequent case, in which the general manager of a railway was held to have implied authority to employ a surgeon to attend a servant of the company injured by an accident on the line, Martin, B., said that, when the previous case was decided, it was generally supposed that a company, except in some very few cases of daily recurrence, could only contract under seal, but there had been much more freedom in this respect accorded to companies since that time.¹⁹

In an action for breach of an alleged contract by a local authority to supply electricity, the jury found for the plaintiff on the questions whether the resident engineer or the consulting engineer of the local authority made the alleged contract, whether they were authorised, or held out by the local authority as being authorised, to make such contract, and whether it was necessary that contracts of the kind should be made to carry into effect the purposes of the local authority as electric light suppliers. By the bye-laws of the local authority their duties and powers under the Electric Lighting Acts and Order had been delegated to their electric lighting committee, but the committee were not empowered to incur any expense exceeding £50 without the consent of the council. Ridley, J., holding that a provision in the Electric Lighting Order imposing a penalty for default in supplying electricity did not prevent an action for breach of a contract to supply from being maintained, that certain letters written by the engineers amounted to a partly executed contract by the local authority, as they had derived some advantage from it in being relieved from the cost of certain works which they would otherwise have had to execute, gave judgment for the plaintiff. The Court of Appeal, however, considering that the letters referred to were merely the expression of a hopeful expectation and did not purport to amount to a binding contract, and that there was no evidence that the engineers had authority to make such a contract, or were held out by the local authority as having it, allowed an appeal against the judgment, and directed it to be entered for the defendants.²⁰

As regards personal liability of members of district councils and their officers, see sect. 265.

Personal
liability.
Servants.

As to malicious breaches of contract by certain servants, see the extracts from the Conspiracy and Protection of Property Act, 1875, in the Note to sect. 189.²¹

Stamp Duty.

By the Stamp Act, 1891,²² a stamp duty of sixpence is imposed on every agreement or memorandum of an agreement made in England under hand only, and not otherwise specifically charged with any duty, whether it is only evidence of a contract or obligatory upon the parties from its being a written instrument, subject to the following exemptions, namely:—agreement or memorandum the matter whereof is not of the value of £5; agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant; agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise; and certain agreements, etc., between masters of ships and mariners, or between landlords and tenants in Ireland.

Exemptions
from stamp
duty.

(15) *Post*, Vol. II., p. 2068; and see *Hyde's Case*, *post*, p. 451 (13).

15 W. R. 769.

(16) See s. 193, *post*, p. 544.

(20) *Bourne & Hollingsworth v. St. Marylebone B.C.* (1908, C. A.), 72 J. P. 129, 306; 6 L. G. R. 406, 1141.

(17) *Post*, p. 548.

(21) *Post*, p. 531.

(18) *Cox v. Midland Counties Ry. Co.* (1849), 3 Ex. 268; 18 L. J. Ex. 65.

(22) 54 & 55 Vict. c. 39, Sched., tit. "Agreement."

(19) *Walker v. Great Western Ry. Co.* (1867), L. R. 2 Ex. 229; 36 L. J. Ex. 123;

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An agreement for the supply of water by a waterworks company was held to come within the above-mentioned exemptions.²³

It was doubted whether an agreement between two companies, signed by their respective agents, for the supply of electric energy, under which the consumers were to pay the supplying company a fixed sum quarterly (variable within certain limits in the event of alteration in the capacity of the consumers' installation), plus a fixed charge per unit supplied, was an agreement relating to the sale of goods, wares, or merchandise within the exemption; but the Court of Appeal held that, even if it was, it was chargeable with *ad valorem* duty as an "instrument being the only or principal or primary security for sums of money at stated periods."²⁴

Highway agreements.

Agreements or contracts made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways are also charged with a stamp duty of sixpence.²²

Agreements for sale or lease.

Ad valorem duties are charged on agreements or contracts accompanied with deposits, agreements for leases or tacks or for any letting, and agreements for the sale of property.²²

Minimum Rates of Wages.

Wages under contracts.

A circular of the Local Government Board to local authorities, dated 29th July, 1910,²⁵ calls attention to sect. 7 of the Trade Boards Act, 1909,²⁶ which prevents local authorities giving contracts, involving employment in certain specified trades, to employers who have not given notice to the trade board that they are willing to be bound by certain minimum rates of wages; and their circular of 2nd September, 1911,²⁷ calls attention to the Resolution of the House of Commons on the subject of fair wages clauses in Government contracts, and recommends the insertion of such clauses in "all contracts for the execution of works or the supply of materials which are entered into by local authorities or by or on behalf of any committee wholly or in part appointed by a local authority."

Engineer's Certificate.

Finality of certificate.

If the moneys becoming due under a contract for works are payable on the certificate of an engineer or other specified person, and the terms of the contract are such as to render the certificate a condition precedent to payment, such certificate is conclusive between the parties, in the absence of fraud or other such conduct by the engineer or the employers.²⁸ But the engineer must give particulars if asked for them, otherwise an action on his certificate may fail.²⁹

Unless it is otherwise provided by the contract, such a "certificate" need not be in writing; thus, where under a contract an architect was to certify that the works had been carried out to his satisfaction before the contractor was entitled to be paid, the architect's verbal approval of the works was held to be sufficient.³⁰ And even where the certificate was required to be in writing it was held that the contractor was entitled to be paid for extras not so certified, because, under the arbitration clause, an arbitrator had decided in favour of his claim and the award took the place of the written certificate.³¹

Under the terms of a contract for carrying out a sewerage scheme, the contractor was not to be entitled to extras for deviations which were not authorised under the hand of the town clerk, and he was only to be paid for his work upon the certificate of the engineer. In the course of the execution of the contract it was found that the sewer could not be carried under a certain place without special precautions being taken, which were not provided for by the contract. The corporation refused to authorise any deviation from the original plan; whereupon the

(22) See footnote (22), *ante*, p. 445.

(23) *West Middlesex Water Co. v. Sowerkrop*, *ante*, p. 144.

(24) *County of Durham Electrical Power Distribution Co. v. I.R. Comrs.*, L. R. 1909, 2 K. B. 604; 78 L. J. K. B. 1158; 101 L. T. 51; 73 J. P. 425; 8 L. G. R. 1088.

(25) Set out in 8 L. G. R. (Orders) 243.

(26) 9 Edw. VII. c. 22, s. 7. Powers of Board of Trade under this Act transferred to Ministry of Labour by 6 & 7 Geo. V. c. 68, s. 2; and s. 7 of Act of 1909 repealed by 8 & 9 Geo. V. c. 32; see s. 4 (5) of that Act.

(27) Set out in 9 L. G. R. (Orders) 98.

(28) *Sharpe v. San Paulo Ry. Co.* (1873), L. R. 8 Ch. 597; 29 L. T. 9; *Botterill v. Ware Union* (1886, C. A.), MS., and 2 T. L. R. 621.

(29) As in *North British Ry. Co. v. Wilson*, 1911 S. C. (S.) 730; 2 Glen's Loc. Gov. Case Law 16.

(30) *Roberts v. Watkins* (1863), 14 C. B. (N.S.) 592; 32 L. J. C. P. 291; 8 L. T. 460.

(31) *Brodie v. Cardiff Cnn.*, L. R. 1919 A. C. 337; 88 L. J. K. B. 609; 120 L. T. 417; 83 J. P. 77; 17 L. G. R. 65. See also cases cited *post*, p. 486.

contractor threw up the contract and claimed to be paid for the work which he had done, and the cost of the plant connected therewith, but it was held that, as no certificate had been given by the engineer, he could not recover.³²

Though no extra work was to be paid for as such except when ordered in writing by both the employer and his architect, it was held by the Privy Council that the contractor could recover extra payment for work done by him without a written order by the employer when the execution of such work was verbally insisted upon by the employer as work covered by the contract, the arbitrator agreeing with the contractor that it was not so covered; the ground of the decision being that the employer had impliedly contracted to pay for this work as extras in the event of his contention being ultimately found to be erroneous.³³

A contract between the council of a borough and certain contractors for the sinking of wells contained a clause requiring the contractor to perform and complete the whole of the works to the entire satisfaction of the engineer, and then provided that if any dispute should arise between the council or the engineer and the contractor as to the mode of carrying out the work, or the interpretation of the contract, or otherwise in relation thereto, the same should be referred to arbitration. Subsequent clauses authorised the council or engineer to dismiss the contractor without prejudice to the contract if the work were improperly conducted or sufficient dispatch were not used, and provided that no deviation from the specifications or drawings should be made without the written sanction of the council or engineer, but that deviations might be ordered by the engineer and were to be carried out by the contractor. Deviations were so ordered and were not carried out by the contractor, and other disputes arose; whereupon notice dismissing the contractor was given. It was held that the contractor was not bound to give up to the engineer the decision of every question, but that the dispute ought to go to arbitration.³⁴

Phillimore, J., construed clauses 16 and 17 of the form sanctioned by the Royal Institute of British Architects, as meaning that defects appearing during the contract were to be left to the architect, but that those appearing afterwards were to be left to an arbitrator.³⁵

Where the price of extras was by the contract to be determined by the employer's engineer, who was defined as "A. B. or other the engineers of the corporation," it was held that the person appointed engineer on the death of A. B. could determine the price to be paid for extra work begun before his appointment.³⁶

An action was brought for the balance of the price of sewerage works constructed under a contract referring all disputes to the local authority's consulting engineer. In answer to an application for the staying of the action, the plaintiff challenged the conduct of the engineer in relation to the works, and alleged that he had by his admissions precluded himself from asserting that the works had not been completed to his satisfaction, and that the period of maintenance had not expired. A stay was refused on the ground that the cross-examination of the engineer was essential to the proper determination of the dispute. The costs of the appeal were ordered to be the plaintiff's in any event.³⁷ Further, as to arbitration clauses in contracts, see the Note to sect. 180, *post*.

A contract entered into by a local board for the construction of a reservoir provided that payment for the work should be made by instalments, upon the certificates of a certain engineer. Several payments had been made, when it was discovered that the reservoir would not hold water, and further payment was refused. Thereupon the contractor brought an action against the board for the balance due under the contract, but the action was stayed on the board executing an agreement with the contractor undertaking to pay a certain sum at the expiration of six months. This agreement was assigned by the contractor to a bank, and notice of the assignment was given by the bank to the board. At the expiration of the six months the bank brought an action against the board to recover the

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Finality of certificate—
*continued.*Staying
actions.False
certificate.

(32) *McDonald v. Workington Cpn.*, 1893 Loc. Gov. Chron. 582. See also *Eaglesham's Case*, *post*, p. 489 (12).

(33) *Molloy v. Liebe* (1910), 102 L. T. 616; 47 Sc. L. R. 909; 1 Glen's Loc. Gov. Case Law 7.

(34) *Foster and Dicksee v. Hastings Cpn.* (1903), 87 L. T. 736; 19 T. L. R. 204. See also *Lawson v. Wallasey Loc. Bd.*, *post*, p. 461 (14); and *Robins v. Goddard* (C. A.), L. R. 1905, 1 K. B. 294; 74 L. J. K. B. 167;

92 L. T. 10.

(35) *Adcock's Trustee v. Bridge R.D.C.* (1911), 75 J. P. 241; 2 Glen's Loc. Gov. Case Law 15.

(36) *Kellett v. Stockport Cpn.* (1906), 70 J. P. 154.

(37) *Freeman & Sons v. Chester R.D.C.* (C. A.), L. R. 1911, 1 K. B. 783; 80 L. J. K. B. 695; 104 L. T. 368; 75 J. P. 132; *Blackwell & Co. v. Derby Cpn.* (1909), 75 J. P. 129, followed.

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amount secured by the agreement, when, for the first time, the board denied their liability on the ground that they had discovered that the contractor and the engineer had conspired together to give false certificates; and that therefore the agreement was one which had been obtained by fraud. It was held, that the defence that the agreement had been obtained by the fraud and collusion of the contractor was a good answer to the action; and that there was no obligation on the part of the board to give notice to the bank of the discovery of the fraud until steps were taken to enforce the agreement.³⁸

Collusion.

A building contract provided that the decision of the building owner's architect on matters relating to the work should be final, and that payments should be made on his certificate. The building owner influenced the architect to delay issuing his certificates. After the expiration of the period of maintenance, without awaiting for the architect's final certificate, the contractor sued the building owner for the balance due under the contract. It was held that the building owner was precluded from defending the action either on the ground that the issue of the certificate was a condition precedent to the bringing of an action or that the certificate (which was issued after the commencement of the action) was conclusive as to the amount due.³⁹

Duty towards mortgagees.

The general principle—that whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognise that, if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger⁴⁰—was relied upon in a case in which the mortgagees of the interest of a builder under his building contract had advanced money to the builder on the faith of a surveyor's certificate as to the progress of the work. The mortgagees brought an action against the surveyor for negligence (without fraud) in making untrue statements in the certificate. But it was held that the surveyor owed no duty to the mortgagees to exercise care in giving his certificates, and that the mortgagees could not maintain the action.⁴¹

Architect and clerk of works.

Four years after the completion of a building dry rot appeared under concrete which had not been laid in accordance with the architect's designs. In an action for damages against the architect, who put the blame on the plaintiffs' clerk of the works, it was held that this was not a matter of detail for the clerk and that the defendant was liable.⁴²

Ownership of plant.

A contractor agreed with a public sewerage board to construct certain works, the materials, plant, temporary buildings, etc., on being placed on the works to be the property of the board. He alleged the impossibility of doing part of the brickwork according to the specification, and the works were allowed to come to a standstill. Notice was given under the specification dispossessing him of the works, and an interim order obtained to restrain him from removing the temporary buildings and plant, an injunction to the same effect being subsequently obtained. The board issued advertisements for new tenders with the alteration suggested by the contractor as to the brickwork. The contractor filed a bill for avoidance of his contract, delivery up of the temporary buildings, etc., and an injunction to restrain the board from disposing of the materials and plant, or taking legal proceedings against him under the contract, on the ground that such contract was impossible of performance and entered into under mistake. It was held by Lord Hatherley, L.C., that there was no mistake, that the contract could not be set aside, that the works under the new contract remained the works to be executed under the old, that the new contractors might use the temporary buildings, etc., that no interlocutory injunction should be granted to the contractor, and that it was too late to appeal against the former injunction.⁴³

Contractor's Plant.

(38) *Wakefield and Barnsley Banking Co. v. Normanton Loc. Bd.* (1881), 44 L. T. 697; 45 J. P. 601; and see the judgment of Lord Bramwell in *Young & Co. v. Royal Leamington Spa Cpn.*, post, p. 455 (11).

(39) *Hickman & Co. v. Roberts*, L. R. 1913 A. C. 229; 83 L. J. K. B. 678; 108 L. T. 436n. See also *Eaglesham's Case*, post, p. 489 (12).

(40) *Per Brett, M.R.*, in *Heaven v. Pender* (1883), L. R. 11 Q. B. D. 503; 52 L. J. Q. B.

702; 49 L. T. 357; 47 J. P. 709.

(41) *Le Lievre v. Gould*, L. R. 1893, 1 Q. B. 491; 62 L. J. Q. B. 353; 68 L. T. 626; 57 J. P. 484.

(42) *Leicester Guardians v. Trollope* (1911, Channell, J.), 75 J. P. 197; 2 Glen's Loc. Gov. Case Law 12.

(43) *Jennings v. Brighton Intercepting and Outfall Sewers Bd.*, and *Brighton, etc., Bd. v. Jennings* (1872), 4 De G. J. & S. 735n.

A provision in a building contract that the builder's plant should be considered to be the property of the board who employed him was considered to be ambiguous, and, having regard to other provisions of the contract, was held not to have vested the plant in the board as against the builder's trustee in bankruptcy, when a receiving order had been made against him while he was executing the contract.⁴⁴ This case was distinguished by Farwell, J., in one in which the contract showed that the plant was intended to constitute a security for the performance of the contract.⁴⁵

**Sect. 173, n.
Bankruptcy
of contractor.**

Obligations towards Contractor.

After their tender had been accepted, contractors sent a representative to inspect the conditions in the contract. He asked the assistant engineer of the local authority whether there was " anything unusual " in them, and relied upon the answer " No, they are the usual conditions." The conditions were subsequently examined by the plaintiffs' solicitors and declared unusual and unreasonable. The plaintiffs withdrew their tender and claimed the return of their deposit. The objections to the conditions were (a) contractors being liable for construction and design; (b) engineer not being made arbitrator but " dispute preventer "; (c) it not being clearly stated that quantities were part of the contract; (d) free access to site not being clearly provided for; (e) contractors having to bear expenses of engineer or his agents visiting works; (f) imposition of a penalty of £100 if the contractor failed to pay the trade union rates of wages; and (g) imposition of a penalty of £200 per week for delay. It was held that the deposit must be returned, Channell, B., saying " I could not possibly say that these conditions and particulars were usual." ¹

**Disclosure of
unusual
conditions.**

A contract for the purchase of an electric lighting undertaking from a company by an urban district council was made subject to the approval of the Local Government Board being given to the purchase and to a loan being raised for the purchase-money, and contained a provision by which the district council expressly undertook to use their best endeavours to obtain such approval. In an action for breach of this undertaking Lord Russell, C.J., ruled that if the jury were of opinion that the Local Government Board would not under the circumstances have given their approval, the plaintiffs would only be entitled to nominal damages. The jury, however, found a verdict for substantial damages, and judgment was given accordingly.²

**Application
for sanction
to loan.**

A person who had contracted with a district council to paint their street lamps was injured in the course of carrying out the work by a ladder, on which he was standing, swinging round and falling. In an action for damages against the council, Bucknill, J., ruled that there was a duty on the council to see that the contractor or person employed by them had a safe article on which to work.³

**Provision
of safe
apparatus.**

When the contractor has undertaken to do work or supply articles according to a schedule of prices, the terms of the contract may be such as to imply an undertaking on the part of the employer not to employ another person to do such work or supply such articles; but the Court of Appeal held that there was no such implied obligation in a contract to supply horses, harness, etc., to a local authority for scavenging work whenever required by the engineer of the authority: the contract providing that the authority might, if they thought proper, execute on their own account or employ other contractors to execute any work ordered by them.⁴

**Employment
of another
contractor.**

A provision, in a contract with a local authority for the execution of works, to the effect that the contractor must verify all representations in the plans, specifications, etc., according to which the works were to be executed, and that the local authority did not hold itself responsible for the accuracy of the information contained in them as to existing works, was held by the House of Lords to afford no defence to an action of deceit brought against the local authority by the contractor for fraudulent misrepresentations made by their agent with respect to such existing works. *Per* Lord Loreburn, C., " no one can escape liability for

Misrepresentation.

(44) *In re Keen, Bristol School Bd. v. Collins*, L. R. 1902, 1 K. B. 554; 71 L. J. K. B. 487; 86 L. T. 235; 9 Manson, 145.

(45) *Hart v. Porthgain Harbour, Ltd.*, L. R. 1903, 1 Ch. 690; 72 L. J. Ch. 426; 88 L. T. 341.

(1) *Moss & Co., Ltd. v. Swansea Cpn.* (1910), 74 J. P. 351.

(2) *Fareham Electric Light Co. v. Fareham U.D.C.*, MS., and 1895 Loc. Gov. Chron. 1191.

(3) *Giles v. Aldershot U.D.C.* (1902), 66 J. P. 441. See *Heaven v. Pender*, ante, p. 448.

(4) *Moon v. Camberwell B.C.* (1903), 89 L. T. 595; 68 J. P. 57; 2 L. G. R. 309.

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his own fraudulent statements by inserting in a contract a clause that the other party shall not rely upon them"; though he suggested that a man himself innocent might under peculiar circumstances guard himself by apt and express clauses from liability for the fraud of his own agents.⁵

In another case,⁶ contractors had tendered on representations made to them by the company's engineer as to certain bores. The representations were found to have been made "recklessly, careless whether they were true or false, and without any belief in their truth." There were very wide clauses safeguarding the company from the consequences of inaccuracies in information supplied and calling upon the contractors to satisfy themselves, but it was held that the contract had been induced by fraud and that the contractors were entitled to be paid the sum claimed either as damages or on a *quantum meruit*.

Ordering
goods
elsewhere.

A contractor undertook to supply goods to an asylums committee "at such times and in such quantities" as might be ordered. It was held that the committee were not bound to take from him all or any of the goods which they had estimated would be their "possible requirements," but that he was bound to supply everything ordered.⁷

Damages for
delay.

As to a local authority's liability to a contractor for loss suffered by delay, see the case cited below.⁸

*Indemnities.*Liability of
contractor.

By a contract for the construction of a reservoir in a rural district for a water company, the contractor undertook to be responsible for "injury or damage to person and property of any description whatever, which may be caused by, or result from, the execution of the works." He caused damage to the highways by "extraordinary traffic" in bringing materials to the site of the reservoir, and the expenses of making good such damage were recovered from the company by the rural district council. It was held by the Court of Appeal (affirming the decision of the King's Bench Division) that damage caused by or resulting from the "execution of the works" included the damage caused by the carriage of the materials, and that, as the highways were the property of somebody, though they were not vested in the rural district council, the company were entitled to recover the expenses from the contractor.⁹

Liability
towards
contractor.

A building owner's architect ordered the contractor to underpin adjoining property. He did so without the consent of the adjoining owner, who recovered damages from him for trespass. The building owner was held liable to indemnify the contractor.¹⁰

Determination of Contract.

Three local authorities entered into an agreement in 1885 for the provision and joint use of a hospital, and for the payment of their respective contributions to the expenses. In 1898 one of these authorities and the successors of the others entered into a further agreement altering the terms of the original agreement as regards the management of the joint hospital, and providing that "this agreement may be determined" on six months' notice by any of the parties. In 1905 the parties entered into a supplementary agreement for the discharge of one party from liability under the agreements, and further altering the terms relating to management of the hospital. In 1906 six months' notice to determine all three agreements was given by one of the remaining parties, but it was held by Neville, J., that the second agreement alone was so terminable.¹¹ An appeal to the Court of Appeal in this case was settled on the agreed terms that the declaration as to the notice should stand, and that the rights of the parties in connection with the agreements

(5) *Pearson & Son v. Dublin Cpn.*, L. R. 1907 A. C. 351.

(6) *Boyd & Forrest v. Glasgow & S.W. Ry. Co.*, 1911 S. C. (S.) 33; 48 Sc. L. R. 157; 2 Glen's Loc. Gov. Case Law 18. Cf. *Blackwell & Co. v. Derby Cpn.* (1909, C. A.), 75 J. P. 129, where a stay was refused on the ground that there was a substantial dispute as to the reasonableness of the conduct of the arbitrator towards the contractor.

(7) *Percival, Ltd. v. London C.C. Asylums*

Committee (1918, Atkin, J.), 87 L. J. K. B. 677; 82 J. P. 157; 16 L. G. R. 367.

(8) *Porter v. Tottenham U.D.C.*, ante, p. 301. See also *post*, pp. 460, 461.

(9) *Croydon R.D.C. v. Sutton Water Co.* (1908, C. A.), 72 J. P. 217; 6 L. G. R. 574.

(10) *Kirby v. Chessum* (1914, C. A.), 79 J. P. 81; 12 L. G. R. 1136; 30 T. L. R. 660.

(11) *Wolstanton United U.D.C. v. Tunstall U.D.C.*, L. R. 1910, 2 Ch. 347; 79 L. J. Ch. 522; 103 L. T. 98; 74 J. P. 353; 8 L. G. R. 870.

should be referred to arbitration under the Local Government Acts, 1888 and 1894.¹² **Sect. 173, n.**

In March, 1910, a contractor tendered for the supply of "bread and flour" to an asylum for the period from 1st April, 1910, to 31st March, 1911. The tender was accepted for flour only, and flour only was supplied up to 24th December, 1910, the last payment being on 17th January, 1911. The tender contained a provision that on its acceptance the contractor must enter into a bond, but this had not been done. On 4th January, 1911, the contractor wrote to the asylum superintendent, intimating that he was transferring his account to his son, to whom all future payments should be made, and there was no reply to this letter. From this date the contractor supplied no more flour to the asylum. On 5th January, 1911, he was nominated for membership of the council, from which the asylum committee was partly drawn. On 16th January he was elected, and on the 19th he signed his acceptance of office, and on the 23rd he voted as a member. In proceedings for acting when disqualified, the justices decided (1) that the flour had not been supplied under the contract, as the tender had not been fully accepted; (2) that the absence of a reply to the letter of 4th January operated as a discharge of the contract from that date; and (3) that the proceedings must accordingly be dismissed. It was held, as to (1), that the tender, being in effect for "such quantities as might be required of any of the two specified articles, bread and flour," was severable; as to (2), that the contract was to continue till 31st March, 1911, and had not been properly determined; and as to (3), that the case must be sent back for a conviction.¹³

In deciding that an agreement with respect to running powers between two railway companies, which contained no provision as to the time for which it was to endure, or as to the mode of determining it, could not be determined by notice given by one company to the other, because the provisions of the agreement, and the circumstances in which it was entered into, showed that it was permanent and not terminable, Lord Cairns, L.C., after distinguishing contracts of hiring and service and contracts of partnership, said that the question was to be decided upon the nature of the agreement itself, and upon the construction of the agreement as it was expressed. And Lord Selborne said "an agreement *de futuro* extending over a tract of time, which on the face of it is indefinite and unlimited, must in general throw upon any one alleging that it is not perpetual, the burden of proving that allegation, either from the nature of the subject, or from some rule of law applicable thereto"; and pointed out that in the case in question the character of perpetuity attached both to the legal personality of each of the parties and to the legal character and use of the subject matter, and that the objects of the agreement were favourably regarded by the law, all such companies having express statutory powers to contract without any necessary limit of time for such objects, and being in the absence of contract to some extent always under legal obligations actual or potential of a like general character.¹⁴

Perpetual contract.

As to impossibility of performance due to war conditions,¹⁵ and relaxation on the ground of war hardship,¹⁶ see the cases cited below and in the Note to sect. 180.¹⁷

Impossibility of performance.

Specific Performance.

A contract with a municipal corporation to erect buildings of a certain kind upon a certain piece of land for them was enforced by specific performance, the Court of Appeal refusing to set aside the judgment on the suggestion that building

(12) L. R. 1911, 1 Ch. 229; 80 L. J. Ch. 418; 103 L. T. 473; 75 J. P. 203; 9 L. G. R. 557. See also *post*, p. 576 (69), as to another point in this case.

(13) *Hyde v. Hosford* (K. B. D., Ir.), 46 Ir. L. T. 59; 4 Glen's Loc. Gov. Case Law 28.

(14) *Llanelly Ry. and Dock Co. v. London and North Western Ry. Co.* (1875), L. R. 7 H. L. 550. See also *Wynn's Case*, *post*, p. 452 (19).

(15) As to lighting contracts, see the *Leiston Gas Co. and Wycombe Electric Light Co. Cases*, *post*, Vol. II., p. 1258; as to reservoir works, *Metrop. Water Bd. v. Dick Kerr & Co.*, L. R. 1918 A. C. 119; 87 L. J. K. B. 370; 111 L. T. 766; 82 J. P. 61;

16 L. G. R. 1; as to requisitioned foodstuffs, *Lipton, Ltd. v. Ford*, L. R. 1917, 2 K. B. 647; 86 L. J. K. B. 1241; 116 L. T. 632; 15 L. G. R. 699; and as to timber from abroad, *Blackburn v. Bobbin & Co.*, L. R. 1918, 2 K. B. 467; 87 L. J. K. B. 1085; 119 L. T. 215.

(16) *North Metrop. Electric Co. v. Stoke Newington B.C.*, *post*, Vol. II., p. 1289; *Metrop. Electric Supply Co. v. London C.C.*, L. R. 1919, 1 Ch. 357; 88 L. J. Ch. 382; 120 L. T. 377; *Schofield & Co. v. Maple Mill, Ltd.* (1918, Ch. D.), 34 T. L. R. 423; *Wauters v. Association Internationale D'Agences* (1918, Rowlatt, J.), 34 T. L. R. 577 (rise in prices not included).

(17) *Post*, p. 485 (10).

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works would not be enforced in that manner because damages were an adequate remedy, and because of the inability of the court to see that the works were carried out.¹⁸

Specific performance of a contract as to the perpetual renewal of a lease was decreed against a municipal corporation.¹⁹

Specific performance of a contract with a local authority to remove certain buildings when called upon by the authority was refused.²⁰

Where there is no final agreement between the parties,²¹ or it would be contrary to equity to do so,²² specific performance will be refused.

The existence of a visible track, which is compatible with either a public or a private way, is not a "patent defect" entitling a vendor to specific performance of a contract to purchase the land, although the track is in fact a highway.^{22a}

Limitation of Actions.

Sect. 264 of the present Act had been held not to apply to an action upon a contract for the execution of works²³; and the provisions of the Public Authorities Protection Act, 1893,²⁴ which are now substituted for that section and limit the time for commencing actions against district councils and others in respect of breaches of public duty to six months from the cause of complaint, have also been held to be inapplicable to such an action.²⁵

Provisions [as]
to contracts
by urban
authorities.
P.H., s. 85.

Sect. 174. With respect to contracts made by an urban authority under this Act, the following regulations shall be observed; (namely,)

(1.) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority:

(2.) Every such contract shall specify the work materials matters or things to be furnished had or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed:

(3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise:

(4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority ten days' public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same:

(5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes; Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper.

(18) *Wolverhampton Cpn. v. Emmons*, L. R. 1901, 1 K. B. 515; 70 L. J. K. B. 429; 84 L. T. 407; followed in *Molyneux v. Richard*, L. R. 1906, 1 Ch. 34; 75 L. J. Ch. 39; 93 L. T. 698.

(19) 45 & 46 Vict. c. 50, ss. 108, 110. *Wynn v. Conway Cpn.* (C. A.), L. R. 1914, 2 Ch. 705; 84 L. J. Ch. 203; 111 L. T. 1016; 78 J. P. 380; 13 L. G. R. 137.

(20) *A.G. v. Kerr and Ball*, ante, p. 175 (9).

(21) *Hatzfeldt v. Alexander*, L. R. 1912,

1 Ch. 284; 81 L. J. Ch. 184; 105 L. T. 434. See also the *Athy Case*, post, p. 455.

(22) *Sobey v. Sainsbury*, L. R. 1913, 2 Ch. 513; 83 L. J. Ch. 103; 109 L. T. 303.

(22a) *Yandle & Sons v. Sutton*, L. R. 1922, 2 Ch. 199; 91 L. J. Ch. 567; 127 L. T. 783.

(23) *Davies v. Swansea Cpn.* (1853), 8 Ex. 808; 22 L. J. Ex. 297.

(24) *Post*, Vol. II., p. 1974.

(25) *Sharpington v. Fulham Guardians*, post, Vol. II., p. 1983.

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Common Seal.

The present section relates only to contracts made by urban district councils. There is no express statutory provision requiring rural district councils to affix their common seals to their contracts. But with regard to their contracts, as well as those of all other bodies corporate, it is to be observed that the general rule of law is that a corporation can only bind itself by deed.

Rural district councils.

Persons dealing with corporate bodies should, therefore, always bear in mind that they are essentially different from an ordinary partnership of individuals for all purposes of contracts, and especially as regards the evidence against them on legal trials; and should insist upon all contracts with them being by deed, under the seal of the corporation, or otherwise executed in the manner (if any) prescribed by the Act of Parliament regulating such corporation. There is no absolute safety or security for any one dealing with such a body on any other footing. The same observation applies in respect of any variation or alteration in a contract which has been made, and it should further be borne in mind that the secretary or other officer of the corporation has of himself no independent authority to bind the corporation by letters or documents signed by him.

Corporate bodies.

Thus, a municipal corporation were held not to be capable of contracting by mere resolution, and not under the common seal, to pay a considerable sum of money out of the corporate funds for the making of certain improvements within their borough; and on that ground a plea of a set-off of the sum in question was held not to have been supported by evidence of the resolution.¹

The Public Health Act, 1848,² required that a contract exceeding £10 in value, made by a local board not being a town council, should not only be sealed, but also be signed by five or more members of the board. The formality of signing is dispensed with by the present Act, but every contract made by an urban district council, if the value exceeds £50, is required to be in writing, and it must be sealed with the common seal of the council, in order that it may be binding on the parties; for the power to enter into contracts so as to bind the rates is entirely the creature of the statute, and the statute having prescribed a mode by which these contracts are to be made, compliance with the statute is essential to the exercise of the power given.

Under the Act of 1848 a contract, exceeding the value of £10, for the performance of work and otherwise carrying the Act into execution, which had been made with a local board of health of a non-corporate district, was held not to be valid, so as to enable the contractor to enforce it against the board, because it was not sealed with the seal of the board and signed by five or more members thereof, in accordance with the requirement of that Act²; for that requirement was not merely directory, but created a condition which must be complied with.³ In the case where it was so held, a bill in equity was afterwards filed to obtain specific performance of the contract; but Wood, V.-C., also held that the local board had no power to enter into a contract which could bind the rates of the particular district unless such contract was made, and the engagements therein contained were entered into, in the mode prescribed by the Act.⁴

Under the present Act an engineer, employed by the surveyor to a local board in pursuance of verbal directions of the board to prepare plans for offices, was on the same ground held by the Court of Appeal not to be entitled to recover the cost of making the plans.⁵ *Per* Bramwell, L.J.: "Sects. 173 and 174 were passed for the protection of ratepayers," and "sect. 174 is applicable to cases other than those alluded to in it, and is not limited to them: the section is general, and refers to every class of contract, and there is no reason for limiting it."

(1) *Ludlow Cpn. v. Charlton* (1840), 6 M. & W. 815; 4 Jur. 657.

(2) 11 & 12 Vict. c. 63, s. 85.

(3) *Frend v. Dennett* (1858), 4 C. B. (N.S.) 576; 4 Jur. (N.S.) 897; 27 L. J. C. P. 314; 23 J. P. 56.

(4) *Frend v. Dennett* (1861), 5 L. T. 73.

(5) *Hunt v. Wimbledon Loc. Bd.* (1878), L. R. 4 C. P. D. 48; 48 L. J. C. P. 207; 40 L. T. 115; 43 J. P. 284. But see *Hodge's Case*, post, p. 454 (10).

Sect. 174, n.
Exceptions.

Exceptions, however, to the general rules above mentioned have been established, as in the case of corporations created for the purpose of carrying on trading speculations, where the nature of their constitution has been such as to render the drawing of bills or the making of particular kinds of contract necessary for, or incident to, the purposes of the corporation. In those cases the courts hold that they will imply in those who are, according to the provisions of the charter or Act of Parliament, carrying on the corporation concerns an authority to do those acts without which the corporation could not subsist; and that an action will lie in certain cases, although the contract be not under seal.⁶

The exception has been put as applying to "cases so constantly recurring, or of so small importance, or so little admitting of delay, that to require in every such case the previous affixing of the seal would be greatly to obstruct the every day ordinary convenience of the body corporate without any adequate object."⁷

**Executed
contract.**

A municipal corporation passed a resolution in 1860 agreeing to let to the plaintiff a portion of the seabeach for 300 years at a nominal rent, and, without any lease or agreement under seal, the plaintiff entered into possession and built a wall and terrace upon the land. In 1864 the corporation gave him notice to quit, and brought an action of ejectment against him, whereupon he filed a bill for specific performance of the agreement. Lord Hatherley, L.C., held that, although such agreement was not under seal, it must be performed, as the corporation had allowed money to be expended on the faith of it.⁸

So where orders are given by a rural district council in relation to work to be done or goods to be supplied in order to carry into effect the purposes for which the council were created, and the work is done or the goods are supplied and accepted, so that the whole consideration for payment is executed, there is a contract to pay implied from their acts, and the absence of a contract under seal does not affect their liability.⁹

In the case cited below,¹⁰ an architect was employed by a local authority to make plans for a kursaal (the erection of which was authorised by a local Act). He was dismissed before the completion of the work. It was held on further consideration by Lawrence, J., that, though the contract was not under seal, the architect could recover £230, the amount awarded by the jury, on a *quantum meruit*, because the authority could not take the benefit of work done in an employment within the scope of their authority and then refuse to pay for it. The Court of Appeal held that this was right, but that, as the particulars of the sum claimed only showed items amounting to £118 14s., and no evidence had been given which would justify the amendment of such particulars, there must be a new trial. The parties, however, consented to judgment for £118 14s., and a new trial was obviated. The appeal was accordingly dismissed, but without costs.

In the *Wimbledon Case*⁵ it was held that, as the plaintiff's plans, being on too expensive a scale, did not enable the defendants to erect the offices required by them, they had not derived such a benefit as would entitle the plaintiff to sue upon an executed consideration; but in a subsequent case, in which the decision in that case was approved by the House of Lords, it was held that the provision requiring contracts to be sealed applied not merely to an executory contract, but also to an executed contract of which the urban sanitary authority had had the full benefit and enjoyment. In this case the contract had been made with the plaintiff by a person who was found to have been "acting within and according to his duties,

(6) *Church v. Imperial Gaslight Co.* (1838), 6 A. & E. 846; *Sanders v. St. Neots Guardians* (1846), 8 Q. B. 810; 15 L. J. M. C. 104 (iron gates for workhouse held incident); *Paine v. Strand Guardians* (1846), 8 Q. B. 326; 15 L. J. M. C. 89; 10 Jur. 308 (survey and map of rateable property in parish held not incident); *Clarke v. Cuckfield Guardians* (1852), 21 L. J. Q. B. 349 (workhouse waterclosets held incident); *Haigh v. North Bierley Guardians* (1858), E. B. & E. 873; 28 L. J. Q. B. 62; 5 Jur. (N.S.) 511; 23 J. P. 195 (fees of accountant engaged to audit accounts suspected to be fraudulent held incident); *Nicholson v. Bradfield Guardians* (1866), L. R. 1 Q. B. 620; 35 L. J. Q. B. 176; 14 L. T. 830; 12 Jur. (N.S.) 686; 30 J. P. 549; 7 B. & S. 774 (coals for workhouse held incident).

(7) *Per Keating, J.*, in *Austin v. Bethnal Green Guardians* (1874), L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. 807; 38 J. P., at

p. 248, col. iii. In this case it was held that the clerk to a workhouse master must be appointed under seal. The same was held with regard to the medical officer in *Dyte v. St. Pancras Guardians* (1872), 27 L. T. 342; 36 J. P. 375; but see *Smart v. West Ham Guardians*, *post*, p. 514 (7). As to "trivial extras," see the *Hounslow Case*, *post*, p. 456 (24).

(8) *Crook v. Seaford Cpn.* (1871), L. R. 6 Ch. App. 551; but see *Bourne and Hollingsworth v. St. Marylebone B.C.*, *ante*, p. 445.

(9) *Lawford v. Billericay Rural District Council*, L. R. 1903, 1 K. B. 772; 72 L. J. K. B. 554; 88 L. T. 317; 51 W. R. 630; 67 J. P. 245; 1 L. G. R. 535.

(10) *Hodge v. Matlock Bath U.D.C.* (1910, C. A.), 75 J. P. 65; 8 L. G. R. 1127; 27 T. L. R. 129.

(5) *Hunt v. Wimbledon Loc. Bd.*, *ante*, p. 453.

powers, and authorities as engineer, agent, and servant of the sanitary authority, and in accordance with and in fulfilment of a certain condition " of a contract made under seal with another contractor who had failed to execute the work; and the engineer had been appointed to his office under seal.¹¹

Where the contract is not executed, but only executory, the case will not come within the exceptions. Thus, a school board had arranged with an architect that he should prepare plans for the enlargement of certain schools belonging to them, and that he should act as clerk of the works and superintend the construction of the new building and be paid by a percentage on the cost of such construction, but after he had prepared the plans declined to carry them out, and erected a building in accordance with the plans of another architect, the first-mentioned architect was held by Wills, J., to be unable to recover remuneration for the work which he had performed for the board.¹²

Scrutton, J., dismissed an action upon a contract for the haulage of highway materials, because it was not under seal.¹³

Specific performance of a contract entered into by an agent was refused, because it had not been approved under seal.¹⁴

In a case where rectification of a sealed contract, sought on the ground that it did not give effect to a previous unsealed contract, was refused,¹⁵ Cozens-Hardy, M.R., said: " The plaintiffs are a corporation, and can only contract under seal. But there are certain exceptions to that rule. One of them—the only material one here—is that a corporation is not allowed to do an act which would really involve fraud on its part. If a corporation, in pursuance of an oral or written contract entered into by its agent, lets a lessee or purchaser—I care not which—into possession, and an act is done which would constitute the purchaser or lessee a trespasser unless he was there in pursuance of such a contract, then the court will not allow the corporation to set up in answer that there is no contract under seal; but it will grant specific performance of that contract against the corporation. . . . But the act of part performance must be an act which is plainly referable to . . . the contract not under seal. That, as it seems to me, can have no application whatever to a case where, as here, the only act of part performance that can be relied upon by the defendant took place after the execution of a contract under seal, and therefore after an act which is quite sufficient to justify and explain it." ¹⁶

A contract between a valuer and the guardians of a poor law union was altered by the clerk to the guardians without the knowledge of the valuer before the seal of the guardians was affixed. The valuer claimed remuneration in accordance with the terms in the original draft, and rectification of the contract. Rectification was refused, because that would have bound the defendants to an agreement requiring a seal for its validity, but which they had never sealed. It was held, however, that the plaintiff was entitled to rescission on the ground of " mistake innocently induced " by the defendants and payment on a *quantum meruit*.¹⁷

Parliamentary agents sued an urban district council for charges for carrying through a gas Bill. The council defended the action on the ground that the retainer was not under seal. The plaintiffs contended (1) that the contract was not " under this Act," because it was entered into for the purpose of acquiring powers not contemplated by sects. 161 and 162; (2) that, as the consideration was executed, they could recover on a *quantum meruit*; and (3) that, a section of the gas Act enacting that all the costs, charges, and expenses incidental to obtaining the Act " shall be paid by the council out of the district fund and general district rate . . . or out of moneys borrowed under the powers of " the Act, this created a statutory obligation or debt and conferred upon the council power to pay, though there was no contract under seal. It was held, as to (1), that, it being *ultra vires* of the council to apply for the Bill, except under sects. 161 and 162, the contract was " under this Act "; and as to (2), that where a statute requires a contract to be under seal a valid contract cannot be implied from an executed

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Executory contract.

Contract by agent.

Part performance and rectification.

Rescission.

Contract "under this Act."

(11) *Young & Co. v. Royal Leamington Spa Cpn.* (1883), L. R. 8 A. C. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 47 J. P. 660; applied in *Mackay & Co. v. Toronto City Cpn.*, L. R. 1920 A. C. 208; 88 L. J. P. C. 204; 122 L. T. 13.

(12) *Start v. West Mersea School Board* (1899), 63 J. P. 440.

(13) *Godfrey, Ltd. v. Alton R.D.C.* (1915, Hants Assizes), 79 J. P. Jo. 280.

(14) *Athy Guardians v. Murphy*, 1896 Ir. Ch. 65. Further as to ratification of con-

tracts, see *post*, p. 457.

(15) *Conway Bridge Comrs. v. Jones* (1910, C. A.), 102 L. T. 92; 26 T. L. R. 259; 1 Glen's Loc. Gov. Case Law 6, 60.

(16) Further as to this case, see *post*, Vol. II., p. 1899.

(17) *Faraday v. Tamworth Guardians* (1916, Younger, J.), 86 L. J. Ch. 436; 81 J. P. 81; 15 L. G. R. 258. *Lawford v. Billericay R.D.C.* *ante*, p. 454 (9), applied.

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consideration; but as to (3), that this plea must be upheld and the claim paid.¹⁸ And a contract with an adjoining owner as to the widening of a street was held to be one "under this Act," and not one under the Highway Acts.¹⁹

But a contract for the reconstruction of a tramway owned by a local authority, and for the consequent lowering of a highway repairable by that authority, was held not to be "under this Act," but under the Tramways Act, 1870²⁰; and one for the erection of a pier under a local Improvement Act was also held not to be "under this Act," a contention that the council, being a new body constituted by the Public Health Act with the powers of the improvement commissioners, were acting under this Act being overruled.²¹

Agreement
for lease.

An agreement for a lease to a local authority, which is not under the seal of the authority, nor signed by any one authorised by them under seal to sign it, nor ratified by them under seal, nor part performed or acted upon, is not enforceable by an action for specific performance.²²

Specification
annexed to
contract.

It would be proper that a specification of works annexed to a contract should also be sealed with the seal of the urban authority; but the omission to do so would not vitiate the contract, or release the sureties of the contractor.²³

Extras.

A contract had been entered into by a builder with the guardians of the union to build a union workhouse for a certain sum to the satisfaction of the architects, and it was agreed that all extra works authorised by the architects in writing should be paid for in addition to the principal sum. The builder having executed certain extra works suggested by the architects from time to time, without an authority in writing, it was held that he could not recover under the deed for such extra works, although they were from time to time examined and approved by the architects. It was held in the same case that, although the deed provided for payment on account during the progress of the works, the plaintiff could not set off money so paid against the money due for the extra works; for a corporate body, having no power to contract except under seal, cannot assent merely by implication to extra works being done.²⁴ And with reference to a local board of health, Martin, B., said "the board could not bind themselves without deed; and the very mischief to be guarded against is such charges for extras."²⁵

The original contract may, however, provide for such extras,²⁶ and a contract authorising a surveyor to fix the price of extras was held to empower him to decide what were extras.²⁷

By a contract under seal a contractor undertook to execute works for a corporation at a fixed price. He alleged that the work had been so essentially varied under the orders of the corporation's engineer that he was entitled to disregard the fixed price and claim payment on the basis of the cost of the work, either under an implied new contract or on the ground that the whole work was "extra work" executed in accordance with the provisions of the contract. It was held (1) that on the evidence there had been no essential variation justifying such a contention; (2) that even if there had been he was not entitled to claim *quantum meruit* upon the basis of an implied new contract, because there was no contract under seal as required by the present section, and, further, because the engineer had no authority to order such a variation from the contract; and (3) that, so far as variations and extra work had been properly ordered by the engineer, the proper basis of payment was the contract sum, plus any difference in cost due to such variations or extras to be ascertained as provided for by the contract, and the contractor could not reject the contract sum and claim to be paid on the basis of cost and expenses.²⁸

(18) *Baker v. Hulme Cultram U.D.C.* (1915, Scrutton, J.), 85 L. J. K. B. 799; 80 J. P. 241; 14 L. G. R. 209. But see *Phelps v. Upton Snodsbury Highway Bd.*, post, p. 529 (26). See also, as to compromise of action, *Gaskill's Case*, post, p. 457.

(19) *Hoare v. Kingsbury U.D.C.*, post, p. 460.

(20) *In re Macdonald & Deakin and Bacup Cpn.* (1911, Leigh Clare, V.-C.), 2 Glen's Loc. Gov. Case Law 12. See also post, p. 458 (41).

(21) *Douglass v. Rhyl U.D.C.*, L. R. 1913, 2 Ch. 467; 82 L. J. Ch. 537; 109 L. T. 30; 77 J. P. 373; 11 L. G. R. 1162. *Lea v. Facey*, post, Vol. II., p. 1981 (7) distinguished.

(22) *Oxford Cpn. v. Crow*, L. R. 1893, 3 Ch. 535; 69 L. T. 228; 42 W. R. 200.

(23) *Russell v. Trickett* (1865), 13 L. T. 280.

(24) *Lamprell v. Billericay Guardians* (1849), 3 Ex. 283; 18 L. J. Ex. 282. See also *Stevens v. Hounslow Burial Bd.* (1889), 61 L. T. 839; 54 J. P. 309; 38 W. R. 236, in which Fry, L.J., and Mathew, J., differed as to whether the extras were "trivial" or not.

(25) *In Rutledge v. Farnham Loc. Bd. of Health*, post, p. 460. See also the *Western Valleys Case*, post, p. 486 (14).

(26) *Williams v. Barmouth U.D.C.* (1897, C. A.), 77 L. T. 383.

(27) *Richards v. May* (1883), L. R. 10 Q. B. D. 400; 52 L. J. Q. B. 272; 31 W. R. 708.

(28) *Bell v. Bridlington Cpn.* (1908, Muir Mackenzie, O.R.), 72 J. P. 453. See also *Jackson v. Romford R.D.C.* (1909, O.R.), 73 J. P. 248. For a successful *quantum meruit* claim, see *Hodge's Case*, ante, p. 454.

With reference to the question whether a contract under seal is necessary when an urban district council agree for the supply of goods by a contractor at intervals at a fixed price, the view of the Local Government Board was that, under ordinary circumstances, when a tender is made to supply goods in that manner without reference to quantity, the question depends upon whether at the time of accepting the tender the council know that the quantity which they will require under the tender will exceed £50 in value.²⁹ When a separate order is given under such a tender for goods exceeding that amount in value, the contract must be under seal.

The appointment of an officer is not a contract so as to be required to be made under the common seal of the council : see the Note to sect. 189.

The contracts referred to in the present section are contracts under this Act; and an agreement for the compromise of a pending action by a local authority is not a contract within that section, but is valid, though not sealed in conformity with sub-sect. (1), irrespective of the amount of money to which it relates.³⁰

The surveyor of a local board and an engineer sued the board for their charges for services in drawing out plans for a scheme of drainage. The original agreement consisted of a letter to the board accepted by them by resolution; but there was no contract under seal until the following year, when the board, after the work had been nearly completed, ratified the agreement by a document under seal. In the year after, however, the board repudiated this ratification, and on the action being brought against them contended (amongst other things) that there was no contract under seal in the first instance, and that the ratification after the work was nearly done was not a compliance with the statute. Cave, J., at the trial, gave judgment in favour of the plaintiffs, ruling on this point that, if while the contract was still open, and it was to the advantage of the local board that it should be carried out in its entirety, the board affixed their seal to it, by doing so they rendered the contract good, the contractor's promise to complete the work being a sufficient consideration for the ratification.³¹ And it was held by Walton, J., in an action by a firm of solicitors claiming a declaration that they were entitled to be paid by an urban district council certain costs (subject to taxation and to the sanction of the Local Government Board), that, although the plaintiffs had only been retained by resolutions of the council which were not under seal, they were entitled to be paid, because the council had, after the work had been done under the retainers, caused their seal to be affixed to the resolutions and to copies thereof which were sent to the plaintiffs.³²

Contracts must be ratified before the time at which they are to commence.³³

An architect was held to be bound by correspondence which passed after a dispute arose.³⁴ See also the Notes on "estoppel" referred to in the Index.

A local authority made a practice of paying their injured workmen as long as the authority's doctor certified incapacity. The doctor having ceased to certify, and the local authority having in consequence ceased to pay a workman, the workman successfully applied to a county court judge to record a memorandum of agreement, alleging that the employer admitted liability and agreed to pay 15s. per week. It was held that there was no evidence of any such agreement.³⁵

Where a corporation is not bound by a contract by reason of their common seal not being affixed, the other party to the contract is equally free from obligation. Thus, a municipal corporation and local board caused certain tolls to be put up for auction, and the highest bidder was declared to be the purchaser. He subsequently, however, declined to carry out the conditions of sale, and, on an action being brought against him for damages for breach of his agreement to take the tolls, it was held that the contract was one which required the common seal, and, not having been sealed by the corporation or signed by any person authorised under their seal to sign it, he was not bound by it. The corporation, having after the

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contract.

Appointment
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Contract
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Mutuality
of contract.

(29) See *Eaton v. Basker*, post, p. 459; *Spencer Whatley & Co. v. Southall-Norwood U.D.C.* (1905), 69 J. P. 308; 3 L. G. R. 641.

(30) *A.-G. v. Gaskill* (1882), L. R. 22 Ch. D. 537; 52 L. J. Ch. 163; 47 L. T. 566; *Williams v. Barmouth U.D.C.*, ante, p. 456; *Leicester Guardians v. Trollope*, ante, p. 448 (42). See also the *Holsworthy Case*, post, Vol. II., p. 1940 (4).

(31) *Melliss v. Shirley and Freemantle Loc. Bd.* (1885), L. R. 14 Q. B. D. 911; 54 L. J. Q. B. 408; 52 L. T. 544; reversed in C. A. on another ground, see post, p. 549 (32). But see the *Kidderminster Case*, post, p. 458.

(32) *Brooks Jenkins & Co. v. Torquay Cpn.*

and *Newton Abbot R.D.C.*, L. R. 1902, 1 K. B. 601; 71 L. J. K. B. 109; 85 L. T. 785; 66 J. P. 293.

(33) *Metrop. Asylums Bd. v. Kingham & Sons* (1890), 6 T. L. R. 217.

(34) *Leicester Guardians v. Trollope*, ante, p. 448 (42). See also *Hird v. Ruskin College* (1910, Parker, J.), 1 Glen's Loc. Gov. Case Law 15; and *Wilkinson's Case*, post, p. 581 (16).

(35) *Godbolt v. London C.C.* (1914, C. A.), 111 L. T. 691; 7 B. W. C. C. 409; 5 Glen's Loc. Gov. Case Law 126. But see *Mansbridge v. Barnet U.D.C.* (1909, Barnet C. Ct.), 73 J. P. 255.

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defendant's refusal to carry out the conditions determined the contract and sold the tolls, purported to ratify the contract by a resolution entered on their minutes under seal, but it was held that, assuming this to have been a ratification under seal, it came too late to give validity to the contract.³⁶

Sealing before acceptance.

In an action by a board of guardians against their contractors for breach of contract, Pollock, B., ruled that a contract, which was sealed with the corporate seal of the guardians before its acceptance by the other party, was not invalid on that ground.³⁷

And in an action by an architect to recover remuneration from a district council Lawrence, J., held that sub-sect. (1) of the present section had been complied with by reason of the seal of the council having been affixed to the conditions of a competition among certain architects, whom they invited to submit designs for a town hall and offices. The conditions had given particulars of the accommodation which the council required, and the scale on which the successful architect would be remunerated, but had not limited the cost of the buildings. The plaintiff's designs had been chosen, and he had been employed without further formal contract to prepare working drawings, and tenders for the erection of the buildings had then been obtained; but sanction to a loan for the cost having been refused by the Local Government Board, the plaintiff was employed in like manner to prepare working drawings for buildings of less than half that cost. And he sued for remuneration on the scale provided by the sealed conditions in respect of the amended scheme, which the learned judge held to be merely a modification of the original scheme, and not a new and independent scheme.³⁸

Pleading.

Absence of seal must be pleaded as a defence, or in reply to a counterclaim.³⁹

Objection taken after verdict.

In an action by a contractor to recover the balance of payments due under a contract with an urban authority, an objection by the defendants that the contract was not under seal was not taken until after the verdict had been given against them. The Court of Appeal held that it was then too late to take the objection.⁴⁰

Estoppel.

Tenders for certain work were invited, and that of the plaintiffs was accepted. A resolution to seal the necessary documents was passed. A form of contract was executed by the plaintiffs, returned to and acknowledged by the local authority, but never sealed. The works were executed, and sums were paid on account. There was a dispute as to the final payment. The parties could not agree as to an arbitrator, the plaintiffs issued a summons under the Arbitration Act, 1889, the clerk to the authority appeared, an order was made referring the appointment to the registrar, the registrar appointed an arbitrator, and the arbitrator sat to hear the case. Then for the first time the clerk to the local authority raised the point that the contract had never been sealed. It was held that the local authority were estopped from denying that the contract had been sealed.⁴¹

Payment under unenforceable contract.

A municipal corporation, as urban sanitary authority, had passed a resolution to pave a street recently widened at a certain cost. The city engineer ordered the work by giving separate orders not exceeding £50, except in one case, in which the order was for £50 15s. Sums of £269, £109, and £192 became due, and the corporation resolved that these sums should be paid to the contractors. No contract under seal had been made, and a dissatisfied ratepayer moved for a writ of *certiorari* to quash the latter resolution, contending that the payment would be illegal and a misapplication. The court, however, held that the contention that there was a misapplication of the borough fund within the meaning of the Municipal Corporation Acts,⁴² in every case where the mandatory provisions of the Public Health Act were not complied with, could not be maintained; that there would be no misapplication of the borough fund, and that the work done was useful, and was done at a reasonable cost, and without corruption or favouritism, and there was nothing illegal in paying a debt justly incurred; and the rule *nisi* for *certiorari* was discharged.⁴³

Objection by third party.

In an action to recover expenses of paving and other work in a street under sect. 150, it was objected that part of the work to an amount exceeding £50 had

(36) *Kidderminster Cpn. v. Hardwick* (1873), L. R. 9 Ex. 13; 43 L. J. Ex. 9; 29 L. T. 612.

(37) *Dartford Guardians v. Trickett* (1888), 59 L. T. 754; 53 J. P. 277; (1889, C. A., aff.), 5 T. L. R. 619.

(38) *Hunt v. Acton U.D.C.* (1908), 72 J. P. 345; 6 L. G. R. 957.

(39) R. S. C. Order XIX., Rules 15, 20.

(40) *Graham & Son v. Huddersfield Cpn.*, 1895 Loc. Gov. Chron. 1115.

(41) *In re Macdonald & Deakin and Bacup Cpn.*, ante, p. 456. But see the *Kingsbury Case*, post, p. 460.

(42) 7 Wm. IV. & 1 Vict. c. 78, s. 44, now repealed; see Act of 1882, s. 141, post, Vol. II., p. 1830.

(43) *Reg. v. Norwich Cpn.* (1852), 30 W. R. 752, and see *Reg. v. Prest* (1850), 16 Q. B. 32; 20 L. J. Q. B. 17; 15 Jur. 554.

been done by contractors employed by the urban authority, and that no written contract under the common seal of the authority had been made with them. It was held, however, that the expenses were nevertheless recoverable, and that, if the urban authority did not set up the objection as between themselves and the contractor, it could not be relied upon by a third party in the position of the defendant. *Per* A. L. Smith, J., the objection, if valid, would have been an objection to the apportionment, which could only be raised at the trial, and in the manner provided by sect. 257.⁴⁴

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Value of Contract.

A joint committee was appointed by three urban sanitary authorities, under sect. 200, for the purpose of providing hospitals for the reception of fever patients, in pursuance of sect. 131, during an epidemic of scarlet fever. The districts of the three authorities were subsequently amalgamated into the borough of G., the corporation of which became subject to their liabilities. The joint committee had erected tents, and entered into a parol agreement with the plaintiff, a medical man, for his attendance upon the patients in the tents at the rate of 5s. 3d. per tent per day. The plaintiff's charges eventually amounted to £97 7s. 9d., to recover which an action was brought. It was held by the Court of Appeal that, if the rule of the common law as to the power of corporations to contract otherwise than under their common seal in the case of small matters only were not excluded by the special provisions of the Public Health Act (Baggallay, L.J., being of opinion that it was excluded), the contract in question would have been valid at common law; and that it was valid, notwithstanding the provisions of the Act, since its value or amount did not necessarily exceed fifty pounds at the time when it was made, Lush, L.J., drawing an analogy between these provisions and those of sect. 4 of the Statute of Frauds relating to contracts not to be performed within a year, as to which it is held that, in order to bring a contract within them, it is not enough that the performance of the contract lasts for more than a year, but it must be shown that at the time when it was made it was incapable of being performed within a year.¹

Contract not necessarily exceeding limit.

But in an Irish case it was held that the "value or amount" of a contract, within the meaning of the corresponding enactment,² was "the amount which, in the light of the facts within the contemplation of the parties, and in reference to which the contract is made, would be recoverable from the plaintiffs by the defendants on completion"³; and accordingly that, though a contract to bore an artesian well might have been stopped by the local authority at any moment, and in that case its value would not have exceeded £50, it should have been under seal.

The engagement of an employee by an urban district council at £1 per week with board and lodging, but not for any definite period, was considered by the Court of Appeal not to create a contract, of which the value exceeded £50, so as to need the common seal.⁴

The accountant to a metropolitan vestry was transferred by the London Government Act, 1899, to the new borough council as an "existing officer," and, without entering into any fresh contract with that council, continued to perform the duties attaching to his former office and much additional work. He sued the council on a *quantum meruit* for £112 10s. It was held that the provision in the Act of 1899⁵ that a liability exceeding £50 may not be incurred except upon a resolution of the council passed on an estimate of the finance committee applied, and his contention that he was employed as a temporary assistant from day to day at a salary less than £50 was overruled.⁶

The owner of an estate with a frontage of 1,000 feet to a lane twenty feet wide deposited plans for the erection of thirty-six houses behind the hedge. The chairman of the local authority drew up an agreement, under which the owner was to throw twenty feet of his land into the roadway, and the authority were to make up and adopt the future maintenance of the whole road. He persuaded the

(44) *Bournemouth Comrs. v. Watts* (1884), L. R. 14 Q. B. D. 87; 54 L. J. Q. B. 93; 51 L. T. 823; 49 J. P. 102. And see the *Wolverhampton Case*, *post*, p. 462 (26).

(1) *Eaton v. Basker and Grantham Cpn.* (1881), L. R. 7 Q. B. D. 529; 50 L. J. Q. B. 444; 44 L. T. 703; 45 J. P. 616.

(2) P. H. (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 201 (1).

(3) *Per* Palles, L.C.B., in *Munro v. Mallow U.D.C.*, 1911 Ir. K. B. 130; 2 Glen's Loc. Gov. Case Law 11.

(4) *Wood v. East Ham U.D.C.* (1907, C. A.), 71 J. P. 129; 5 L. G. R. 403.

(5) 62 & 63 Vict. c. 14, s. 8 (3).

(6) *Gray v. Hackney B.C.* (1904, K. B. D.), 2 L. G. R. 429.

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owner to sign this agreement and send in amended plans, which were approved. The agreement was approved by resolution of the authority, but never signed on their behalf or sealed. The owner carried out all his part of the agreement. The authority, after planting some trees and erecting three lamp posts on the added strip, declined to carry out their part of the agreement, and defended an action for specific performance on the ground that the contract was unenforceable because it was over £50 in value and unsealed. One of the contentions of the owner was that the contract was not over £50 in value, because the lane was only to be widened "as the building of houses proceeds"; but it was held that these words merely indicated the time at which the mutual obligations were to be performed, and did not make the contract one for dealing with anything but the whole strip. Other contentions based on estoppel and "under this Act" were overruled, and the action was dismissed, but without costs.⁷

Performance of Contract.

Failure to complete within time limited.

If a contract be made for the superintendence of the execution of works to be completed within a certain time, and the works, from any cause, be not completed within the specified time, no claim for any payment beyond that stipulated for can be supported; therefore on a contract by a local board of health to employ the plaintiff, an engineer, about certain works, and pay him £500 during two years, he undertaking to do his best to complete the works within that period, it was held that the board were not liable for refusing to allow him to carry on the works beyond that time, even though the delay was caused by their fault or default, they paying him the whole £500.⁸

Avoidance of contract.

A clause for the avoidance of a contract "if the contractors fail to proceed in the execution of the works in the manner and at the rate of progress required by the engineer," it was held, could only be acted upon within the time limited by another clause for the completion of the works.⁹

Failure to complete.

Certain defects and omissions were held to amount only to a negligent performance of the contract, and not to an abandonment of or failure to complete the contract; and the contractor accordingly recovered the lump sum specified, less the cost of making the work correspond to that contracted to be done.¹⁰

Performance prevented by employers.

Where a contractor undertakes, under a penalty, to perform certain work within a specified time, and the performance within that time is prevented by the act of the party with whom he contracts, the contractor is exonerated from the penalties.¹¹

A local authority who have contracted for the execution of works cannot justify the exercise of a power of re-entry and seizure of the works in progress in case of default or delay on the part of the contractor, when the alleged default or delay has been brought about by the acts or default of the authority themselves or their agent¹²; and if they nevertheless re-enter and seize the works the contractor may treat the contract as rescinded, and sue on a *quantum meruit* for the value of the work and labour done and materials supplied previously to the rescission.¹³

A contractor agreed with a local board to remove earth from the bed of a river, and to complete the work under the direction and to the satisfaction of the engineer of the board by a certain date, subject to such an extension of time as the engineer might think reasonable, in case a temporary staging then erected on the site of the work should not be removed within such a time as would enable the contractor to complete the work by that date. The board were to make monthly payments on the certificate of the engineer to the amount of 80 per cent. of the value of the work done during each month, and pay the balance on the completion of the work. There was also a clause in the contract providing that, if any difference should arise between the board and the contractor concerning the work contracted for, or concerning anything in connection with the contract, such difference should be referred to the engineer, and his decision should be final and binding on the parties. The work was not completed for more than a year after the date fixed

(7) *Hoare v. Kingsbury U.D.C.*, L. R. 1912, 2 Ch. 452; 81 L. J. Ch. 666; 107 L. T. 492; 76 J. P. 401; 10 L. G. R. 829, at p. 839. Further, as to this case, see *ante*, p. 456.

(8) *Rutledge v. Farnham Loc. Bd. of Health* (1861), 2 F. & F. 406.

(9) *Walker v. L. and N. W. Ry. Co.* (1876), L. R. 1 C. P. D. 518; 45 L. J. C. P. 787; 36 L. T. 53.

(10) *Dakin & Co. v. Lee* (C. A.), L. R. 1916,

1 K. B. 566; 84 L. J. K. B. 2031; 133 L. T. 903.

(11) *Holme v. Guppy* (1838), 3 M. & W. 387; *Russell v. Viscount Sa Da Bandeira* (1862), 13 C. B. (N.S.) 149; 32 L. J. C. P. 68; 7 L. T. 804.

(12) *Roberts v. Bury Improvement Comrs.* (1870), L. R. 5 C. P. 310; 39 L. J. C. P. 129; 22 L. T. 132; 34 J. P. 821.

(13) *Lodder v. Slowey* (P. C.), L. R. 1904 A. C. 442; 73 L. J. P. C. 82; 91 L. T. 211.

by the contract, and the engineer admitted that the contractor was entitled to compensation for the expense caused by delay in consequence of the non-removal of the staging, and agreed to allow £15 10s. per day for thirty-eight days, but the parties could not agree upon the amount due for extra work and other expenses. The engineer, however, sent in a certificate that the work was finished to his satisfaction, and that a certain sum was due, and the board sent the contractor a cheque for the amount certified after making certain deductions. The contractor, after giving credit for this sum, brought an action against the board, in which it was held that an undertaking was implied by the contract that the board would do such things as were necessary to enable the contractor to execute his part of the contract within a reasonable time, and that, as they had caused delay in the execution of the contract (namely, by not causing the staging to be removed within a reasonable time), the contractor was entitled to damages, notwithstanding the general provision in the contract for the reference of disputes to the final arbitration of the engineer, and notwithstanding the certificate given by the engineer in pursuance of that provision and purporting to declare the amount payable to the contractor in full satisfaction of his claims for work executed pursuant to the contract and in connection with it, the dispute not being a "difference concerning a matter in connection with the contract."¹⁴

It was, however, held that no duty was cast upon a board of guardians to provide against delay on the part of other persons with whom they were to contract for certain subsidiary work which was to be paid for out of the plaintiff's contract price, the plaintiff having accepted the primary obligation of completing the work as a whole by a specified date, and that there was no implied promise on the part of the board that the work of those other persons should be performed without unreasonable delay.¹⁵

And where delay was caused by a wrongful claim by a third person to prevent access to the land on which certain buildings were to be erected, the contractor failed to recover damages from the local authority.¹⁶

The cases cited below decided points in connection with defaults by sub-contractors, who had supplied some article or done some work included in the main contract.¹⁷

Penalty.

The omission to specify a penalty under sub-sect. (2) of the present section does not invalidate the contract, the requirement being "directory" and not "imperative."¹⁸

A contract imposed a penalty for non-completion within a specified time. The contract was not completed within that time. The engineer's final certificate contained no deduction in respect of the penalty. It was held (1) that the engineer had no jurisdiction to waive the penalty, and that therefore his certificate did not operate as an estoppel; and (2) that, as the builder had been prevented from completing the contract within the specified time by reason of extras ordered by the local authority, the penalty clause had been extinguished, and the claim must be paid in full.¹⁹

Sect. 174, n.
Performance prevented by employers—
continued.

Delay caused by third parties.

Specialist sub-contractors.

Absence of provision for penalty.

Deduction of penalty.

(14) *Lawson v. Wallasey Loc. Bd.* (1883), L. R. 11 Q. B. D. 229; 52 L. J. Q. B. 302; 47 L. T. 625, affirmed in C. A.; 52 L. J. Q. B. 309n.; 48 L. T. 507; 47 J. P. 437.

(15) *Mitchell v. Guildford Guardians* (1903), 68 J. P. 84; 1 L. G. R. 857; following *Leslie & Co. v. Metropolitan Asylum District* (1901, C. A.), 1 L. G. R. 862n.

(16) *Porter v. Tottenham U.D.C.*, ante, p. 301 (23).

(17) *Mitchell's Case*, supra (15), as to delay over laundry boilers; *Leslie & Co.'s Case*, supra (15), as to delay over chimney stacks; *Bower Bros.' Case*, ante, p. 134 (20), as to defective windmill; *Crittall Mfg. Co. v. London C.C.* (1910, Channell, J.), 75 J. P. 203; 2 Glen's Loc. Gov. Case Law 20, as to window casements and meaning of "prime cost," disapproved in *Hampton v. Glamorgan C.C.*, L. R. 1917 A. C. 13; 86 L. J. K. B. 106; 115 L. T. 726; 81 J. P. 41; 15 L. G. R. 1, as to heating apparatus; *Young & Co. v. White* (1911, K. B. D.), 76 J. P. 14; 28

T. L. R. 87; 2 Glen's Loc. Gov. Case Law 22, as to steel work; *Ramsden & Carr v. Chessum* (1913, H. L.), 110 L. T. 274; 78 J. P. 49; 30 T. L. R. 68, as to door fittings, "implied promise to pay," and "money had and received"; *Elliott v. Roberts & Co.* (C. A.), L. R. 1916, 2 K. B. 518; 85 L. J. K. B. 1689; 115 L. T. 255; 81 J. P. 20; 14 L. G. R. 942, as to injury to workmen of specialists in heating apparatus.

(18) *Soothill Upper U.D.C. v. Wakefield R.D.C.*, L. R. 1905, 2 Ch. 516; 74 L. J. Ch. 703; 93 L. T. 711; 69 J. P. 447; 3 L. G. R. 1208. A decision to the contrary, in *British Insulated Wire Co. v. Prescott U.D.C.*, L. R. 1895, 2 Q. B. 463, 538; 64 L. J. Q. B. 811; 73 L. T. 383; 59 J. P. 552, was cited but not dealt with, possibly because an appeal was settled, see L. R. 1895, 2 Q. B. 538.

(19) *Gallivan v. Killarney U.D.C.*, 1912 Ir. K. B. 356.

Sect. 174, n.
Retention money.

A contractor for the execution of sewerage works for a rural district council gave A a charge on his "retention money" under the contract, and subsequently gave B a charge on all other money due to him under the contract; 80 per cent. of the value of the work executed was to be paid to him monthly on the engineer's certificate. When all works had been certified as duly completed, he was to be paid a further 15 per cent. The remaining 5 per cent. was to be paid six months afterwards. It was held, in an action between A and B, that the "retention money" included the whole 20 per cent. deferred.²⁰

Where a contract was taken out of the hands of a contractor, and a new contract was entered into with his sureties to complete, it was held that the sureties were entitled to the retention money, and not a creditor of the contractor, to whom he had purported to assign that money.²¹

Liquidated damages.

A contract for sewerage works provided for the completion of the works by a certain day, and in default of such completion for the forfeiture by the contractor of £100 and £5 per day as liquidated damages. As the damages were to be paid on the occurrence of a single event only, they were regarded as liquidated sums and not as penalties.²²

Measure of damages.

A contract provided for a penalty for each week's delay beyond the date specified for completion. It also empowered the employers to take possession of the works, and engage others to complete if the contractor suspended. The contractor became bankrupt and suspended. The employers engaged others to complete. The works were not completed until six weeks after the specified date. It was held that, though the employers were entitled to damages for breach of contract, such damages could not be measured by the penalty clause, for control of the contract has passed out of the contractor's hands before that date.²³

Estimate not essential.

Estimate.

The requirements of the statute as to things to be done before the contract itself is entered into, such as the estimates to be made before commencing works, and the previous reports, are directory only as respects contracts entered into by the urban district council, and are merely for their guidance; and therefore a contract under seal, entered into between a corporation and a contractor for the execution of certain works, was held to be valid, although no estimate or report of the surveyor had been previously obtained. The non-observance of the proviso might, however, affect the right of the council to levy a rate for the purposes of the contract.²⁴ It was also held in the same case that an action lay upon the contract itself for non-payment, and that the plaintiff was not driven to seek his remedy by mandamus or by any such collateral proceeding.

The corresponding provision of the Public Health Act, 1848,²⁵ requiring an estimate of the expense of executing works, as well as of the expense of keeping them in repair, was held not to apply to a contract for work done to streets which were not highways repairable by the inhabitants at large, and therefore a local board could enforce payment of the expenses from the owners of such streets, notwithstanding the absence of the estimate and report of their surveyor.²⁶

Sect. 150 of the present Act requires an estimate to be obtained before the notice to do the works is given, but this requirement has been considered to be only directory.

Revocation of acceptance.

Tenders.

A local authority's acceptance under seal of a tender for the execution of work was held not to prevent them from revoking such acceptance, where the conditions on which the tender was made provided for the execution of a formal contract, and of a bond with sureties for its performance, and the contractor failed to attend

(20) *West Yorkshire Bank, Ltd. v. Isherwood Bros.* (1912, K. B. D.), 76 J. P. 456; 28 T. L. R. 593; 3 Glen's Loc. Gov. Case Law 17.

(21) *McMahon v. O'Neill*, 1915 Ir. K. B. 384.

(22) *Law v. Redditch Loc. Bd.*, L. R. 1892, 1 Q. B. 127; 61 L. J. Q. B. 172; 66 L. T. 76; 56 J. P. 292; see also *Lord Howard de Walden v. Barber* (1903), 19 T. L. R. 183; *Dunlop Tyre Co. v. New Garage Co.*, L. R. 1915 A. C. 79; 83 L. J. K. B. 1574; 111 L. T. 862; *Ford Motor Co. v. Armstrong* (1915, C. A.), 31 T. L. R. 267; 59 Sol. J. & W. R.

362.

(23) *British Glantzoff Mfg. Co. v. General Accident Assurance Cpn.*, L. R. 1913 A. C. 143; 1913 S. C. (H. L.) 1; 50 Sc. L. R. 13; 3 Glen's Loc. Gov. Case Law 16.

(24) *Nowell v. Worcester Cpn.* (1854), 9 Ex. 457; 23 L. J. Ex. 139. See also *Rex (Wrice) v. Monaghan U.D.C.* (1904, K. B. D., I.), 38 Ir. L. T. 218.

(25) 11 & 12 Vict. c. 63, s. 85.

(26) *Cunningham v. Wolverhampton Loc. Bd.* (1857), 7 E. & B. 107; 26 L. J. M. C. 33. See also *Watt's Case*, ante, p. 459 (44).

with his sureties and execute the formal contract and bond when called upon by the local authority to do so.²⁷ **Sect. 174, n.**

The fact that plans and specifications had been furnished to the contractor before he tendered for the execution of the works was held by the House of Lords not to have created in the contract ultimately made with him an implied warranty that the works could be successfully executed according to such plans and specifications; and the contractor was, therefore, held to have no ground for an action for damages for breach of such a warranty, when he had wasted much time and labour in attempting to use caissons in accordance with the plans and specifications for the purpose of rebuilding Blackfriars Bridge over the Thames, and had found that the caissons would not answer their purpose. It was, however, suggested by Lord Cairns, L.C., that the contractor might possibly have had a right of action for compensation for his extra work as upon a *quantum meruit*.²⁸ But a clause to the effect that contractors are not to rely upon any representations made in the plans only applies to "honest" representations.²⁹

Implied warranty.

Security.

A surety was held not to be liable for the costs of arbitration proceedings, not having received notice of such proceedings.³⁰ This decision was affirmed on appeal,³¹ but on the ground that the reference to the arbitrator was a departure from the contract which had been guaranteed.

Liability of surety.

Where sureties employ a person to carry out a contract on the failure of the contractor, and allow the building owner to supervise the work, and the building owner improperly seizes the works, the person so employed can sue the sureties in respect of such seizure.³²

As to the measure of damages where sureties are liable, see the case cited below.³³

The surety for a contractor is not discharged from liability, although his position has been altered by the conduct of the employer, where that conduct has been caused by a fraudulent act or omission of the contractor against which the surety has by the contract of suretyship guaranteed the employer. Thus, where the sureties had guaranteed that certain work should be well and truly done by a contractor, and the contractor fraudulently concealed bad work and obtained the engineer's certificate, on which the retention money was paid, the sureties were held liable, although it had been found that the employers had not properly superintended the work.³⁴ But concealment of the fact that a local authority were employing another surveyor to join with their own surveyor in the supervision of the work was held to discharge the surety.³⁵

Discharge of surety.

See also the surety cases cited in the Note to sect. 194.³⁶

(27) *Bozson v. Altrincham U.D.C.* (1903, C. A.), 67 J. P. 397; 1 L. G. R. 639.

(28) *Thorn v. London City Cpn.* (1876), L. R. 1 A. C. 120; 45 L. J. Ex. 487; 34 L. T. 545. See also *Boyd & Forrest v. Glasgow & S. W. Ry. Co.*, ante, p. 450.

(29) *Pearson & Sons v. Dublin Cpn.*, ante, p. 450, and post, Vol. II., pp. 1979, 1989.

(30) *Hoole U.D.C. v. Fidelity & Deposit Co.* (1915, Bailhache, J.), 80 J. P. 115; 14 L. G. R. 950.

(31) L. R. 1916, 2 K. B. 568; 85 L. J. K. B. 1018; 115 L. T. 24; 80 J. P. 353; 14 L. G. R. 950.

(32) *Lodder v. Slowey*, ante, p. 460.

(33) *British Glanztoff Case*, ante, p. 462.

(34) *Kingston-upon-Hull Cpn. v. Harding*, L. R. 1892, 2 Q. B. 494; 62 L. J. Q. B. 55; 67 L. T. 539; 57 J. P. 85.

(35) *Stiff v. Eastbourne Cpn.* (1869), 20 L. T. 339; 17 W. R. 428.

(36) *Post*, pp. 549-551.

Sect. 175.

PURCHASE OF LANDS.

Power to purchase lands.
P.H., s. 84.*
L.G. Am., s. 22.
San. 1866, s. 47.
P.H. 1874,
ss. 31, 33.
S.U. 1865, s. 7.
S.U. 1867, s. 4.
* See Note to s. 5,
ante p. 42.

Sect. 175. Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease sell or exchange any lands, whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district.

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the [Minister of Health] otherwise [directs]) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

Note.

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Power to purchase Lands.

Purposes of Act.

By sect. 95 of the Public Health Acts Amendment Act, 1907,¹ where that provision is in force, " the powers of a local authority under " the present section and sect. 176 " shall extend to highway purposes."

Property connected with, but not actually essential for, the immediate object authorised, may sometimes be purchased.²

Lands
Clauses Acts.

But where a company was authorised to purchase land compulsorily " in case the construction of the tramway or any works or building necessary for the working thereof " involved its acquisition, it was held that this did not authorise the purchase of land for the provision of dwellings and a recreation ground for the company's European inspectors, such things being ³ " at once enlightened and humane, and doubtless beneficial to the company and calculated to promote the efficient and profitable working of its tramways, but in no sense necessary for the working, unless the word is to be stretched until it becomes merely a synonym for convenient or advantageous." ⁴

Sect. 176 applies the general provisions of the Lands Clauses Acts to the purchase of lands either by agreement or by compulsion; but the provisions relating to compulsory purchase are only applicable when the district council have obtained a provisional order, in the manner prescribed by sect. 176, authorising them to put in force the power of compulsory purchase with reference to specified lands, and when such order has been confirmed by Parliament.

Meaning of
lands.
Easements.

The provisions of the Lands Clauses Acts are considerably modified in cases where the land is purchased for various special purposes.^{4a}

The term " lands " in the present Act includes messuages, buildings, lands, easements, and hereditaments of any tenure.⁵

Although the term " lands," as used in the Lands Clauses Acts, has been held not to include easements or other incorporeal hereditaments, so as to enable undertakers to create or compel landowners to grant easements,⁶ provisional orders are frequently made under the present Act,⁷ enabling district councils to put in force the compulsory powers of those Acts with respect to rights of way and other incorporeal hereditaments.

A contract for the sale of lands to a school board with all that was appurtenant or appendant to them, but containing no reference to an alleged right of way over other lands of the vendor, did not entitle the board to that right : it gave them

(1) *Post*, Part I., Div. III.

(2) See *Quinton v. Bristol Cpn.*; and *Galloway v. London City Cpn.*, ante, p. 359.

(3) *Per* Lord Sumner, L. R. 1914 A. C., at p. 990.

(4) *West India Electric Co. v. Kingston Cpn.*, L. R. 1914 A. C. 986; 83 L. J. P. C. 380; 111 L. T. 1038.

(4a) See, e.g., Small Holdings, etc., Act of 1908, Sched. I., post, Vol. II., p. 1525; Housing Act of 1909, Sched. I., post, Part II.,

Div. III.; Development, etc., Act of 1909, Sched., post, Vol. II., p. 2222; and Unemployed Relief Works Act, 1920, post Vol. II., p. 2350.

(5) See ante, p. 14.

(6) *Pinchin v. London and Blackwall Ry. Co.* (1854), 5 De G. M. & G. 851, 862; and see *Great Western Ry. Co. v. Swindon, etc., Ry. Co.* (1884), L. R. 9 A. C. 787.

(7) See also *Hill v. Midland Ry. Co.* (1882), L. R. 21 Ch. D. 143.

a right of way of necessity; but it only gave them a right to one such way, and, as there were two convenient ways to the land, the vendors were entitled to choose which of them the purchasers should have.⁸

A local board took land under the Public Health and Lands Clauses Acts from a vendor who had notice of the purpose for which the land was required, the conveyance containing the usual general words as to ways appurtenant to or used with the land. On the hearing of an action for an injunction to restrain the board and their contractors from using the only way of access to the lands for carting bricks and other purposes, it was held that the board had the right to use the way for all purposes necessary for carrying out their undertaking, though it had previously only been used for less burthensome purposes.⁹ But where a level crossing was made across a railway for the accommodation of the adjoining landowner, it was held that the owner of the land and his successors were not entitled to use the crossing so as to increase the burden of the easement, unless the increase were one which could or ought to have been contemplated by the parties at the time when the accommodation works were made.¹⁰

A grant of a right-of-way extends to all licensees of the grantee, lawfully going to and from the dominant tenement, although "the grantee his executors administrators and assigns undertenants and servants" are the only persons specified in the grant.¹¹

Sect. 51 enables district councils to take on lease or hire any waterworks or any water, or right to take or convey water, either within or without their district, and any rights, powers, and privileges of any water company. See also the Note to that section, and sects. 327 and 332 and Notes, *post*.

Sects. 175-178 are applied to the purchase of land for the purposes of Part III. of the Housing of the Working Classes Act, 1890,¹² and for the purpose of erecting an isolation hospital under the Isolation Hospitals Act, 1893.¹³

The Museums and Gymnasiums Act, 1891,¹⁴ applies sects. 175-178 of the present Act to the purchase of land (by agreement only) by an urban district council for the purposes of that Act.

The Post Office Act, 1908,¹⁵ provides as follows:—“(1) Where the council of any borough or any urban district consider that it would be beneficial to the inhabitants of the borough or district that any new post office should be on a more expensive site, or of a larger size, or of a more ornate building, or otherwise of a more expensive character than the Postmaster-General would otherwise provide, the council may contribute towards the new post office, either by a grant of money, or, with the consent of the [Minister of Health], by the appropriation of land belonging to the council, or by the purchase of land for the purpose.

“(2) Where the council of any borough or any urban district consider that it would be beneficial to the inhabitants of the borough or district that any post or telegraph office should be established or any additional facilities (postal or other) provided by the Postmaster-General in or for the purposes of the borough or district, the council may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of the office or the provision of the facilities.

“(3) Where the council of any rural district, or the parish council of a parish, or in the case of a parish not having a parish council the parish meeting, consider that it would be for the benefit, in the case of a rural district council, of any contributory place or places within their district, and in the case of a parish council or parish meeting of their parish, that any post or telegraph office should be established or any additional postal or other facilities provided by the Postmaster-General whether within or without the area to be benefited, that council or meeting may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of the office, or the provision of the

Sect. 175, n.

Easements—
continued.

Water rights.

Housing,
hospitals,
and museums.Postal
facilities.

(8) *Bolton v. Bolton* (1879), L. R. 11 Ch. D. 968; 48 L. J. Ch. 467; 40 L. T. 582. See also *Titchmarsh v. Royston Water Co.* (1899), 81 L. T. 673; 48 W. R. 201; 64 J. P. 56.

(9) *Serff v. Acton Loc. Bd.* (1886), L. R. 31 Ch. D. 679; 55 L. J. Ch. 569; 54 L. T. 379.

(10) *Great Western Ry. Co. v. Talbot* (C. A.), L. R. 1902, 2 Ch. 759; 71 L. J. Ch. 835; 87 L. T. 405. See also *Harris v. Flower* (1904, C. A.), 74 L. J. Ch. 127; 91 L. T. 816; 21 T. L. R. 13; *Milner's Safe Co. v. Great Northern & City Ry. Co.*, L. R. 1907, 1 Ch. 208; 75 L. J. Ch. 807; 95 L. T. 321 (settled

on terms in C. A., 76 L. J. Ch. 99).

(11) *Baxendale v. North Lambeth Liberal Club*, L. R. 1902, 2 Ch. 427; 71 L. J. Ch. 806; 87 L. T. 161.

(12) See s. 57 (1), *post*, Part II., Div. III.

(13) See s. 11, *post*, Part II., Div. I.

(14) See s. 11, *post*, Vol. II., p. 1399.

(15) 8 Edw. VII. c. 48, s. 49. This Act (see s. 92 and Sched. II.) repeals the previous provisions for these purposes contained in the Acts of 1891, 54 & 55 Vict. c. 46, ss. 7, 8; 1895, 58 & 59 Vict. c. 18, s. 1; and 1898, 61 & 62 Vict. c. 18, s. 1, and c. 59, s. 1.

Sect. 175, n.

Postal
facilities—
continued.

facilities: Provided that a rural district council shall not exercise their powers under this provision as respects any office established or facilities provided outside the contributory place proposed to be charged unless the parish council, or if there is no parish council the parish meeting, of any parish wholly or partly situated in the contributory place consent to the exercise of the powers.

“(4) Any expenses incurred by the council of a borough under this section may be paid out of the borough fund or borough rate, and any expenses incurred by the council of an urban district (not a borough) may be paid out of the rate out of which the general expenses of the council under the Public Health Act, 1875, are defrayed.

“(5) Any expenses incurred by a rural district council in pursuance of an undertaking under this section may be defrayed as special expenses legally incurred in respect of the contributory place or places, and shall be apportioned between those places if more than one, and sects. 229, 230, and 231 of the Public Health Act, 1875, shall apply accordingly.

“(6) Any expenses incurred by a parish council or meeting in pursuance of an undertaking under this section shall be defrayed as expenses of that council or meeting, as the case may be, within the provisions of the Local Government Act, 1894.

“(7) The council of a borough may borrow for the purposes of subsection (1) of this section under sect. 106 of the Municipal Corporations Act, 1882,¹⁶ and any enactment amending the same, and the council of an urban district (not a borough) may borrow for the purposes of the same subsection in like manner as if those purposes were purposes of the Public Health Act, 1875, and the provisions of that Act with respect to borrowing shall apply accordingly.”

Parish
councils.

Land may be acquired by a parish council for public walks or recreation grounds and buildings, and for the purposes of the Adoptive Acts, under the Local Government Act, 1894.¹⁷ As to allotments, see the Note referred to below.^{17a}

Purchase by
deputy.

A person who purchases land as a local authority's deputy holds it as trustee for the authority.¹⁸

Conveyance
of the land.

An urban district council, being content to rest their title to certain lands and easements acquired by them on a special Act incorporating the Lands Clauses Act, 1845, on their notice to treat, and on a compensation award under the Acts, refused on the ground of expense to accept a conveyance, and had a copy of the special Act stamped and produced to the Inland Revenue Commissioners under the Finance Act, 1895,¹⁹ as though the Act had itself vested the property in them. *Swinfen Eady, J.*, held, however, that the vendor was entitled to have a proper deed of conveyance executed, the form to be settled in case of disagreement under the direction of the court.²⁰

Solicitor for
both parties.

Where, however, land was being given for widening a highway, the Minister of Health (in 1922) recommended deeds poll as cheaper than conveyances.

With reference to the competency of the clerk to a district council, a solicitor, to act as solicitor for the vendor as well as the council in connection with the purchase of land by the council, the Local Government Board stated that, except under special and exceptional circumstances, they did not consider it advisable that the same solicitor should act for both parties in cases where a local authority are concerned, as the authority might require the independent advice of their solicitor as to the legality and reasonableness of charges made against or payable by them.

Covenants by
purchasers.

The Court of Appeal held that it was not *ultra vires* for a local authority, in exercising a statutory power to purchase unspecified land by agreement, to covenant with the vendor not to exercise upon such land certain ancillary and subsidiary powers, the exercise of which was permissive only, and not essential for carrying out the purpose for which the land is acquired; and they accordingly affirmed an injunction granted by *Parker, J.*, restraining the breach of a covenant not to erect buildings other than such structures as summer-houses, a bandstand, or shelters for the accommodation and convenience of the public, upon land purchased for a public pleasure ground, the local authority having proposed to erect lavatories, etc., on the land under a general power to provide such conveniences.²¹

(16) 45 & 46 Vict. c. 50, s. 106.

(17) See ss. 7–10, *post*, Vol. II., p. 2002.

(17a) *Post*, Vol. II., p. 2009. See also M. H. Memorandum on Act of 1922, and Report of Departmental Committee, in “*Loc. Gov. 1922*,” pp. 37–52; and M. H. Orders of 1922, set out in 20 L. G. R. (Orders) 299–315.

(18) *Longfield P.C. v. Robson*, *post*, Vol. II., p. 1514.

(19) 58 & 59 Vict. c. 16, s. 12.

(20) *Re Cary-Elwes' Contract*, L. R. 1906, 2 Ch. 143; 75 L. J. Ch. 571; 94 L. T. 845; 70 J. P. 345; 4 L. G. R. 838; see also *Monighetti's Case*, *ante*, p. 361 (27).

(21) *Stourcliffe Estate Co., Ltd. v. Bournemouth Cpn.*, L. R. 1910, 2 Ch. 12; 79 L. J. Ch. 455; 102 L. T. 629; 74 J. P. 289; 8 L. G. R. 595. See also *ante*, p. 114.

A voluntary agreement for the purchase of lands for sewage works by a local authority that provided that all costs and expenses should be paid by the purchasers, was a sale under the Lands Clauses Act; and by Sched. I., Part I., r. 11 of the General Order made under the Solicitors Remuneration Act, 1881,²² the scale of charges in Sched. I., Part I., did not apply.²³ Farwell, J., held that a school board or local authority could assent to their solicitor's election that his remuneration in relation to a sale purchase or mortgage of land should be regulated in accordance with rule 6 of the above-mentioned General Order.²⁴

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Costs.

A local authority purchased land by agreement. Delay in completion was caused by tardy sanction of a loan by the Local Government Board. An action was brought by the vendor against a committee of the local authority for specific performance. The action was settled when the sanction was obtained on the terms that the sale should proceed and the local authority should pay the vendor's party and party costs. A bill of costs was delivered, and objection was taken to various items incurred before the issue of the writ. Possession of the land was refused until the bill was paid, and the bill was paid by the local authority under protest. It was held that the bill could not be taxed under the Solicitors Act, 1843.²⁵

On the purchase by agreement of a portion of certain premises for street improvements the London County Council agreed to repay the owner, against whom an action was pending at the suit of an adjoining owner for injury to his ancient lights, "any sum by way of compensation for damage" caused by rebuilding another portion of the premises. It was held that the agreement did not include the costs of the pending action.²⁶

Further as to costs, see sect. 80 of the Act of 1845 and the Note thereto.²⁷

As to the taxation of bills due to a solicitor in respect of legal business performed on behalf of the council, see sect. 249 and Note, *post*.

With regard to the *ad valorem* duties payable on conveyances on sale, see the scale in the Schedule to the Stamp Act, 1891,²⁸ as amended by the Finance (1909-1910) Act, 1910²⁹; and with regard to the similar duties on leases, see the Schedule to the Stamp Act, 1891,²⁸ and the Finance (1909-1910) Act, 1910,³⁰ and the Revenue Act, 1911.³¹

Stamp duty.

By the Finance Act, 1895,³² "where after the passing of this Act, by virtue of any Act, whether passed before or after this Act, either (a) any property is vested by way of sale in any person; or (b) any person is authorised to purchase property; such person shall within three months after the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act printed by the [King's] printer of Acts of Parliament or some instrument relating to the vesting in the first case, and an instrument of conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production, the duty with interest thereon at the rate of 5 per cent. per annum from the passing of the Act, date of vesting, or completion of the purchase, as the case may be, shall be a debt to [His] Majesty from such person."

Where the property conveyed includes chattels, the duty is payable on their value, as well as on the value of any land conveyed.³³

The Customs and Inland Revenue Act, 1885,³⁴ imposes a duty of 5 per cent. on the annual value of all real and personal property which shall have belonged to or been vested in any body corporate or unincorporate during the year, in lieu of probate, legacy, and succession duties, from which such property escapes; but it exempts (amongst others) "property which, or the income or profits whereof, shall be legally appropriated and applied for the benefit of the public at large or of any county, shire, borough, or place, or the ratepayers or inhabitants thereof, or in any manner expressly prescribed by Act of Parliament."

Estate duty.

(22) 44 & 45 Vict. c. 44.

(23) *In re Burdekin*, L. R. 1895, 2 Ch. 136; 64 L. J. Ch. 561; 72 L. T. 639.

(24) *In re Evans*, L. R. 1905, 1 Ch. 290; 74 L. J. Ch. 204; 92 L. T. 151; 69 J. P. 104; 3 L. G. R. 169.

(25) 6 & 7 Vict. c. 73, ss. 38, 41; *In re King, ex parte Chesham U.D.C.* (1910, Swinfen Eady, J.), 74 J. P. 445.

(26) *Potter v. London C.C.* (1905, K.B.D.), 70 J. P. 35; 4 L. G. R. 246.

(27) *Post*, Vol. II., p. 1582.

(28) 54 & 55 Vict. c. 39, Sched.

(29) 10 Edw. VII. c. 8, s. 73.

(30) *Ibid.*, s. 75.

(31) 1 Geo. V. c. 2, s. 15.

(32) 58 Vict. c. 16, s. 12.

(33) *Eastbourne Cpn. v. A.G.*, L. R. 1904 A. C. 155; 73 L. J. K. B. 259; 90 L. T. 99; 68 J. P. 393; 2 L. G. R. 789.

(34) 48 & 49 Vict. c. 51, s. 11.

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Tithe rent-charge.

Breach of contract to purchase land.

Lease of land.

Use for different purpose.

As to the redemption of tithe rentcharge before the lands taken are used, see the Note to sect. 27.³⁵

Where a corporation, acting as burial board, contracted to purchase certain land to add to their burial ground, and the sanction of the Secretary of State, which was essential, was subsequently refused, the Court of Appeal held that they were not prohibited from contracting to purchase the land, and the vendor, who did not insist on specific performance, was entitled to damages.³⁶

Use of Land purchased.

A district council may, with the consent of the Minister of Health, let any land in their possession, which they can conveniently spare, under sect. 177; or, as mentioned below, they may allow a person to use it for any purpose under a temporary licence without obtaining such consent.

Land compulsorily purchased by a district council for a particular purpose of the Act cannot be used by the district council for a different purpose, at any rate, without the assent of the vendor or his successors in title, if such use of it would permanently interfere with its devotion to the original purpose for which it was purchased.¹ See, however, sect. 95 of the Public Health Act of 1907.²

But if the land purchased will ultimately be needed for the purpose for which it was acquired, the council may in the meantime grant a licence for its use for other purposes not inconsistent with that for which it was required; and the sanction of the Minister of Health is not necessary for this purpose.

The Education Act, 1921,³ provides as follows:—“(1) A local education authority may . . . (iii) appropriate, with the consent of, and after inquiry by, the Minister of Health, for any of the purposes of this Act, any land acquired by them otherwise than in their capacity as local education authority. (2) The council of a non-county borough or urban district may appropriate, with the consent of, and after inquiry by, the Minister of Health, for the purpose of their power to supply or aid the supply of higher education, any land acquired by them under any other power. (3) The appropriation of land by a local education authority or a council under this section shall be subject in any case to any special covenants or agreements affecting the use of the land in their hands. (4) Where the capital expenditure in connexion with any land appropriated under this section or any loan for the purpose of repaying that expenditure or any part of that expenditure or loan has been or is charged on, or raised within, any special part of the area of the local education authority or council, and the Board of Education, or, in the case of land appropriated under this section and acquired by an authority otherwise than in their capacity as local education authority, the Minister of Health, are or is of opinion that the use of the land for the purposes for which it is appropriated will alter the area benefited by the expenditure, the Board of Education, or the Minister of Health, as the case requires, shall order such equitable adjustment in respect thereof to be made as they or he may think right in the circumstances, and the local education authority or council shall comply with any order so made.”

The same Act⁴ also provides that “the council of any county, borough, or urban district may, with the consent of the Board of Education, appropriate any land held by them in their capacity as local education authority for any of the purposes of the council, otherwise than in their capacity of local education authority approved by the Minister of Health: Provided that the council shall not on any lands so appropriated (a) create or permit any nuisance; or (b) sink any well for the public supply of water or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless, after local inquiry and consideration of any objections made by persons affected, the Minister of Health, subject to such conditions as he may think fit and subject in the case of a generating station to the provisions of sect. 11 of the Electricity (Supply) Act, 1919,⁵ authorises the work or construction.”

See also sect. 24 of the Baths and Washhouses Act, 1846⁶; sect. 11 of the Burial Act, 1854⁷; sect. 3 of the Recreation Grounds Act, 1859⁸; sect. 57 (3) of

(35) *Ante*, p. 95.

(36) *Ward v. Portsmouth Cpn.*, L. R. 1898, 2 Ch. 191; 67 L. J. Ch. 489; 78 L. T. 771; 62 J. P. 820.

(1) See *A.G. v. Sunderland Cpn.* (1876), *ante*, p. 425 (32); *A.G. v. Hanwell U.D.C.*, *post*, p. 472.

(2) *Post*, Part I., Div. III.

(3) 11 & 12 Geo. V. c. 51, s. 113 (1) (iii),

(2)—(4). As to coming into operation of this Act on Oct. 1, 1922, see B. of E. Order, 1922, 20 L. G. R. (Orders) 255.

(4) *Ibid.*, s. 114.

(5) *Post*, Vol. II., p. 1335.

(6) *Post*, Vol. II., p. 1386.

(7) 17 & 18 Vict. c. 87, s. 11.

(8) *Post*, Vol. II., p. 1444.

the Housing Act of 1890⁸; sect. 7 (2) of the Open Spaces Act, 1906⁹; and sect. 49 (1) of the Post Office Act, 1908.¹⁰ **Sect. 175, n.**

Town planning schemes sometimes authorise the use of land for a purpose different from that for which it was acquired.

Compulsory powers for the purchase of land for a particular purpose are conferred on the ground that the use of the land for that purpose will be for the public good, and the statutory body on whom such powers are conferred, whether they are seeking to make a profit for shareholders or are trustees acting solely for the public good, cannot by contract bind themselves and their successors not to use those powers. The House of Lords, therefore, held that a body of harbour trustees could not bind themselves so to restrict their use of certain land taken by them under compulsory powers as not to interfere with the vendor's access from his adjoining land to the harbour on which the land taken fronted, and thereby reduce the amount of compensation payable to the vendor.¹¹

Covenant not to use statutory powers.

This was applied by Neville, J., to a covenant by a railway company in a voluntary conveyance of land to them. The company were authorised to purchase certain additional lands for enlarging their stations "and for other purposes of and connected with their undertaking," and bound themselves by the covenant in question to use the land purchased with the buildings then and thereafter to be erected thereon as a passenger station, "and for no other purpose." It was held that the company could sell a part of such land, which they did not require, free from the restriction.¹²

With regard to the effect of a special statutory power to purchase land for a specified purpose, in overriding the restrictions which would otherwise be imposed by law upon the use of such land, see the Note to sect. 341, *post*.

A possessory title may be acquired against those who have purchased land under the Lands Clauses Acts, although the land may not be superfluous.¹³

Possessory title.

Thus, a possessory title was held by Byrne, J., to have been acquired against a railway company to the surface of the land under which a tunnel belonging to and used by the company ran, although the surface was not superfluous land, the company retaining only the tunnel and so much of the underlying and superincumbent strata as was necessary for its due and proper enjoyment as and for a tunnel.¹⁴

Sale of superfluous Land.

Where land is vested in a public body for public purposes, that body cannot part with the land, unless they are specially authorised to do so.¹⁵

Land purchased under statutory powers for a particular purpose and essential to the carrying out of that purpose, is not superfluous land, and cannot be sold as such. Thus, a corporation, after purchasing land under a local Act for the purpose of widening certain narrow lanes, proposed to abandon the improvement of one of the lanes and to sell the land, including that which was to have been thrown into the lane, to a school board for the erection of schools. But Bacon, V.-C., held that the land could not be sold as superfluous, so as to put it out of the power of the corporation to carry out the improvement, and granted an injunction to prevent the building scheme from being carried out so as to have that effect.¹⁶ And where land had been purchased by a railway company by private contract for the purposes of their railway, and had not twenty-two years afterwards been used for that purpose, but had been let to agricultural and mining tenants, the House of Lords held that it was not superfluous, because there was a reasonable prospect of the land being ultimately required for the railway.¹⁷

Land still required for original purpose.

So also under the present section, where a district council had purchased land for sewage works, and had sold some of it as superfluous, but were utilising another portion for the collection of dustbin refuse and other purposes, it was held by Romer, J., that, as all the land would, having regard to the rapid growth of the population, be ultimately required and ought to be kept for sewage purposes, the council were entitled to retain it until required for that purpose, and in the

(8) *Post*, Part II., Div. III.

(9) *Post*, Vol. II., p. 1479.

(10) *Ante*, p. 465.

(11) *Ayr Harbour Trustees v. Oswald*, L. R. 8 A. C. 623; distinguished in *Stourcliffe v. Bournemouth Cpn.*, *ante*, p. 466.

(12) *Re South Eastern Ry. Co. & Whiffin's Contract*, L. R. 1907, 2 Ch. 366; 76 L. J. Ch. 481.

(13) *Bobbett v. South Eastern Ry. Co.* (1882), L. R. 9 Q. B. D. 424; 51 L. J. Q. B.

161; 46 L. T. 31; 46 J. P. 823.

(14) *Midland Ry. Co. v. Wright*, L. R. 1901, 1 Ch. 738; 70 L. J. Ch. 411; 84 L. T. 255. But see the *Vancouver Case*, *ante*, p. 423 (6).

(15) See *Tepper v. Nichols*, *ante*, p. 51.

(16) *A.G. v. Sunderland Cpn.*, 1873 W. N. 174.

(17) *Hooper v. Bourne* (1880), L. R. 5 A. C. 1; 49 L. J. Q. B. 370; 42 L. T. 97; 44 J. P. 327.

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Charge.	A corporation can give a charge upon their surplus land to secure a <i>bond fide</i> existing debt. ¹⁹
Horizontal stratum of land.	Under the Lands Clauses Act, 1845, it was held by the Court of Appeal that a horizontal stratum of land, namely, in one case, the land under the arches on which a railway was carried, ²⁰ and in another the soil above a railway tunnel, ²¹ could not be sold by a railway company as superfluous land not required for the purposes of their undertaking; for such land must be land separated from the land retained by a vertical and not a horizontal division.
Right of pre-emption.	The Local Government Board expressed the opinion that the provisions of sect. 128 of the Lands Clauses Act, 1845, ²² as to offering superfluous lands to the owner of the lands from which they were originally taken or to adjoining owners, are not superseded by the present section.
Consideration.	Joyce, J., said that the present section " obviously contemplated a sale for a sum of money in cash," and distinguished it from the sale of land by a borough council under the Municipal Corporations Act, 1882, ²³ under which he held that land might be sold in consideration of a perpetual rentcharge. ²⁴
Sale by private tender.	Where a district council were desirous of disposing of surplus property by private treaty, the Local Government Board drew attention to the provision in the present section as to price, but stated that the council might sell the property by private tender after advertisement of the sale had been given.
Improvement of land before sale.	An urban district council, having surplus property, and being desirous of selling it in building plots, and of making a road through it as the plots were sold, were informed by the Local Government Board that the Board saw no objection to the proposal to sell in building plots so much of the property as was not needed for the purposes for which it was acquired, but that they had been advised that the council could not, in anticipation of sale under the present section, undertake road-making through the surplus land in order to improve its sale value, though they could enter into binding agreements for the sale of such land on terms requiring them, after the sale, to carry out such works of road-making, etc., as came within their powers.
Covenants running with land.	It should be observed that positive covenants to do certain acts do not generally run with the land, either as regards the benefit or as regards the burden of the covenants. ²⁵ A portion of a building estate was sold, subject to covenants to erect no other than private residences on it and to submit plans for approval before building; and a building lease, containing similar covenants, was granted by the purchaser. The lessees erected a building in breach of the covenants, and were subsequently adjudicated bankrupt. The trustee in bankruptcy disclaimed the lease, and on the lessor re-entering into possession a person who had purchased another portion of the estate with the benefit of the covenants brought an action against the lessor to compel the removal of the building and for damages. It was held that the covenants had been broken once for all by the lessees, and that there was no continuing breach on the part of the lessor on which the action could be founded. ²⁶ A defence based on " change in neighbourhood " failed in the case cited below. ²⁷ The registration of restrictive covenants in the Land Registry under the Land Transfer Acts does not cause them to run with the land if they would not otherwise do so. A purchaser, therefore, of a portion of an estate, who had covenanted to observe certain restrictive conditions, under which only dwelling-houses were to be built on the estate, was unable to enforce this restriction against his vendor and the purchasers of another portion, because there had been no building scheme affecting the land of the common vendor, although the conditions had been registered. ²⁸ See also sect. 90 of the Law of Property Act, 1922. ²⁹

(18) *A.G. v. Teddington U.D.C.*, L. R. 1898, 1 Ch. 66; 67 L. J. Ch. 23; 77 L. T. 426; 61 J. P. 825.

(19) *Stagg v. Medway (Upper) Navigation Co. (C. A.)*, L. R. 1903, 1 Ch. 169; 72 L. J. Ch. 177; 87 L. T. 705; 19 T. L. R. 143.

(20) *Mulliner v. Midland Ry. Co.* (1879), L. R. 11 Ch. D. 611; 48 L. J. Ch. 258; 40 L. T. 121.

(21) *In re Metropolitan Ry. Co. v. Cosh* (1879, C. A.), L. R. 13 Ch. D. 607; 49 L. J. Ch. 277; 42 L. T. 73; 44 J. P. 393.

(22) *Post*, Vol. II., p. 1596.

(23) 45 & 46 Vict. c. 50, s. 109.

(24) *Scarborough Cpn. v. Cooper*, L. R. 1910, 1 Ch. 68; 79 L. J. Ch. 38; 101 L. T. 552; 74 J. P. 44; 8 L. G. R. 54.

(25) See *Austerberry v. Oldham Cpn.*, ante, pp. 278 (4), 361 (22).

(26) *Powell v. Hemsley (C. A.)*, L. R. 1909, 2 Ch. 252; 78 L. J. Ch. 741; 101 L. T. 262.

(27) *Ramuz v. Leigh-on-Sea Conservative Club* (1915, Eve, J.), 31 T. L. R. 174.

(28) *Willé v. St. John (C. A.)*, L. R. 1910, 1 Ch. 325; 79 L. J. Ch. 239; 102 L. T. 383.

(29) *Post*, Vol. II., p. 2357.

In order to enable the owner of a plot on a building estate to enforce restrictive covenants against the owner of another plot, "it must be proved (1) that both the plaintiff and the defendant derive their title under a common vendor; (2) that previously to selling the lands to which they are respectively entitled the vendor laid out his estate, or a defined portion of it (including those lands) for sale in lots subject to restrictions intended to be imposed on all the lots, and which, though varying in details as to particular lots, are consistent and consistent only with some general scheme of development; (3) that these restrictions were intended by the common vendor to be and were for the benefit of all the lots intended to be sold, whether or not they were also intended to be and were for the benefit of other land retained by the vendor; and (4) that both the plaintiff and the defendant, or their predecessors in title, purchased their lots from the common vendor upon the footing that the restrictions subject to which the purchases were made were to enure for the benefit of the other lots included in the general scheme whether or not they were also to enure for the benefit of other lands retained by the vendor." ²⁸

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Building
scheme.

A district council selling superfluous land may impose restrictive covenants in the interests of the district or of neighbouring lands retained by them. ^{28a}

Restrictive
covenants.
Conditions
of sale.

A district council sold part of certain surplus land by auction in building plots, the other plots remaining unsold. The conditions of sale provided that the purchasers of certain of the plots, which in fact remained unsold, should enter into covenants with the vendors to erect a shop and dwelling-house on each plot. Stirling, J., held that, although the insertion of the above condition in the schedule to the conveyance of a plot which was sold showed that the purchaser of that plot was meant to have the benefit of the condition against the purchasers of the other plots, and therefore also against the vendors if those plots were not sold, the obligation to erect the shops and dwelling-houses, being a positive and not a restrictive obligation, could not be enforced, and that the council were at liberty to erect a fire-engine station on the unsold plots. ²⁹

A corporation sold surplus land by auction subject to certain conditions of sale and building restrictions, but reserved power to alter these restrictions. Each purchaser was to submit for approval building plans complying with the bye-laws, which, having regard to the size of the plots, would only allow buildings of a certain height to be erected on such plots. A purchaser of a plot, having acquired other adjoining land not included in this sale, combined the plot and other land as a site for a building of greater height. It was held that, having regard to the reserved power, none of the purchasers could insist on the buildings of other purchasers being of any particular height. ³⁰

An urban district council who had purchased land out of revenue and sold the surplus were desirous of applying the proceeds of the sale to the credit of the district fund; but the Local Government Board, after pointing out that the proceeds must, in accordance with the provisions of the present section, be applied towards discharge, by means of a sinking fund or otherwise, of the outstanding principal moneys which had been borrowed by the council on the security of the fund or rate applicable for the general purposes of the Act, added that, if the council were not able to apply the money at once or on short notice in repaying such principal moneys, it should be invested in trust securities, and an equal portion applied in each year towards making up the instalment of principal in respect of some one or other of the loans raised on the security above mentioned.

Application
of proceeds
of sale.

The "general purposes" of the Act may in a rural district mean the general purposes of a contributory place as distinguished from those of the whole district. ³¹

Where the Local Government Board approved of the application of the proceeds of sale of property in repayment of outstanding debt, it was their practice to limit their approval to the application of the proceeds in liquidation of loans which have not less than twenty years to run.

Direction of Minister of Health.

The Court of Appeal held that under the present section the Local Government Board might direct a local authority to retain land that by no possibility could

Extent of
power of
Minister.

(28) *Per Parker, J., in Elliston v. Reacher*, L. R. 1908, 2 Ch. at p. 384; 77 L. J. Ch. 617; 99 L. T. 346; approved and adopted by C. A., L. R. 1908, 2 Ch. 665; 78 L. J. Ch. 87; 99 L. T. 701.

2 Ch. 240; 67 L. J. Ch. 636; 78 L. T. 829.

(30) *A.G. v. Richmond Cpn.* (1903), 89 L. T. 700; 68 J. P. 73; 2 L. G. R. 628.

(31) See *Earl Jersey v. Uxbridge R.S.A.*, L. R. 1891, 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858.

(28a) M. H. decision, 1922.

(29) *Holford v. Acton U.D.C.*, L. R. 1898,

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ever be required for the original purpose for which it was acquired, but that they could not direct it to be applied to any purpose permanently inconsistent with that original purpose. The court therefore confirmed the decision of Kekewich, J., granting an injunction to restrain an urban district council from erecting an isolation hospital on land which had been purchased compulsorily from the relator and plaintiff for the purposes of sewage disposal, although the Local Government Board had made an order directing the land to be retained by the council as a site for the erection of such a hospital.³²

Having regard to this decision, the Local Government Board stated that where land had been acquired by means of a loan sanctioned by the Board for a definite purpose, it could not be appropriated for a different purpose without a distinct recognition, by the vendor or his successors in title, of the right so to appropriate it, although it was purchased by agreement and the conveyance did not state that it was sold for a particular purpose.

Where a district council were unable to decide as to the time when they would be able to distinguish between land actually required for the purpose for which it was acquired and that which should be sold as surplus land, the Local Government Board suggested that they should in the meantime grant a licence to use the land for a temporary purpose under such conditions as would enable the land to be appropriated at an early date to its original purpose. So also where the whole of certain land purchased for sewage disposal was not needed for that purpose immediately, but would be required in the future for the extension of the works, and the council proposed under sect. 177 to let the part not needed immediately to a parish council for allotments; the Board considered that the case was not one for a demise under that section, but suggested that a licence, not requiring their sanction, should be granted.

Public Health Act, 1907.

The effect of the *Hanwell* and *Pontypridd Cases* above cited is modified where sect. 95 of the Public Health Acts Amendment Act, 1907,³³ is in force. For under that enactment lands acquired by a district council, and not required for the purposes for which they were acquired, may, subject to certain restrictions, be appropriated for any purpose approved by the Minister of Health, notwithstanding anything in the present section or any general provision in any local Act.

The same enactment provides for the settlement by the Minister of Health of disputes as to rights under agreements made before the coming into force of the enactment.

Regulations as to purchase of land.
L.G., s. 75.
L.G. Am., s. 18.
P.H. 1874, s. 35.

Sect. 176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say,)

(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 :

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall—Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further—Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands :

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the [Minister of Health]. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts

(32) *A.G. v. Hanwell U.D.C.*, L. R. 1900, 2 Ch. 377; 69 L. J., Ch. 626; 82 L. T. 778; approved by C. A. in *A.G. v. Pontypridd U.D.C.*, post, Vol. II., p. 1284.
(33) *Post*, Part I., Div. III.

with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the [Minister of Health] requires : Sect. 176.

(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the [Minister of Health] shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof :

(5.) After the completion of such inquiry the [Minister of Health] may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the [Minister] may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more of such persons on behalf of all such persons.

Note.

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Lands Clauses Acts.

The Act of 1845 was amended by Acts of 1860, 1869, 1883, and 1895.¹ With regard to the construction of incorporated Acts, see sect. 316 of the present Act. See also sect. 95 of the Public Health Acts Amendment Act, 1907.² Application of Acts.

It will be observed that the general provisions of the Acts are applicable to the purchase of land by a district council by agreement as well as to purchases by compulsion under provisional orders. The provisions relating to compulsory purchase only are not applicable unless a provisional order has been made in the manner prescribed by the present section and confirmed by Parliament as mentioned in sect. 297; though sect. 68 of the Act of 1845, relating to compensation in respect of lands injuriously affected by the execution of the works, which is included under the heading "with respect to the purchase and taking of lands otherwise than by agreement," has been considered applicable to a case where lands were injuriously affected by works executed on other lands which had been purchased by agreement.³

The present section is applied to the purchase of land under numerous Acts mentioned in other parts of this work.⁴

The Lands Clauses Acts do not apply to the Crown, so that the Crown cannot be forced into court as a litigant under them for the purpose of contesting a claim before the court; and therefore, where a company had paid into court under those Acts the purchase-money (as settled by arbitration between them and the lord of the manor) for a piece of land on the seashore, the court directed a petition, filed by the lord of the manor for payment out of court of such purchase-money, to stand over until an information claiming the land as part of the foreshore, which had been filed by the Crown against the lord of the manor, should be heard.⁵

The second clause of sect. 175, as to the sale of superfluous lands, takes the place of sect. 127 of the Lands Clauses Act, 1845.⁶ The other sections of the Act Sale of superfluous lands.

(1) See *post*, Vol. II., p. 1565.
(2) *Post*, Part I., Div. III.
(3) *Kirby v. Harrogate Sch. Bd.*, and *Long Eaton Recreation Ground Co. v. Midland Ry. Co.*, *post*, p. 480.
(4) See entries in Index under heading

"Compulsory Purchase."
(5) *In re Lowestoft Manor* (1883, C. A.), L. R. 24 Ch. D. 253; 52 L. J. Ch. 912; 49 L. T. 523.
(6) *Post*, Vol. II., p. 1596.

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of 1845, relating to the sale of such lands, are, however, applicable to district councils : thus, subject to sect. 175 of the present Act, sect. 128 will require " the promoters," before selling the lands, to offer them to the person entitled for the time being to the lands from which they were originally severed, or to the adjoining owners.

See also the Note to the preceding section with regard to the sale of superfluous lands, and with regard to the appropriation of lands for purposes other than those for which the purchase was made.

Mandamus to comply with Acts.

The King's Bench Division in Ireland granted a peremptory *mandamus* directing a local authority to comply properly with the requirements of the Railways Act (Ireland), 1851, as to compulsory purchase, but the rule was discharged by the Court of Appeal on the merits.⁶

Provisional Orders.

Instructions of Local Government Board.

" Instructions as to Applications to the Local Government Board for Provisional Orders under sects. 176 and 279 of the Public Health Act, 1875," containing a detailed account of the steps prescribed by the present section and of the further requirements of the Board and of the Houses of Parliament in connection therewith, were issued by the Board. They, together with instructions as to similar applications under other Acts, can be obtained from the Ministry of Health.

Local inquiries and provisional orders.

With regard to the holding of local inquiries by Inspectors appointed by the Minister of Health, see sects. 293-296. And with regard to the making and confirmation of provisional orders, and the costs, see sects. 297 and 298.

Deposit of plans, &c.

The Standing Orders of Parliament⁷ require that " whenever plans, sections, books of reference, or maps, are deposited in the case of a provisional order or [provisional⁸] certificate, proposed to be made by any public department or county council, duplicates of the said documents shall also be deposited in the office of the Clerk of the Parliaments [in the Private Bill Office⁸] : Provided that with regard to such deposits as are so made at any public department or with any county council, after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November." But see, as to such orders, the Note to sect. 297.

Whatever representation may be made on a plan deposited and referred to in an Act of Parliament is of no effect, unless the representation is incorporated in the Act.⁹

Housing of working classes.

The Housing of the Working Classes Act, 1903,¹⁰ requires provision to be made, where necessary, for the accommodation of persons of the working class displaced by reason of the taking, compulsorily or by agreement, of land under powers given after the 14th August, 1903, by any local Act or provisional order or order having the effect of an Act, and the Standing Orders of Parliament require a statement to be deposited with respect to the persons of the working class residing in an area proposed to be taken under a Bill containing, reviving, or extending power to take land, when thirty or more of such persons reside in the area.¹¹

Exercise of Compulsory Powers.

Limitation of time.

Under sect. 123 of the Act of 1845,¹² the powers of the council for the compulsory purchase of lands will not be exerciseable after the expiration of three years from the passing of the Act confirming the provisional order, unless some other period is prescribed by that Act.

Where a local authority acquired land compulsorily for the erection of labourers' cottages, and failed to obtain, within the two years specified in an Irish Act of 1883, any tenders (except for fences) in response to their advertisements, it was held that they must be declared to be holding as trustees for the original owner, and ordered to reconvey to him for the sum which he had received from them.¹³

The extension by a local Act of the time limited by a previous Act for the exercise of compulsory powers for the purchase of land for a market and other purposes was held applicable to the purchase of land for a market, although the

(6) 14 & 15 Vict. c. 70, s. 4. *Rex (Montgomery) v. Belfast Cpn.*, 1915 Ir. K. B. 36 (re plans and schedules).

(7) H. L. 39; H. C. 39.

(8) H. C. 39.

(9) *North British Ry. Co. v. Tod* (1846, H. L.), 12 Cl. & F. 722; 10 Jur. 975; A.G. v. *Great Eastern Ry. Co.* (1873), L. R. 6 H. L.

367; 22 W. R. 281.

(10) See s. 3, and Sched., post, Part II., Div. III.

(11) S. O., H. L. 38; H. C. 38.

(12) *Post*, Vol. II., p. 1595.

(13) *Barnett v. Cootehill* (No. 1) R.D.C. (1912, Cavan Assizes), 46 Ir. L. T. 169; 4 Glen's Loc. Gov. Case Law 18.

second Act contained no express reference to markets; and the extension was not limited by a recital that it was expedient that the time limited for construction of *waterworks* should be extended. The powers were not to be exercised "without the consent first obtained of the owners and ratepayers," and such consent, having been once obtained while the original powers were in force, was not required to be obtained again after the passing of the second Act.¹⁴

The district council may in some cases take more of the land with respect to which the compulsory powers are conferred upon them than is actually essential for the immediate purpose for which those powers were conferred, as in the case where premises adjoining a street are taken for the purpose of widening the street, and the whole of the land is not intended to be thrown into the public way.¹⁵ And they may be compelled to take the whole of a "house," although they only need part of it.¹⁶

A local authority are not bound to purchase the land in respect of which they have obtained a provisional order, although the order has been duly confirmed, the notice under sub-sect. (2) of the present section creating no contract between the parties.¹⁷

Where lands are taken compulsorily under the present section, the proceedings for assessing compensation are governed by the Lands Clauses Acts, as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919,¹⁸ and the provisions of sect. 179 of the present Act with respect to arbitration do not apply. Where the compensation for lands taken compulsorily was referred to arbitration, and the arbitrator awarded a sum greater than that offered, it was held that sect. 180, sub-sect. (13), did not give him a discretion as to the costs, but the landowner was entitled to his costs as provided by sect. 34 of the Lands Clauses Act, 1845.¹⁹ See now, however, sect. 5 of the Act of 1919,²⁰ which contains special provisions as to costs.

Where the compensation for premises taken compulsorily for widening a street had been determined by a jury in the absence of the mortgagee, who had not been made party to the proceedings and was therefore not bound by them, and the council then gave the mortgagee notice to treat and entered (or were assumed for the purposes of the case to have entered) into possession of the premises, Parker, J., refused an interim injunction at the mortgagee's instance to restrain the council from proceeding further upon the notice.²¹

By the combined operation of sect. 6 of the Public Libraries Act, 1919,²² and sects. 111 and 172 and Scheds. V. and VII. of the Education Act, 1921,²³ library authorities, being local education authorities, may purchase land compulsorily for the purpose of any of their powers or duties under the Public Libraries Acts, subject to the following provisions:—“(1) Where a local education authority propose to purchase land compulsorily under this Act, the local education authority may submit to the Board of Education an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement. (2) An order under this Schedule shall be of no force unless and until it is confirmed by the Board, and the Board may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this Schedule, become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act. (3) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the local education authority and the persons interested in the land,

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Extent of
land to be
taken.Exercise of
powers not
obligatory.

Procedure.

Notice to
mortgagees.Public
libraries.

(14) *Bentley v. Rotherham and Kimberworth Loc. Bd.* (1876), L. R. 4 Ch. D. 588; 46 L. J. Ch. 284.

(15) See *Quinton v. Bristol Cpn.*, ante, p. 359 (8).

(16) See ante, p. 359, and s. 92 of Act of 1845, post, Vol. II., p. 1586, and the Note thereto; also *Lavers v. London C.C.*, 93 L. T. 233; 69 J. P. 362; 3 L. G. R. 1025, which was followed in *Pollard v. Middlesex C.C.* (1906, Ch. D.), 95 L. T. 870; 71 J. P. 85; 5 L. G. R. 37.

(17) *Burges v. Bristol U.S.A.* (1886), 50 J. P. 455; and see *Burr v. Wimbledon Loc.*

Bd., 1887 W. N. 155.

(18) *Post*, Vol. II., p. 2334.

(19) *Ex parte Rayner* (1878), L. R. 3 Q. B. D. 446; 47 L. J. Q. B. 660; 39 L. T. 232; 42 J. P. 807.

(20) *Post*, Vol. II., p. 2336.

(21) *Cooke v. London C.C. and Ellis*, L. R. 1911, 1 Ch. 604; 80 L. J. Ch. 423; 104 L. T. 540; 75 J. P. 309; 9 L. G. R. 593. See also *post*, Vol. II., p. 1570.

(22) *Post*, Vol. II., p. 1420.

(23) 11 & 12 Geo. V. c. 51, ss. 111, 172, Scheds. V., VII.

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Public
libraries—
continued.

and shall incorporate, subject to the necessary adaptations—(a) the Lands Clauses Acts (except sect. 127 of the Lands Clauses Consolidation Act, 1845) as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919²⁴; and (b) sects. 77 and 85 of the Railways Clauses Consolidation Act, 1845.²⁵ (4) The order shall be published by the local education authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed. (5) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall without further inquiry confirm the order unless they are of opinion that the land is unsuited for the purpose for which it is proposed to be acquired; but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local education authority and all persons interested in the land and such other persons, as the person holding the inquiry in his discretion thinks fit to allow, shall be permitted to appear and be heard at the inquiry. (6) Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of adjoining land, and such person shall have for the purpose of the inquiry all the powers of an Inspector of the Ministry of Health, and, if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that, owing to its extent or situation or the purpose for which it is used, it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the conditions specified in his report, then, if the Board confirm the order in respect of that land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament. Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat. (7) Where the land proposed to be acquired is the site of an ancient monument or other object of archæological interest or is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking or at the date of the order forms part of any park, garden or pleasure ground or is otherwise required for the amenity or convenience of any dwelling house, the order shall be provisional only and shall not have effect unless confirmed by Parliament. (8) In construing for the purposes of this Schedule or any order made thereunder any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local education authority shall be deemed to be the promoters of the undertaking. (9) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Act, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice. (10) In this Schedule the expression 'prescribed' means prescribed by the Board of Education."

Purchase Money.

Assessment of
value of land.

Rules for the assessment of compensation are laid down by sect. 2 of the Act of 1919, and the cases cited under the present heading must be considered in the light of those rules.²⁴ The district valuer's advice should be sought.²⁶

The fact that money has been spent upon the land for the purpose of developing it is to be taken into consideration in assessing its value; but the amount so spent,

(24) *Post*, Vol. II., p. 2334.

(25) *Post*, Vol. II., pp. 1612, 1613.

(26) See M. H. Circular, Nov. 25, 1922,
20 L. G. R. (Orders) 281.

together with the price paid for the land by the owner, are not necessarily the same as its present value.²⁵ If an undertaking is purchased, it must be valued as a "going concern."²⁶ **Sect. 176, n.**

The purchase of land by turnpike trustees in consideration of a fee farm rent was held to be binding on a local authority as their successors in the following circumstances. A strip of land had been acquired in 1802 by turnpike trustees for widening a turnpike road, but no conveyance or record of the transaction was forthcoming. A small fee farm rent was in fact paid by the trustees to the owners of the adjoining land until the turnpike trust expired in 1871, and was subsequently paid by the highway authority until 1904, when they repudiated any liability to pay it. The Court of Appeal held that a grant at a fee farm rent ought to be presumed, and that the corporation of the borough, as the highway authority, were liable to pay such rent.²⁷ **Fee farm rent.**

Where certain persons had purchased for building a school a piece of land which was specially adaptable for that purpose, and there was no other land in the neighbourhood equally suitable, and before they commenced building received notice to treat for part of it, the remaining part being less suitable for their purpose, it was held that in assessing the purchase money, their intention to use the land for a particular purpose might be taken into consideration.²⁸ **Special adaptability of land taken.**

Where compulsory powers had been given to purchase the land adjacent to a church, and the subsoil under the church itself, the House of Lords held that the arbitrator to whom the amount of the purchase money for the land taken, and the compensation for severance of other lands of the rector and churchwardens and for injuriously affecting such other lands had been referred, ought to assess the amounts on the basis that, under some Act of Parliament, or under a scheme under the Union of Benefices Act, 1860,²⁹ or otherwise, the site of the church might (but for the passing of the special Act conferring the compulsory powers) at some future time have ceased to be the site of a church, and have become available for building, and that he was at liberty to draw his own conclusions as to when (if at all) that time would be likely to arrive.³⁰

The value to be ascertained is the value of the land to the owner, and not to the purchasers; but its special adaptability to a purpose such as that for which it is taken may in some cases be taken into consideration without evidence that there are at the time other persons who would be likely to purchase it for that purpose.³¹ Thus, in the case of land taken compulsorily by a joint water board for the purpose of making a reservoir, the Court of Appeal held that the fact that the land had peculiar natural advantages for supplying a district or area, apart from any value created or enhanced by the scheme or special Act of the board for appropriating the water to a particular local authority, might be taken into consideration in assessing the purchase money, although it might not be proved that the land could be similarly used by other specified local authorities.³² And the Court of Appeal (on this point affirming the judgment of Bray, J.) subsequently held that, where land taken compulsorily for the construction of a reservoir had a natural and peculiar adaptability for the purpose, such adaptability was to be taken into consideration in assessing the compensation, notwithstanding the fact that the land could not be used for that purpose, unless compulsory powers for the purchase of other land were first obtained. The Court, however, also held that, in determining the value arising from the adaptability of the land, the contingent value arising from the possibility of the land taken coming into the market when required for the particular purpose, and not the realised possibility

(25) See *Streatham Estate Co. v. Public Works Comrs.* (1888), 52 J. P. 615.

(26) *Perth Gas Co. v. Perth Cpn.*, L. R. 1911 A. C. 506; 80 L. J. P. C. 168; 105 L. T. 266; *In re Belfast Cpn. and Cavehill Tramway Co.* (1911, C. A., I.), 45 Ir. L. T. 283; 2 Glen's Loc. Gov. Case Law 33.

(27) *Foley's Charity Trustees v. Dudley Cpn.*, L. R. 1910, 1 K. B. 317; 102 L. T. 1; 74 J. P. 41; 8 L. G. R. 320.

(28) *Bailey v. Isle of Thanet Light Ry. Co.*, L. R. 1900, 1 Q. B. 722; 69 L. J. Q. B. 442; 82 L. T. 713.

(29) 23 & 24 Vict. c. 142.

(30) *In re City and South London Ry. Co. and St. Mary Woolnoth and St. Mary Woolchurch Haw Rector and Churchwardens*, L. R. 1905 A. C. 1; 74 L. J. K. B. 147; 92 L. T. 34; 69 J. P. 101.

(31) *Countess Ossalinsky v. Manchester Cpn.*, Browne & Allan on Compensation (1903 Edit.), p. 659 (Appendix).

(32) *In re Gough and Aspatria Sillott and District Joint Water Bd.*, L. R. 1904, 1 K. B. 417; 73 L. J. K. B. 228; 90 L. T. 43; 68 J. P. 229; see also *Re Tynemouth Cpn. and Duke of Northumberland* (1903), 89 L. T. 557; 67 J. P. 425.

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arising from the fact that statutory powers for the construction of the reservoir had actually been obtained, should be considered.³³

It was held that, in assessing the compensation payable to owners of land, the arbitrator should take into consideration the special adaptability of the land for railway purposes arising out of possible competition between colliery owners and the company, but not that arising from the fact that an integral part of the company's main line existed on the land. *Per* Shearman, J. : "Special adaptability is merely one kind of special value which is likely in the market to attract a class of purchasers who would come into competition . . . but the value of the land which should be awarded by the arbitrator is in no sense more than that price that the legitimate competition of purchasers would reasonably force it up to." *Per* Rowlatt, J. : "Where there is no competition, or where the price has been raised by bidding to a point at which competition ceases, there is no room for the application of the doctrine of special adaptability." ³⁴

Land subject to covenants.

A piece of land had been sublet at a low rent to a corporation as a public park, by lessees of the land, for the remainder of the term of the lessees less one day, subject to a condition that, if the land should be taken by a railway company, the sub-lease should determine. The land was so taken, and, on the purchase money payable to the lessees being assessed, they were allowed the value of the land for commercial purposes during the remainder of their term of ninety-nine years, and not merely the value of the rent which they would have received from the corporation for use of the land as a park.³⁵

Circumstances subsequent to notice to treat.

The House of Lords held that the arbitrator, in assessing the amount payable to the owners of seams of coal required to be left unworked for the support of certain waterworks, ought to take into consideration any knowledge which he had acquired with reference to the land between the date of the service of the notice under sect. 22 of the Waterworks Clauses Act, 1847,³⁶ and the date of his award. The question was whether evidence that coal had risen in value since the date of the notice was admissible; and the statement of Phillimore, J.,—that the true inquiry was not what was the value of the coalfield or of the coal, but what would the colliery company, if they had not been prohibited, have made out of the coal during the time it would have taken them to get it—was approved.³⁷

After a corporation had served notice to treat for the purchase of certain insured buildings, the buildings were burnt down, and the owner received from the insurance company the agreed amount of the loss, and then entered into an agreement with the corporation for the payment by them, for the purchase of the property, of a sum arrived at by taking into consideration the amount paid by the insurance company, the corporation undertaking to indemnify the owner against any claim by the company. In an action by the company to recover back the amount paid by them, Bigham, J., gave judgment in their favour on the ground that the benefit of the contract of insurance did not pass to the corporation, and that the owner was entitled to be paid by the corporation the value of the premises as at the time of the notice to treat, and the company, who succeeded to the owner's rights in this respect, could not be prejudiced by the owner's agreement with the corporation.³⁸

Claimant's title.

In assessing the amount payable under sect. 121 of the Lands Clauses Consolidation Act, 1845,³⁹ to a person having no greater interest in the land than as tenant for a year or from year to year, the justices have no power to inquire into the claimant's title to the interest which he claims. Nevertheless, as it is a condition precedent to his right to compensation under that section that he has been required to give up possession before the expiration of his term or interest, the justices must satisfy themselves on this point before assessing the compensation.⁴⁰

(33) *Re Lucas and Chesterfield Gas and Water Bd.*, L. R. 1909, 1 K. B. 16; 77 L. J. K. B. 1009; 72 J. P. 437; 6 L. G. R. 1106.
(34) *Sidney v. North Eastern Ry. Co.*, L. R. 1914, 3 K. B. 629; 83 L. J. K. B. 1640; 111 L. T. 677. See also *Cedar Rapids Mfg. Co. v. Lacoste*, L. R. 1914 A. C. 569; 83 L. J. P. C. 162; 110 L. T. 873; *Odlum v. Vancouver City Cpn.* (1915), 85 L. J. P. C. 95; 113 L. T. 795.
(35) *In re Morgan and London and North Western Ry. Co.*, L. R. 1896, 2 Q. B. 469; 66 L. J. Q. B. 30; 75 L. T. 226.

(36) *Post*, Vol. II., p. 1214.
(37) *Bwlfa and Merthyr Dare Steam Collieries, Ltd. v. Pontypridd Water Co.*, L. R. 1903 A. C. 426; 72 L. J. K. B. 805; 89 L. T. 280.
(38) *Phoenix Assurance Co. v. Spooner*, L. R. 1905, 2 K. B. 753; 74 L. J. K. B. 792; 93 L. T. 306.
(39) *Post*, Vol. II., p. 1594.
(40) *Great Northern and City Ry. Co. v. Tillet*, L. R. 1902, 1 K. B. 874; 71 L. J. K. B. 525; 86 L. T. 723; 66 J. P. 742.

A person who had for ten years been in possession of certain lands, which were taken for public purposes under a colonial Act, was held to have a *prima facie* case for compensation, although the Crown had acquired the title of the rightful owner under the Act.⁴¹

On land being taken under compulsory powers by a sanitary authority, interest on the purchase money at 4 per cent. was allowed to the vendor from the time when the verdict of the jury that assessed the amount was given, although *de facto* possession of the land was not obtained until the subsequent expiration of the tenancies subject to which the land was held.⁴²

In 1905 a local authority in Ireland were authorised to purchase compulsorily certain land. On 4th June, 1906, the arbitrator awarded £56 15s. 6d. as compensation. On 1st January, 1907, the local authority went into possession, the owners not objecting. In 1908 the local authority were authorised to purchase compulsorily more land on the same estate. On 15th October, 1908, the arbitrator awarded £606 10s. as compensation. On 1st April, 1909, the local authority went into possession of this land, the owners again not objecting. During all this time an action was pending in the English Chancery Division as to this estate, a receiver had been appointed, and considerable delay took place in consequence. Ultimately, on 1st August, 1913, the local authority lodged in court the moneys thus awarded. On 10th February, 1914, a petition was presented, claiming a declaration that the local authority were liable to pay to the petitioners interest on these moneys at 5 per cent. per annum from the respective dates when the local authority entered into possession to the date of the lodgment in court. It was held that the claim was barred by lapse of time.⁴³

In 1846 a railway company compulsorily acquired a portion of A's estate. A refused to grant a conveyance, and the company entered into possession without one. In 1875 the company obtained a conveyance from A's successor. In 1903 A claimed, for the first time, compensation for loss of his rights as superior. An arbitrator fixed the compensation for such loss as £381 if it should be valued as at 1846, and as £885 if it should be valued as at 1875 or 1903. It was held that the compensation due was £885 with interest from 1903.⁴⁴

Compensation.

With regard to the compensation which can be claimed for damage sustained in consequence of the exercise of the powers of the present Act (as distinguished from the exercise of the powers conferred by an Act confirming a provisional order for compulsory purchase), see sect. 308 and the Note to that section.

The Act of 1919 does not affect the assessment of compensation for the injurious affection of lands other than those taken, but only the assessment of the purchase money of the lands taken.

In assessing compensation for part of an estate, which was taken compulsorily for a sewage farm, it was decided by the House of Lords that, although the remainder of the estate was separated by a railway from the part which was taken, and was not occupied and used with it, the two parts were so situated that the possession and control of each gave an enhanced value to the whole, and regard was therefore to be had to the purpose for which the land taken was to be used, and that compensation under the Lands Clauses Act could be claimed for injuriously affecting the remainder of the estate by the use of such land as a sewage farm.¹

Where, however, no such land is taken from a person, he is not entitled to any compensation for his property being injuriously affected by the use of land taken under compulsory powers from another person, unless he is expressly given the right to such compensation by statute.²

An Act of 1817 authorised the purchase by a company of certain lands for a canal, the right to work minerals being expressly reserved to the vendor, subject

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Interest on
purchase-
money.Limitation
of time.Lands
injuriously
affected.

Minerals

(41) *Perry v. Clissold*, L. R. 1907 A. C. 73; 76 L. J. P. C. 19.

(42) *In re Eccleshill Loc. Bd.* (1879), L. R. 13 Ch. D. 365; 49 L. J. Ch. 214; 28 W. R. 536.

(43) L.G. (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 51 (7). *In re Borrisokane Rural District Labourers Order*, 1908, 1914 Ir. Ch. 297; 48 Ir. L. T. 203; 5 Glen's Loc. Gov. Case Law 21. *Sharpington v. Fulham Guardians*, ante, p. 452, considered.

(44) *Fraser v. Caledonian Ry. Co.*, 1911 S. C. (S.) 145; 2 Glen's Loc. Gov. Case

Law 30. See also *Byfield v. Barnet U.D.C.* (1911), 2 Glen's Loc. Gov. Case Law 218.

(1) *Cowper Essex v. Acton Loc. Bd.* (1889), L. R. 14 A. C. 161; 58 L. J. Q. B. 594; 61 L. T. 1; 53 J. P. 756; and see *Re Stockport Timperley and Altrincham Ry. Co.* (1864), 33 L. J. Q. B. 251; and *Reg. v. Pearce, Ex parte London Sch. Bd.*, 67 L. J. Q. B. 842; 78 L. T. 681.

(2) *Hammersmith and City Ry. Co. v. Brand* (1868), L. R. 4 H. L. 215; 38 L. J. Q. B. 265; 21 L. T. 238.

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Minerals—
continued.

to a restriction against injuring the canal. The land in question was purchased in 1818. The canal was opened in 1822. A statutory conveyance was not executed until 1862. Oil shale was a recognised mineral in 1862, but not in 1818. It was held, without deciding whether oil shale was a mineral or not, that a claim for compensation upon the company's serving notice not to work minerals failed, because the above-mentioned express reservation must be construed as implying that the price paid for the land included a sum to cover loss from inability to work the minerals, except subject to the above restrictions against injuring the canal.³

"If the owner claims on a compulsory sale of the surface for injurious affection of his title to the minerals, the answer to him is that his title is not at present injuriously affected, inasmuch as he can work freely until he receives a counter notice, after which he may be able to claim full compensation for the minerals themselves."⁴

A covenant to pay compensation for subsidence due to the working of minerals affects the nature and value of the land and runs with it.⁵

Land having
benefit of
covenants.

The Court of Appeal held that, where land subject to a restrictive covenant was purchased with notice of such covenant under the authority of an Act of Parliament incorporating the Lands Clauses Act, 1845, the purchasers were not bound by the covenant, whether the land was purchased compulsorily or by agreement,⁶ and suggested that the remedy of the covenantee (if any) was to claim compensation under sect. 68 of that Act.^{6a}

And in a subsequent case before the same court, where a railway company had broken certain restrictive covenants which had been imposed upon land taken by them from one owner for the benefit of the land of another owner, none of whose land was taken, the owner of the last-mentioned land was held to be entitled to recover the compensation assessed by a jury under the Lands Clauses Act in respect of the breach of the covenants.⁷

Withdrawal
of offer.

Where a lessee offered to accept a sum as compensation, and, before acceptance, assigned his leasehold interest to a sub-lessee and gave the undertakers notice of the assignment and stated that he was no longer able to agree as to the value of the leasehold interest, it was held by Romer, J., that the offer had been withdrawn.⁸

Costs.

There is no "overriding principle of law" which entitles an owner whose land is compulsorily acquired to the costs of the sale, even though there may be no special reasons for disallowing them.⁹

*Deficiency in Poor Rate.*Recovery of
deficiency.

Sect. 133 of the Lands Clauses Act, 1845,¹⁰ requires the "promoters" to make good any deficiency which may arise in assessments for land tax and poor's rate, by reason of lands having been taken for the purposes of the Act, "until the works shall be completed and assessed to such land tax or poor's rate." It does not, however, make the promoters rateable, and the deficiency cannot be recovered summarily.¹¹

County and
borough
rates.

The "deficiency in the assessment for poor's rate" includes deficiencies in county and borough rates, as well as in the rates raised for poor law purposes properly so called.¹² In the County of London, where an amalgamated general rate and poor rate is made under the London Government Act, 1899, it is only the deficiency in so much of the amalgamated rate as represents the poor rate that is to be made good.¹³

In a railway company's Act, which provided that the company should make good deficiencies in "general purposes rates," this expression was considered to

(3) *Marquis of Linlithgow and Young's Paraffin Co. v. North British Ry. Co.*, L. R. 1914 A. C. 820; 51 Sc. L. R. 626; 5 Glen's Loc. Gov. Case Law 24.

(4) *Per Lord Haldane, C.*, in *Davies v. James Bay Ry. Co.*, L. R. 1914 A. C. 1043, at p. 1050; 83 L. J. P. C. 339; 30 T. L. R. 633.

(5) *Dyson v. Forster*, L. R. 1909 A. C. 98; 78 L. J. K. B. 246; 99 L. T. 942.

(6) *Kirby v. Harrogate Sch. Bd.*, L. R. 1896, 1 Ch. 437; 65 L. J. Ch. 376; 74 L. T. 6; 60 J. P. 182.

(6a) *Post*, Vol. II., p. 1578.

(7) *Long Eaton Recreation Ground Co. v. Midland Ry. Co.*, L. R. 1902, 2 K. B. 574;

71 L. J. K. B. 837; 86 L. T. 873; 67 J. P. 1.

(8) *Cardiff Cpn. v. Cook*, (1922), 21 L. G. R. 279. *Cf. Mercer's Case*, *post*, p. 752 (2).

(9) *In re Lord Inchiquin's Estate* (No. 2), 1915 Ir. Ch. 169.

(10) *Post*, Vol. II., p. 1597.

(11) *London City Cpn. v. Holborn Overseers* (1867), L. R. 2 C. P. 574; 36 L. J. M. C. 95; 16 L. T. 665.

(12) *Farmer v. London and North Western Ry. Co.* (1888), L. R. 20 Q. B. D. 788; 59 L. T. 542; 36 W. R. 590.

(13) *Islington B.C. v. London Sch. Bd.*, L. R. 1903, 2 K. B. 354; 72 L. J. K. B. 677; 89 L. T. 53; 68 J. P. 35; 1 L. G. R. 704.

apply to all rates made for general purposes, namely, for purposes in which the great majority of parishioners had a common interest, and that under this term the company were bound to make good the deficiency in the assessment for the metropolitan consolidated rate, the lighting rate, and public libraries rate.¹⁴

The deficiency is to be calculated without reference to allowances made to the owners of premises under agreements in pursuance of sect. 3 of the Poor Rate Assessment and Collection Act, 1869,¹⁵ for the payment of rates whether the premises are occupied or unoccupied.¹⁶

The clause was held to apply even to land intended to be laid out as a public highway, although such highway never could become assessable.¹⁷ Several properties were taken compulsorily by an urban sanitary authority for the purposes of a number of distinct schemes of street improvement. In some cases the whole of the land taken was thrown into the roadway; in others the authority intended to sell the surplus land for a capital sum or for rentcharges. The court decided that the time when the liability to make good the deficiency in the rates ceased was when the road was completed, or the surplus land sold, or the rentcharge completed, whichever should last happen, treating each improvement as a separate undertaking; and that the deficiency was to be calculated on each undertaking within the rating area, and not on each property which had been separately assessed; but the judges differed on the question whether upon the construction of certain local Acts the district was to be treated as one rating area or two.¹⁸

A railway company were liable to make good the deficiency in poor rates under the same clause in respect of houses which they purchased, beyond their limits of deviation, merely to avoid the opposition of the owners to their Bill; for inasmuch as they could only hold land under statutory powers, they could not be heard to say that they had become possessed of the houses otherwise than by virtue of their Acts. The amount of the deficiency in this case was to be computed according to the value of the houses at the passing of the special Act, and without regard to the fact that some of them were then unoccupied.¹⁹

Sect. 176, n.

Allowances to owners.

Land taken for highway.

Land taken beyond limits of deviation.

Sect. 177. Any local authority may, with the consent of the [Minister of Health], let for any term any lands which they may possess, as and when they can conveniently spare the same.

Power to let lands.

P.H. 1874, s. 34.

Note.

The present section is applied by the Metropolis Water Act, 1902.²⁰

“Lands” and “premises,” by sect. 4, include messuages, buildings, lands, easements, and hereditaments of any tenure.

Surplus lands may be sold under sect. 175. The Local Government Board would not consent to such land being let for a term of ninety-nine years.

In 1892 the lessee of land belonging to a municipal corporation, which she held for a term which was to expire in 1899, compromised an action, which was brought against her by the corporation for recovery of rent, by surrendering the lease and accepting a lease for her life; but the consent of the Local Government Board to the new lease was not obtained,²¹ and that lease was therefore invalid. After the lessee had been in undisputed possession for sixteen years from the date of the new lease, the corporation were held to be entitled to recover possession of the land, notwithstanding a claim of possessory title by the lessee; for the surrender of the old lease, being made in consideration of the grant of the invalid lease, was itself invalid, and the corporation were not estopped from disputing its validity, as it

Application of section.

Surplus land.

Consent.

(14) *Burrup v. London and South Western Ry. Co.* (1890), 64 L. T. 112.

(15) 32 & 33 Vict. c. 41, s. 3.

(16) *St. Leonard, Shoreditch, Vestry v. London C.C.*, L. R. 1895, 2 Q. B. 104; 64 L. J. Q. B. 615; 72 L. T. 802; 59 J. P. 423.

(17) *Stratton v. Metropolitan Bd. of Works* (1874), L. R. 10 C. P. 76; 44 L. J. M. C. 33; 31 L. T. 689. And see *Wheeler v. Metropolitan Bd. of Works* (1869), L. R. 4 Ex. 303; 38 L. J. Ex. 165; 20 L. T. 984.

(18) *Bristol Governors of the Poor v. Bristol Cpn.* (1887), L. R. 18 Q. B. D. 549; 56 L. J. Q. B. 320; 56 L. T. 641; 51 J. P. 676. *East London Ry. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81; 43 L. J. M. C. 159; 30 L. T. 412.

(19) *Putney Overseers v. London and South Western Ry. Co.*, L. R. 1891, 1 Q. B. 440; 60 L. J. Q. B. 438; 64 L. T. 280; 55 J. P. 422.

(20) 2 Edw. VII. c. 41, s. 24 (2).

(21) Under 45 & 46 Vict. c. 50, s. 108, and L.G. Act, 1888, s. 72, *post*, Vol. II., p. 1946.

Sect. 177. n.
Consent—
continued.

was made in contravention of the enactments requiring the consent of the Local Government Board.²²

With regard to the form of the consent, the following case may be noted. Certain promoters obtained a provisional order for the construction of a tramway. A confirming Act of 1895 gave the local authority power to purchase after a lapse of fourteen years, and required the approval of the Board of Trade to the sale to any purchaser. In 1896, before the tramway was constructed, the promoters sold their rights under the order to a company without such approval. In 1910 the local authority required the promoters to sell to them, knowing that the sale to the company had not been so approved. The matter was referred to arbitration, and the value was assessed at £12,963. The company and "all others the promoters" of the order brought an action for the recovery of this amount. The local authority contended that they could not pay the promoters, as they had no legal title to the undertaking; or the company, as there had been no approval of the sale to them. It was held (1) that the assignment of mere promoters' rights did not require the approval of the Board of Trade; and (2) that the Board had, by certain documents signed by their assistant secretary, sufficiently recognised the company as transferees of the undertaking; and that, therefore, the local authority must pay the promoters.²³ *Per* Fletcher Moulton, L.J.: "The mystery of the conscience of some corporations I shall never fathom, but corporations not only do things which private persons with a spark of honesty would not think of doing, but they come openly and fight for the right to do them. . . . I am glad to think that [the defendants' contention] is as bad in law as it would be in morals."

Provision for
lands belonging
to the Duchy of
Lancaster.
P.H. 1874, s. 32.

Sect. 178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to [His] Majesty [His] heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of [His] Majesty [His] heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

Note.

**Application
of section.**

The present section is applied to the acquisition of land under the Small Holdings and Allotments Act, 1908,²⁴ and for the purposes of parish councils.²⁵ See also sect. 24, sub-sect. (2) of the Metropolis Water Act, 1902.²⁶

**Purchase
money.**

The purchase money is to be paid to the Receiver-General of the Duchy, and invested or applied as prescribed by the Act of 1855.²⁷

(22) *Canterbury Cpn. v. Cooper* (1909, C. A.), 100 L. T. 597; 73 J. P. 225; 7 L. G. R. 908.

(23) Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 43. *Hartlepool Tramways Co. v. West Hartlepool Cpn.* (1911, C. A.), 75 J. P. 537; 9 L. G. R. 1098.

(24) See s. 38 of Act of 1908, *post*, Vol. II., p. 1514.

(25) See L.G. Act. 1894, s. 9, *post*, Vol. II., p. 2007.

(26) 2 Edw. VII. c. 41, s. 24 (2).

(27) 18 & 19 Vict. c. 58, s. 2.

Sect. 179.

ARBITRATION.

Sect. 179. In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for ¹), and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

Mode of
reference
to arbitration.
P.H., s. 123.
S.U. 1865, s. 8.
San. 1866, s. 9.

Note.

The present section and sects. 180 and 181 are applied to disputes as to compensation, costs, damages, and expenses arising under the Public Health Acts Amendment Act, 1907.²

**Matters to
be settled by
arbitration.**

The present Act authorises or directs the following matters to be settled by arbitration : viz. the terms and conditions on which the owner or occupier of any premises without the district of the local authority may cause any sewer or drain from such premises to communicate with a sewer of the local authority (sect. 22); differences with respect to the supply of water by a water company to the local authority (sect. 52); the terms on which a local authority may supply water to the local authority of an adjoining district (sect. 61); the apportionment of the expenses of paving a private street among the adjoining owners (sect. 150); the amount of compensation to be paid by an urban authority in consequence of a house or building being set back or forward by them (sect. 155); the quota of rates to be paid by the Universities of Oxford and Cambridge (sect. 228); the amount of compensation to be paid to any person who sustains damage by reason of the exercise of any of the powers of the Act by the local authority (sect. 308); differences with respect to interference by the local authority with the improvement of certain rivers, canals, docks, harbours, locks, reservoirs, basins, or towing-paths, or works or lands connected therewith (sect. 328); differences with respect to injuries to the supply of water in certain cases by the exercise of the powers of the Act by the local authority, or with respect to the efficiency of sewers, drains, culverts, or pipes substituted for others by the local authority (sect. 333).

The arbitration clauses of the Lands Clauses Consolidation Act, 1845,³ apply to the assessment of compensation in respect of lands taken under compulsory powers by a district council.⁴ But see, now, the Acquisition of Land (Assessment of Compensation) Act, 1919.⁵

Several other Acts affecting local authorities refer disputes to arbitration.⁶

Further with regard to arbitrations, see sect. 180 and the Note thereto, and the Notes to sects. 150 ⁷ and 308.⁸

Sect. 180. With respect to arbitrations under this Act, the following regulations shall be observed ; (that is to say,)

Regulations as
to arbitration.

(1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal :

P.H.,
ss. 123-128.

(2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same :

(3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation :

(4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the

(1) *E.g.*, where the amount claimed does not exceed £20, when summary proceedings are sometimes available, see ss. 181 and 308.

(2) See s. 10, *post*, Part I., Div. III.

(3) See ss. 25-37 and Notes, *post*, Vol. II., p. 1571.

(4) *Ex parte Rayner*, *ante*, p. 475.

(5) *Post*, Vol. II., p. 2334.

(6) See, *e.g.*, s. 22 of Superannuation Act of 1922, *post*, p. 525.

(7) *Ante*, p. 330.

(8) *Post*, p. 759.

Sect. 180.

Regulations as
to arbitration—
continued.

party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :

(5.) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed ex parte; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :

(6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :

(7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the [Minister of Health] shall, on the application of any such party, appoint an umpire :

(8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire :

(9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him :

(10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace : (that is to say,) “ I A.B. do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875. A.B.”

(11.) Such declaration shall be annexed to the award when made; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanour :

(12.) Any arbitrator arbitrators or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath :

(13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire :

(14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto :

(15.) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference.

Note.

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Appointment of Arbitrators.

Arbitration
Act, 1889.

By the Arbitration Act, 1889,¹ “ this Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.” The provisions of that Act, therefore, so far as they

(1) 52 & 53 Vict. c. 49, s. 24.

are not inconsistent with the present section, are to be treated as supplementary to it. And where a contract for sewage works, made by a corporation before the Act of 1889, contained a provision for the reference of disputes to an arbitrator or umpire to be appointed under the Common Law Procedure Act, and amending Acts, it was held by the Court of Appeal that the contractor was entitled, on notice to the corporation (who did not admit that certain differences, which had arisen, came within the arbitration clause at all), to apply to a master in chambers under sect. 5 of the Act of 1889 to appoint an arbitrator.²

The provisions of sub-sect. (1) are mandatory, and, before the Act of 1889, in a case of disputed compensation arising under sect. 308, in which the local authority had appointed their arbitrator under seal, but the other party had appointed his by parol and not by writing under his hand, it was held that the arbitration was an arbitration pursuant to the statute; that the irregularity was not cured by the appearance of the parties; and that neither the original submission, the appointment of an umpire by the parties, nor the umpire's award, could be made an order of court.³

If, within the fourteen days specified in sub-sect. (2), the appointment of an arbitrator is made with his assent, the document need not be delivered to him before that time has elapsed, though it must be delivered before he acts.⁴

The appointment of an umpire by two arbitrators under the similar provisions of the Public Health Act, 1848, was held valid, although it was made after the twenty-one days limited by the Act for the arbitrators to make their award had elapsed without the time having been enlarged, the appointment having been made within the time limited for making the umpirage.⁵

Arbitrators may select an umpire by lot from a number of persons whom they both agree to be fit to act, and they need not sign the appointment in each other's presence⁶; but they may not toss for the right of selection.⁷

The making of the declaration required by sub-sect. (10) of the present section is a condition precedent to entering on the reference; and where an umpire had omitted to make the declaration his award was set aside, with costs against the local authority, on the application of the other party to the arbitration.⁸

Although a party to an arbitration may attend before the arbitrator and take part of the proceedings, calling evidence, cross-examining witnesses, etc., yet if he does so under protest, he is not precluded from subsequently questioning the appointment of the arbitrator or his jurisdiction to determine any particular matter dealt with at the arbitration.⁹

The Court of Appeal refused to restrain arbitration proceedings under a contract, though performance had been rendered impossible because of the war.¹⁰

An arbitrator has power both to order an affidavit of documents to be made, and to order a party to answer interrogatories on oath.¹¹

Submission to Arbitration.

C was building a house for B and engaged A to lay certain patent flooring. In order to obtain the contract A wrote to C as follows: "We hereby guarantee these floors subject to fair wear and tear for a period of three years; also that if the floors are unsatisfactory to your client we will refund to you the money you have paid us for laying them, subject to the faults (if any) being due to no cause beyond our control. The decision of the architect, Mr. . . . to be binding on both sides." B found the flooring unsatisfactory and had it taken up. The architect, after attending at the premises and asking both parties what they had to say, but without holding a formal enquiry or making any written award, decided

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Arbitration
Act, 1889—
continued.

Appointment
of umpire.

Declaration.

Appearance
under protest.

Restraining
arbitration
proceedings.
Discovery.

Submission.

(2) *Eyre v. Leicester Cpn.*, L. R. 1892, 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. 733; 56 J. P. 228.

(3) *In re Gifford and Bury B.C.* (1888), L. R. 20 Q. B. D. 368; 57 L. J. Q. B. 181; 58 L. T. 522; 52 J. P. 119. But see *Martin v. Leicester Water Co.* (1858) 3 H. & N. 463; 27 L. J. Ex. 432, as to formalities under Lands Clauses Acts.

(4) *Douglas v. Belfast Cpn.*, 1909 Ir. K. B. 30.

(5) *Holdsworth v. Barsham* (1862), 2 B. & S. 480; 31 L. J. Q. B. 145; 8 Jur. (N.S.) 672; affirmed in Ex. Ch., *sub nom. Holdsworth v. Wilson* (1863), 4 B. & S. 1; 32 L. J. Q. B. 289; 8 L. T. 434; 10 Jur. (N.S.) 171.

(6) *Re Hopper* (1867), L. R. 2 Q. B. 367;

36 L. J. Q. B. 97; 15 L. T. 566; 8 B. & S. 100.

(7) *Pescod v. Pescod* (1888), 58 L. T. 76.

(8) *Ludlow Cpn. v. Prosser* (1906, K. B. D.), 70 J. P. 400; 4 L. G. R. 940; 22 T. L. R. 597.

(9) *Ringland v. Lowndes* (1864, Ex. Ch.), 17 C. B. (N.S.) 514; 33 L. J. C. P. 337; 10 Jur. (N.S.) 850; following *Davies v. Price* (1864, Ex. Ch.), 17 C. B. (N.S.) 526n.

(10) *Smith Coney & Barrett v. Becker Gray & Co.*, L. R. 1916, 2 Ch. 86; 84 L. J. Ch. 865; 112 L. T. 914. Further as to the effect of war conditions on contracts, see *ante*, p. 451 (15), (16).

(11) *Russell v. Timber Operators, Ltd.* (1923, K. B. D.), 58 L. J. Jo. 95.

Sect. 180, n.

Submission—
continued.

that the faults were not due to causes beyond A.'s control. C sued A for the return of the cost of the flooring. Bucknill, J., held that there was a "submission to arbitration," but that as the arbitration had not been properly conducted, and there was no signed award, and the flooring had been taken up without A having been given an opportunity of replacing it, judgment must be entered for A. But the Court of Appeal (Vaughan Williams, L.J., dissenting) held that there was no submission to arbitration and, therefore, no necessity for the formalities prescribed by the Act of 1889. Judgment was accordingly entered for C. *Per Fletcher Moulton, L.J.*: "A submission means a written agreement to submit present or future differences to arbitration, whether the arbitrator be named therein or not. Now it is impossible to call this guarantee a written agreement. It is only signed by one of the parties, and therefore, whatever be its other legal consequences, it cannot be a submission under the Arbitration Act, 1889, and that Act does not apply in any way to it."¹¹

Further, as to what amounts to a "submission" to arbitration, see the cases cited below.¹²

Withdrawal.

As to the withdrawal of a notice of dispute, see the case cited below.¹³

Ouster of
jurisdiction
of court.

A sewerage contract provided (1) that two named engineers "shall be sole judges as to how the works are to be carried out, and as to what materials are to be used," (2) that "no extra work shall be executed by the contractor without a written order from the resident engineer which must also be countersigned by the engineers or one of them"; (3) that "if the contractor executes any works which he considers extra, he shall submit an account of the same to the engineers within one month from the time of their execution, and no claim for extra works will be allowed which has not been so submitted"; and (4) that "in case of any dispute or difference arising at any time, whether during the progress of the works or after completion thereof, as to the quality and sufficiency of materials methods and workmanship, as to whether proper progress is being or has been made, as to the interpretation of the specifications and drawings, as to compliance with the requirements of persons and authorities not parties to the contract, as to the extension of time for completion, as to all questions of measurement and valuation, and as to all matters herein left to the decision of the engineers, the decision of the engineers shall be final and binding on all parties to the contract." £236,014 was paid for work and extras passed by the engineers. Payment of £17,191 was refused on the ground that the claim was not made till more than a month had elapsed since the execution of the work, and that most of it was for extras for which no order countersigned by the engineers had been obtained. An order staying an action for this amount was granted by the Master and affirmed by Horridge, J., but quashed by the Court of Appeal on the ground that this dispute was not covered by the above quoted clauses. *Per Fletcher Moulton, L.J.*: "In the whole course of my experience I never remember to have seen an arbitration clause so maimed as this one."¹⁴

The plaintiffs contracted to carry out certain sewerage works for the defendant local authority. A clause in the contract provided that the local authority's engineer was to settle disputes. On June 10th, 1910, the plaintiffs commenced an action for sums which they alleged were due to them under the contract, and for damages for wrongful termination. The defendants did not take out a summons to stay the action. On October 10th, 1910, the engineer made an award without having given the plaintiffs any notice of his intention to arbitrate. It was held (Vaughan Williams, L.J., dissenting) that the award, having been made pending the unstayed action, was invalid.¹⁵ *Per Fletcher Moulton, L.J.*,¹⁶ "If the court has refused to stay an action, or if the defendant has abstained from asking it to do so, the court has seisin of the dispute, and it is by its decision, and its decision alone, that the rights of the parties are settled. It follows, therefore, that in the latter case, the private tribunal, if it has ever come into existence, is *functus*

(11) 52 & 53 Vict. c. 49, s. 27. *Carmichael v. Stonewod Fireproof Flooring Co.* (1911), 3 Glen's Loc. Gov. Case Law 8. *Re Carus Wilson*, L. R. 18 Q. B. D. 7, distinguished.

(12) *Taylor v. Yeilding* (1912, Neville, J.), 56 Sol. J. & W. R. 253; *Hickman v. Kent Sheep Breeders' Assoc.*, L. R. 1915, 1 Ch. 881; 84 L. J. Ch. 688; 113 L. T. 159; *Anglo-Newfoundland Co. v. Regem*, L. R. 1920, 2 K. B. 214; 89 L. J. K. B. 570; 22 L. T.

731; 84 J. P. 121.

(13) *Stoker v. Morpeth Cpn.*, ante, p. 330.

(14) *Taylor v. Western Valleys Sewerage Bd.* (1911, C. A.), 75 J. P. 409; 2 Glen's Loc. Gov. Case Law 16.

(15) 52 & 53 Vict. c. 49, ss. 1, 4. *Doleman & Sons v. Ossett Cpn.* (C. A.), L. R. 1912, 3 K. B. 257; 81 L. J. K. B. 1092; 107 L. T. 581; 76 J. P. 457; 10 L. G. R. 915.

(16) L. R. 1912, 3 K. B. at p. 269.

officio unless the parties agree *de novo* that the dispute shall be tried by arbitration, as in the case where they agree that the action itself shall be referred. There cannot be two tribunals each with the jurisdiction to insist upon deciding the rights of the parties and to compel them to accept its decision. The learned judge has decided that, if during the pendency of the action an award is obtained from the arbitrator, it can be pleaded in bar to the action, or, in other words, the decision of the arbitrator, and not that of the court, decides the rights of the parties. If this were good law, there would be in every case a race between the public and private tribunals, and the decision of the speediest would prevail. This would be ousting the jurisdiction of the court in a most ignominious way."

Where disputes were referred to the clerk of a local board, and an application was made to stay an action, the court held that there must be arbitration but not by the clerk, and that the matter must stand over for the parties to agree upon a different arbitrator.¹⁷

Where there is a cross-allegation by the contractor that the delay was due to the architect, the latter cannot decide this point.¹⁸

Where arbitration proceedings prove abortive, the jurisdiction of the court is not ousted.¹⁹

Merely filling in the slip attached to a county court summons and thus giving notice of intention to defend is not such a "step in the proceedings" as will prevent the defendant subsequently applying for a stay on the ground that the action is barred by an arbitration clause.²⁰ But appearing and obtaining a non-suit because of such a clause is such a step,²¹ and so is appearing to a summons for directions and giving an undertaking to account,²² and asking for discovery.²³ The grant of the King's *fiat* to a petition of right is not such a step.²⁴

Where the engineer to one party to a contract has to settle a *bonâ fide* dispute involving a probable conflict of evidence between himself and the other party, the court is justified in refusing to stay the action by that other party. *Semble* (*per* Lord Parker), it is desirable, where the action embraces several items all within an arbitration clause and the arbitrator is disqualified from acting in respect of some items only, that the court should stay the action as to those items, and allow it to proceed as to others.²⁵

Rescission,²⁶ or repudiation,²⁷ of a contract does away with the necessity for arbitration.

A contract for the supply of machinery contained a clause referring disputes to arbitration subject to a proviso that no dispute should be deemed to have arisen "unless one party has given notice in writing to the other of the existence of such dispute or difference within seven days after it arises." The engineer of the company to whom the machinery was supplied wrote rejecting part. After more than seven days had elapsed the manufacturers wrote declining to accept the rejection. No further notices were given by either party as to the existence of a dispute. An action to recover the price of the machinery was defended on the ground that it was barred by the arbitration clause. It was contended by the manufacturers that the proviso as to notice had not been complied with, and that therefore the action lay. It was held that, as no dispute had arisen until the manufacturers wrote declining to accept the rejection of the machinery, and as

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Ouster of jurisdiction of court—
continued.

(17) *Pickthall v. Merthyr Tydfil Loc. Bd.* (1886), 2 T. L. R. 805. See also *Nuttall's Case*, *post*, p. 489.

(18) *Roberts v. Bury Improvement Comrs.*, *ante*, p. 460.

(19) *Cameron v. Cuddy*, L. R. 1914 A. C. 651; 83 L. J. P. C. 70; 110 L. T. 89.

(20) *Austin v. Bowley & Son* (1913, K. B. D.), 108 L. T. 921; W. N. 153; 5 Glen's Loc. Gov. Case Law 10.

(21) *Dickens v. Spence*, *Times*, 13th April, 1908.

(22) *Ochs v. Ochs Bros.*, L. R. 1909, 2 Ch. 121; 78 L. J. Ch. 555; 100 L. T. 800. See also *Cohen v. Arthur* (1912), 56 Sol. J. & W. R. 344.

(23) *Parker Gaines & Co. v. Turpin*, L. R. 1918, 1 K. B. 358; 87 L. J. K. B. 357; 118 L. T. 346.

(24) See the *Anglo-Newfoundland Case*, *ante*, p. 486 (12).

(25) *Bristol Cpn. v. John Aird & Co.* (1913), L. R. 1913 A. C. 241; 82 L. J. K. B. 684; 108 L. T. 434; 77 J. P. 209. See Note to this case in 4 Glen's Loc. Gov. Case Law 9.

(26) *Hegarty v. Cosmopolitan Insurance Cpn.*, 1913 S. C. (S.) 377; 50 Sc. L. R. 256; 4 Glen's Loc. Gov. Case Law 10. In this case the contract was held not rescinded. Cf. *Athlone* (No. 2) *R.D.C. v. Campbell & Son* (1912, H. L., I.), 47 Ir. L. T. 142, where it was held that bringing an action on a contract for money due for boring wells did not put an end to the contract.

(27) *Woodall v. Pearl Assurance Co. (C. A.)*, L. R. 1919, 1 K. B. 593; 88 L. J. K. B. 706; 120 L. T. 556; 83 J. P. 125. In this case it was held that there was no repudiation. In the *Athlone Case*, *supra*, it was held that there was an unjustified repudiation and that the contractor could sue.

Sect. 180, n. | their letter doing this itself amounted to notice of the existence of a dispute, the action was barred.²⁸

In addition to the cases cited elsewhere in this Note and dealing with ouster of the jurisdiction of courts of law by a submission to arbitration, see those cited below.²⁹

Time for Making Award.

**Time for
award of
umpire.**

It has been held that the umpire's award must be made within twenty-one days from the date of the reference to him, unless the time is extended. This time was reckoned from the date of the meeting when an umpire first attended and when the arbitrators finally disagreed, although the powers of the arbitrators did not expire until some days afterwards.³⁰

**Enlargement
by the court.**

The Arbitration Act, 1889,³¹ enacts that the court or a judge may enlarge the time for making an award, whether the time for making the award has expired or not; and the Court of Appeal have held that this enables the court or a judge to enlarge the time after the expiration of the time prescribed by sub-sect. (9) of the present section, on the ground that that sub-section deals only with the power of the arbitrator or umpire to enlarge it.³²

**Remission
of award.**

So also the court can remit a matter to an arbitrator under the Arbitration Act, 1889,³³ although he is *functus officio* ³⁴; and to an umpire, though the time for making the award has expired.³⁵

**Enlargement
by consent.**

Under the arbitration clauses of the Lands Clauses Consolidation (Scotland) Act, 1845,³⁶ it has been held that, after the expiration of the time for making the award, the time may be enlarged by the mutual consent of both parties, a fresh submission being thereby entered into, giving the arbitrator power further to enlarge the time.³⁷

Conduct of Arbitrators.

**Bias of
arbitrator.**

The arbitrators must be perfectly unbiassed in their judgment as to the matter to be referred to them; *i.e.* they must have no direct personal interest in the matter, however remote; for it is sufficient for the interference of a court of equity if any circumstances be shown calculated to produce a bias in the judgment of an architect. Therefore, where a guarantee has been given by an architect before the contract was made that the expense of a certain building should not exceed a certain sum, and this fact was unknown to the other party to the contract, the latter was not bound to submit to his determination.¹ It is not necessarily an objection on the ground of bias to an award of compensation for lands taken compulsorily that the umpire has during the course of the arbitration given evidence on behalf of one of the parties in another inquiry as to the value of other lands taken under the same parliamentary powers.²

Where, however, a particular person is named as arbitrator in the submission,

(28) *Howden & Co. v. Powell Duffryn Steam Coal Co.*, 1912 S. C. (S.) 920; 49 Sc. L. R. 605; 3 Glen's Loc. Gov. Case Law 10.

(29) *Freeman & Sons' Case*, ante, p. 447; *Blackwell & Co.'s Case*, ante, p. 450; *Lock v. Army Navy and General Assurance Assoc.* (1915, Astbury, J.), 31 T. L. R. 297 (important questions of law no ground for refusing stay); *Munro v. Bognor U.D.C.* (C. A.), L. R. 1915, 3 K. B. 167; 84 L. J. K. B. 1091; 113 L. T. 159; 79 J. P. 286; 13 L. G. R. 431 (stay refused because "fraud" alleged); *Jureidini v. National British Insurance Co.*, L. R. 1915 A. C. 499; 84 L. J. K. B. 640; 112 L. T. 531 (also where action went to "root of contract"); *Printing Machine Co. v. Linotype, Ltd.*, L. R. 1912, 1 Ch. 566; 81 L. J. Ch. 422; 106 L. T. 743 (and where "rectification" claimed); *Bonnin v. Neame*, L. R. 1910, 1 Ch. 732; 79 L. J. Ch. 338; 102 L. T. 708 (and because of "partisan attitude" of arbitrators); *Brodie v. Cardiff Cpn.*, ante, p. 446; *Adcock's Trustee v. Bridge R.D.C.*, ante, p. 447 (engineer's decision not necessarily "final").

(30) *In re Yeadon Loc. Bd. and Yeadon*

Water Co. (1889, C. A.), L. R. 41 Ch. D. 52; 58 L. J. Ch. 563; 60 L. T. 550.

(31) 52 & 53 Vict. c. 49, s. 9.

(32) *Knowles and Sons v. Bolton Cpn.*, L. R. 1900, 2 Q. B. 253; 69 L. J. Q. B. 481; 82 L. T. 229; following *Warburton v. Haslingden Loc. Bd.* (1879), 48 L. J. C. P. 451; and overruling *In re Mackenzie* (1886), L. R. 17 Q. B. D. 114; 55 L. J. Q. B. 309.

(33) 52 & 53 Vict. c. 49, s. 10.

(34) *In re Stringer and Riley Bros.* (K. B. D.), L. R. 1901, 1 Q. B. 105; 70 L. J. Q. B. 19; 49 W. R. 111.

(35) *Hurley v. Queenstown U.D.C.* (1913), 47 Ir. L. T. 117.

(36) 8 Vict. c. 19, s. 35.

(37) *Caledonian Ry. Co. v. Lockhart* (1860, H. L.), 3 Macq. Sc. 808; 6 Jur. (N.S.) 1311. See also *Palmer v. Metropolitan Ry. Co.* (1862), 31 L. J. Q. B. 259; 10 W. R. 714.

(1) *Kemp v. Rose* (1858), 1 Giff. 258; 4 Jur. (N.S.) 919.

(2) *In re Haigh and London and North Western and Great Western Ry. Cos.*, L. R. 1896, 1 Q. B. 649; 65 L. J. Q. B. 511; 74 L. T. 655.

and the circumstances, from which a possibility of bias may be inferred, are known to the parties, the person so named is not disqualified from acting as arbitrator.³

An architect, employed by a building owner to superintend the execution of a contract and measure up the work on its completion, was held to be an arbitrator placed in a judicial position between the building owner and the contractor by the contract, which provided that, in case of dispute between the building owner or the architect on his behalf and the contractor, the dispute was to be referred to a referee whose award was to be equivalent to a certificate of the architect. The architect could not therefore be liable to the building owner for alleged negligence (without fraud or collusion) in measuring up the work.⁴

Under an Improvement Act a corporation, being about to lay pipes and take water for the supply of their town from springs on certain land, proceeded to arbitration with respect to the amount of compensation to be paid to the landowner. The arbitrator, an engineer, having stated that, as he had been appointed on account of his special knowledge, he would take the evidence on matters of fact, but would give no attention to mere matters of opinion, the counsel for the landowner, who had intended to offer evidence of experts on matters of opinion, withdrew from the arbitration, and a motion was made to rescind the order of reference on account of the conduct of the arbitrator. The court said that, if the arbitration went on and an award was made, it would not be allowed to stand, a false principle having been adopted by the arbitrator which went to the essence of the case on one side; but they postponed their decision on the motion in order that the proposition which they had thrown out might be considered by the parties.⁵ And where an arbitrator had expressed an opinion on the matter which he would have to decide so strongly as to amount to a prejudgment, and had been engaged in an unseemly personal dispute, raising a vindictive feeling between him and one of the parties, the court refused an application under sect. 4 of the Act of 1889 to stay an action which had been brought by a contractor for the construction of sewers to recover the amount payable under his contract, which contained a provision for the reference of disputes to the defendants' surveyor.⁶ Rejection of material evidence,⁷ admission of inadmissible evidence,⁸ taking evidence in the presence of one of the parties only,⁹ and refusal to state a case on a question of law,¹⁰ may amount to misconduct. Ignorance of emergency legislation passed during the arbitration is not misconduct.¹¹ Improper dealings between an architect and his employer prevent the architect's decision against the contractor being final.¹²

Where it was a condition precedent to an arbitrator's jurisdiction that the dispute should have arisen during a tenancy, and he was not authorised by the submission to decide this point, it was held that he could not clothe himself with jurisdiction by deciding that the dispute had so arisen.¹³

An arbitrator has jurisdiction to determine the existence of a custom not inconsistent with the terms of a contract.¹⁴

He may not delegate his powers, but may consult experts,¹⁵ though he may not call in the solicitor to one of the parties to help him frame his award.¹⁶ His award only binds the parties to the reference.¹⁷

Where the refusal of a county court judge to set aside an arbitrator's award is wrong in law, an appeal lies to the King's Bench Division, and not to the Court of Appeal.¹⁸

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Negligence
of arbitrator.Misconduct
of arbitrator.

Jurisdiction.

Appeal.

(3) *Eckersley v. Mersey Docks and Harbour Bd.* (C. A.), L. R. 1894, 2 Q. B. 667; 71 L. T. 308; *Bright v. River Plate Construction Co.*, L. R. 1900, 2 Ch. 835; 70 L. J. Ch. 59; 82 L. T. 793; 64 J. P. 695.

(4) *Chambers v. Goldthorpe* (C. A.), L. R. 1901, 1 K. B. 624; 70 L. J. K. B. 482; 84 L. T. 444.

(5) *In re Lancaster Water and Improvement Bill*, *Times*, 28th November, 1879.

(6) *Nuttall v. Manchester Cpn.* (1892, Q. B. D.), 8 T. L. R. 513; as explained in *Eckersley v. Mersey Docks and Harbour Bd.*, *supra*.

(7) *Williams v. Wallis and Cox*, L. R. 1914, 2 K. B. 478; 83 L. J. K. B. 1296; 110 L. T. 999; 78 J. P. 337; 12 L. G. R. 726.

(8) *Walford Baker & Co. v. McFie & Sons*, *post*, Vol. II., p. 1540.

(9) *In re O'Connor and Whitlaw* (1919, C. A.), 88 L. J. K. B. 1242.

(10) See *In re Palmer & Co., etc.*, *post*,

p. 490 (26).

(11) *Osmond v. Woolley* (1917, K. B. D.), 87 L. J. K. B. 822; 118 L. T. 29; 34 T. L. R. 133.

(12) *Eaglesham v. McMaster*, L. R. 1920, 2 K. B. 169; 89 L. J. K. B. 805; 123 L. T. 198; 84 J. P. 146; see also *Hickman's Case*, *ante*, p. 448.

(13) *May v. Mills* (1914, Lord Coleridge, J.), 30 T. L. R. 287.

(14) *Produce Brokers Co. v. Olympia Oil and Cake Co.*, L. R. 1916, 1 A. C. 314; 85 L. J. K. B. 160; 114 L. T. 94.

(15) *Caledonian Ry. Co. v. Lockhart* (1860, H. L., S.), 3 Macq., at p. 823; 6 Jur. (N.S.) 1311; 8 W. R. 373.

(16) *Underwood v. Bedford Ry. Co.* (1861), 11 C. B. (N.S.) 442.

(17) *Tunbridge Wells Loc. Bd. v. Akroyd*, *post*, p. 491.

(18) *Williams v. Wallis and Cox*, *supra*.

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Though there is no right of appeal, if an award is ambiguous the High Court can declare the rights of the parties thereunder.¹⁹

Special Case.

Award in form of special case.

The award is to be final and binding on the parties; but under sect. 7 (b) of the Arbitration Act, 1889,²⁰ Sched. I. (h) of which also makes the award so final and binding,²¹ "the arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power to state an award as to the whole or part thereof in the form of a special case for the opinion of the court." Where an award is stated by an arbitrator in the form of a special case under the provisions above quoted, the arbitrator has exhausted his powers, and the opinion of the court is an effective determination of the rights of the parties, in which case the Court of Appeal has jurisdiction to entertain an appeal,²² and leave to appeal is not required.²³ But where a special case is stated under sect. 19 of the Act of 1889,²⁴ in the course of proceedings in a reference under that Act, the opinion of the court on the case is not a judicial decision, but merely consultative, and therefore no appeal lies to the Court of Appeal.²⁵

Interlocutory special case.

Order to state special case.

Sect. 19 of the Act of 1889 impliedly confers on a party to an arbitration the right at any stage of the proceedings to apply to the court for an order directing the arbitrator to state a special case on any question of law arising in the course of the reference, and the court will grant the application unless it is frivolous and made merely for the purpose of delay. A refusal by the arbitrator to state such a case or to delay his award until an application can be made to the court for an order directing a case to be stated is *prima facie* misconduct on his part within sect. 11 of the Act, and may justify the court in setting aside the award or remitting it to the arbitrator.²⁶

Per Collins, L.J.: "I think that the decisions have gone to this length, that if the court is satisfied that there is a real point of law, and that the arbitrator is not specially qualified to decide that point, the court will order the arbitrator to state a special case under sect. 19 of the Act."²⁷

But the arbitrator cannot be directed by the court or a judge to state a special case when no request has been made to him to do so before he has made his award,²⁸ or when his finding on a question of fact makes the question of law to be raised immaterial.²⁹

It is not a condition precedent to an application for an order directing an arbitrator to state a case that the arbitrator should have stated or indicated what his opinion or decision was or would be upon the law.³⁰

Order to state case fairly.

Where, in a case stated by a stipendiary magistrate, the appellant's point of law was put in the form of a finding of fact against him, a rule for a *mandamus* directing a fair statement of the case was granted.³¹

Time for setting down case.

A commercial cause was referred to arbitrators, who made an award in an alternative form—first, a special case under sect. 7 of the Arbitration Act, 1889,³² stating the questions of law to be raised; and secondly, a final and conclusive award. The award further set out that, if either party should desire to take the

(19) R. S. C. Order XXV., Rule 5. *Loft-house Colliery Co. v. Ogden*, L. R. 1913, 3 K. B. 120; 82 L. J. K. B. 910; 107 L. T. 827.

(20) 52 & 53 Vict. c. 49, s. 7 (b).

(21) *Ibid.*, Sched. I. (h).

(22) *In re Kirkleatham Loc. Bd. and Stockton and Middlesborough Water Bd.* (C. A.), L. R. 1893, 1 Q. B. 375; 62 L. J. Q. B. 180; 67 L. T. 811; 57 J. P. 421.

(23) S. C. J. (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1.

(24) 52 & 53 Vict. c. 49, s. 19.

(25) *In re Knight and Tabernacle Permanent Building Soc.* (C. A.), L. R. 1892, 2 Q. B. 613; 62 L. J. Q. B. 33; 67 L. T. 403; 57 J. P. 229; *Cogstad & Co. v. Newsum & Co.*, L. R. 1921, 2 A. C. 528; 90 L. J. K. B. 1293; 126 L. T. 65; 85 J. P. 253; 19 L. G. R. 581.

(26) *In re Palmer & Co. and Hosken & Co.* (C. A.), L. R. 1898, 1 Q. B. 131; 67 L. J. Q. B. 1; 77 L. T. 350; *In re Fischel & Co. and Mann & Cook*, L. R. 1919, 2 K. B. 431; 88 L. J. K. B. 1173; 121 L. T. 275. But see *Barnett's Case*, *infra* (29).

(27) *In re Nuttall and the Lynton and Barnstaple Ry. Co.* (1900), 82 L. T. 17. As to the proper time for making such an order, see *per Sargant, J.*, in *In re Woking U.D.C. (Basingstoke Canal) Act*, 1911, 77 J. P., at p. 324. Reversed in C. A. on other points, see L. R. 1914, 1 Ch. 300; 83 L. J. Ch. 201; 111 L. T. 49; 78 J. P. 81; 12 L. G. R. 214.

(28) *In re Montgomery Jones & Co. and Liebenthal & Co.* (1898, C. A.), 78 L. T. 406. *Johnston v. Glasgow Cpn.*, 1912 S. C. (S.) 300; 49 Sc. L. R. 269; 3 Glen's Loc. Gov. Case Law 159.

(29) *Buerger & Co. v. Barnett* (1919, K. B. D.), 89 L. J. K. B. 161; 120 L. T. 570; 35 T. L. R. 260.

(30) *In re Spillers & Baker, Ltd., and Leatham & Sons* (C. A.), L. R. 1897, 1 Q. B. 312; 66 L. J. Q. B. 326; 76 L. T. 35.

(31) *Rex (Rhymney Iron Co.) v. Griffiths* (1916, K. B. D.), 80 J. P. Jo. 331; Loc. Gov. Chron. 549. The case was subsequently stated as desired. MS.

(32) 52 & 53 Vict. c. 49, s. 7.

opinion of the court, they should give the other side notice in writing before the expiration of fourteen days from the date of the award, and should put down the award for argument as a special case before the expiration of two weeks from the service of such notice, then the award should be in the special case form; but that if no such notice was given by either side, then the award should be in the final form in favour of the buyers. It was held that the arbitrators had jurisdiction to state the award in this form, although there was no rule of court which limited the time within which the opinion of the court could be taken upon an award stated in the form of a special case.³³

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A local Act provided that, if any difference should arise between a main sewerage board and any constituent authority respecting certain matters, "the same shall by virtue of this Act stand referred for decision to the Local Government Board, whose decision thereon and respecting the costs of the reference shall be final and binding." It was held that this provision did not enable the Local Government Board to state a special case for the opinion of the court, as the action of the Local Government Board under it was not an arbitration, and there was nothing in the nature of a submission to arbitration or reference by consent of the parties where the submission was or might be made a rule or order of a superior court, within the meaning of the Common Law Procedure Act, 1854.³⁴ This case was distinguished in one in which the statute provided for the determination of differences "by the arbitration of the Local Government Board," who were in that case compelled to state a case for the opinion of the court.³⁵

Special case by Minister of Health.

Stamp Duty.

The appointment of an arbitrator, if under seal (but not otherwise ³⁶), must bear an impressed stamp of ten shillings,³⁷ and the uniform duty of ten shillings is imposed upon all awards by the Revenue Act, 1906.³⁸

Stamp duty.

Effect of Award.

When an arbitrator has executed an instrument as and for his award, he is *functus officio*, and cannot of his own authority remedy any mistake that he may have made in executing it.³⁹

Mistake in award.

The award is binding only upon those who were parties to the reference; and therefore the result of an arbitration between a local board and the owners of certain premises in a street, with respect to an apportionment of the expenses of making up the street under sect. 150, did not enable the board to alter the apportionment as against the owners of other premises in the street.⁴⁰

Effect of award on third parties.

An award will not be held bad because the possibility that matters not within the jurisdiction of the arbitrator may have been taken into consideration is not in terms excluded on the face of the award.⁴¹

Excess of jurisdiction.

Enforcement of Award.

By the Arbitration Act, 1889,¹ a submission "shall have the same effect in all respects as if it had been made an order of Court"; and "an award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect." But having regard to the exception in sect. 24 of that Act,² an application for an order to make the submission a rule of court may still be necessary. Such an application should be made *ex parte* in chambers.³

Rule of Court.

The ordinary mode of giving effect to an award is by moving for a rule calling on the delinquent party to show cause why he should not pay the sum awarded; and if that rule is made absolute, execution issues for the sum specified in such rule.⁴ But, under the present Act, it has been held that the award of an umpire

Action on award.

(33) *Olympia Oil and Cake Co. v. McAndrew Moreland & Co.* (C. A.), L. R. 1918, 2 K. B. 771; 88 L. J. K. B. 227; 119 L. T. 553; 83 J. P. 9; 16 L. G. R. 745.

(34) *Bexley Loc. Bd. v. West Kent Main Sewerage Bd.* (1882, Q. B. D.), L. R. 9 Q. B. D. 518; 51 L. J. Q. B. 456; 47 L. T. 192; 46 J. P. 519.

(35) *In re Kent C.C. and Sandgate Loc. Bd.* (Q. B. D.), L. R. 1895, 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. 725; 59 J. P. 456. But now see L. G. (Determination of Differences) Act, 1896, *post*, Vol. II., p. 1901.

(36) See *Routledge v. Thornton* (1812), 4 Taunt. 704; 13 R. R. 734.

(37) 54 & 55 Vict. c. 39, ss. 1, 2, Sched. I.

"Deed."

(38) 6 Edw. VII., c. 20, s. 9.

(39) *Mordue v. Palmer* (1870, C. A.), L. R. 6 Ch. 22; 40 L. J. Ch. 8; 23 L. T. 752.

(40) *Tunbridge Wells Loc. Bd. v. Akroyd* (1880, C. A.), L. R. 5 Ex. D. 199; 49 L. J. Ex. 403; 42 L. T. 640; 44 J. P. 504.

(41) *Falkingham v. Victorian Ry. Comrs.*, L. R. 1900 A. C. 452; 69 L. J. P. C. 89; 82 L. T. 506.

(1) 52 & 53 Vict. c. 49, ss. 1, 12.

(2) *Ante*, p. 484.

(3) *In re Davey and Railway Passenger Assurance Co.* (1880, C. A.), 49 L. J. Ch. 568; 43 L. T. 234.

(4) *Jones v. Williams* (1839), 11 A. & E. 175.

Sect. 180, n. giving compensation for damage to land in pursuance of sect. 308 cannot, although duly made a rule of court, be enforced by motion in the manner in which awards are ordinarily enforced.⁵ It was also said in the same case that the local authority had a right to compel the claimant to bring an action and prove his title. In such an action the award of compensation would not itself have been evidence that the sum awarded was in respect of matters which were the subject of compensation, but the plaintiff would have to show, when the question was raised, that the arbitrator had jurisdiction.⁶ And in the case of an award in respect of expenses incurred under sect. 150 the Court of Appeal held that the award could not be enforced as a judgment under the Act of 1889, or by action, but that the sum awarded must be enforced in the manner prescribed by the present Act.⁷

Statutory proceedings.

When a claim for compensation is made against a district council for damage caused by the exercise of the powers conferred upon them by the present Act, the arbitrator has jurisdiction to hold the arbitration and make his award as to the fact of damage and the amount of compensation under sects. 179, 180, and 308, although the council *bonâ fide* dispute their liability to make compensation at all under the Act. The proper course is for the council to raise the question of liability in their defence to proceedings for the enforcement of the award.⁸ The court had previously refused to set aside an award simply on a denial by the local authority of their liability in respect of the matter dealt with by the award.⁹

Limitation of time. An action to enforce an award succeeded, though the claim for compensation was made more than six years after the completion of the work.¹⁰

Costs.

Security. An arbitrator cannot order security for costs.¹¹

Discretion of arbitrator. The costs of an arbitration with respect to compensation under sect. 308 are in the discretion of the arbitrator or umpire under sub-sect. (13) of the present section; and the court remitted an award to an umpire with a direction to him to deal with such costs, and also with the costs of the application to the court.¹² An arbitrator has, however, no power under the present section to award costs to a wholly unsuccessful party.¹³

Where an arbitrator under the Light Railways Act, 1896, made his award without dealing with the costs, being under the impression that the provisions of the Lands Clauses Consolidation Act, 1845, were applicable, and that the costs would therefore follow the event, the Court of Appeal remitted the award to him to deal with the costs under the Arbitration Act, 1889.¹⁴

Where an award was set aside, and a second award increased the compensation payable, and the arbitrator directed each party to pay his own costs, the costs of the application to set aside were ordered to be paid by the promoters¹⁵; and where an award was partially set aside, the umpire was ordered to reconsider the question of costs.¹⁶

Taxation of costs. It was held under the Public Health Act, 1848,¹⁷ that an award for costs generally, without ascertaining the amount, was good; that the party entitled to receive the costs, after delivering his bill for the amount, might maintain an action to recover them; and that the party to pay might have the costs taxed; but that taxation was not a condition precedent to the other party's right to bring an action to recover them.¹⁸

After an arbitration a local board were ordered to pay the other party's costs. They were held liable to pay the costs as between party and party, but were not entitled to an order of course to tax them under sects. 37 and 38 of the Attorneys Act, 1843,¹⁹ as those sections refer only to costs between solicitor and client; and

(5) *In re Walker and Beckenham Loc. Bd.* (1884), 50 L. T. 207; 48 J. P. 240.

(6) *Rhodes v. Airedale Drainage Comrs.* (1876, C. A.), L. R. 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46.

(7) *In re Willesden Loc. Bd. and Wright* (C. A.), L. R. 1896, 2 Q. B. 412; 65 L. J. Q. B. 567; 75 L. T. 13; 60 J. P. 708.

(8) *Brierley Hill Loc. Bd. v. Pearsall* (1884), L. R. 9 A. C. 595; 54 L. J. Q. B. 25; 51 L. T. 577; 49 J. P. 84.

(9) *Burgess v. Northwich Loc. Bd.* (1877, C. P. D.), 37 L. T. 355; 26 W. R. 19.

(10) *Turner v. Midland Ry. Co.*, *post*, Vol. II., p. 1578. See also *Byfield's Case*, *ante*, p. 479 (44).

(11) *In re Unione Stearinerie Lanza and Wiener*, L. R. 1917, 2 K. B. 558; 86 L. J.

K. B. 1236; 117 L. T. 337.

(12) *Peake v. Finchley Loc. Bd.* (1887, Q. B. D.), 57 L. T. 882.

(13) *In re Barnett and Eccles Cpn.* (1901, K. B. D.), 65 J. P. 757. But see *Gray v. Lord Ashburton*, *post*, Vol. II., p. 1541.

(14) *In re Baxters and Midland Ry. Co.* (1906), 95 L. T. 20; 70 J. P. 445; 22 T. L. R. 616.

(15) *In re Surbiton U.D.C. and Upjohn*, *Times*, 19th January, 1899, p. 14, col. ii.

(16) See *Hurley v. Queenstown U.D.C.*, *ante*, p. 488.

(17) 11 & 12 Vict. c. 63, ss. 125, 126, 127.

(18) *Holdsworth v. Barsham; Holdsworth v. Wilson*, *ante*, p. 485.

(19) 6 & 7 Vict. c. 73, ss. 37, 38.

the order which the board had obtained was accordingly discharged.²⁰ On the submission to arbitration being made a rule of court, a special order to tax the costs is not necessary²¹; nor need an action on the award be brought previously to such taxation.²²

The Arbitration Act, 1889,²³ authorises arbitrators or umpires to tax or settle the amount of costs to be paid or any part thereof, and to award costs to be paid as between solicitor and client. The amount of the costs (including the amount awarded by the umpire, if any, to himself, and the amount awarded to the arbitrators²⁴) ought to be stated in the award itself, otherwise the costs will be taxed in the ordinary way.²⁵

The disallowance of part of the amounts of the arbitrators' and umpire's fees upon taxation of the costs of the arbitration as between the parties is not evidence against the arbitrators and umpire in an action brought by the party that paid the fees on taking up the award to recover back from them the part of the fees so disallowed, but the onus is on the plaintiff of showing that fees charged are unreasonable and extortionate.²⁶

A professional man who undertakes the duties of an arbitrator is entitled to remuneration, though there has been no stipulation for fees.²⁷ An arbitrator's fee may be challenged by action to set aside his award.²⁸

Where an arbitrator found for the plaintiff on most issues, but for the defendant on some, it was held that the taxing master should not have refused to apportion the arbitrator's fees.²⁹

In the cases cited below,³⁰ the court refused to adopt "Ryde's scale" as a basis for assessing the remuneration due to surveyors.

Where an arbitration as to the compensation to be paid by a district council to a landowner in respect of the construction of a sewer was held before the sewer was constructed, and was proceeded with at the instance of the claimant after the notice of intention to construct the sewer had been withdrawn by the council, so that the arbitrator had no jurisdiction to award any compensation, it was held by the Court of Appeal that his award was invalid as regards the costs also.³¹

The costs of a special case stated by an arbitrator under the Arbitration Act, 1889,³² as his award upon a claim for compensation under the Lands Clauses Consolidation Act, 1845, were costs over which the Court of Appeal had jurisdiction.³³

Sect. 181. All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a court of summary jurisdiction, but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

Note.

For a list of the questions referable to arbitration under the present Act, see the Note to sect. 179.

There does not appear to be anything to prevent the justices from ascertaining the amount under the present section, and then ordering payment upon the same summons, in cases in which they have jurisdiction to enforce payment.³⁴

(20) *In re Cowdell* (1883, Ch. D.), 52 L. J. Ch. 246; 31 W. R. 335.

(21) *In re Clark and Bath Cpn.* (Ch. D.), 1884 W. N. 127.

(22) *Chesterfield Cpn. v. Brampton Loc. Bd.* (1886, Q. B. D.), 50 J. P. 824.

(23) 52 & 53 Vict. c. 49, Sched. I. (i).

(24) *In re Gilbert and Wright* (1904, K. B. D.), 68 J. P. 143.

(25) *In re Prebble and Robinson* (Q. B. D.), L. R. 1892, 2 Q. B. 602; 67 L. T. 267; 57 J. P. 54.

(26) *Llandrindod Wells Water Co. v. Hawksley* (1904, C. A.), 68 J. P. 242; 20 T. L. R. 241.

(27) *Macintyre Bros. v. Smith*, 1913 S. C. (S.) 129.

(28) *Withington v. Wrexham Water Co.* (1884), 32 W. R. 1000.

(29) *National Gas Engine Co. v. Dolphins Barn Brick Co.* (1910, C. A., I.), 44 Ir. L. T.

248; 1 Glen's Loc. Gov. Case Law 86.

(30) *Debenham v. King's College, Cambridge* (1884), 1 C. & E. 438 (re compulsory purchase); *Faraday v. Tamworth Guardians*, ante, p. 455 (re financial adjustment between unions).

(31) *Davis v. Witney U.D.C.* (1899), 63 J. P. 279.

(32) 52 & 53 Vict. c. 49, s. 7 (b).

(33) *In re Gonty and Manchester Sheffield and Lincolnshire Ry. Co.* (C. A.), L. R. 1896, 2 Q. B. 439; 65 L. J. Q. B. 625; 75 L. T. 239; overruling *In re Holliday and Wakefield Cpn.* (1888, C. A.), L. R. 20 Q. B. D. 699; 57 L. J. Q. B. 620; 59 L. T. 248; 52 J. P. 644.

(34) *West v. Downman* (1880, C. A.), L. R. 14 Ch. D. 111; 42 L. T. 340; 29 W. R. 6; and see *Lea v. Abergavenny Improvement Comrs.* (1885, Q. B. D.), L. R. 16 Q. B. D. 18; 55 L. J. M. C. 25; 53 L. T. 728; 50 J. P. 165.

Sect. 180, n.
Taxation of costs—cont.

Arbitrator's fees.

Apportionment.

Surveyor's fees.

Costs of invalid arbitration.

Costs of special case.

Claims under twenty pounds may be referred to court of summary jurisdiction.
L.G., s. 64.

Jurisdiction of justices.

Sect. 182.

Authentication
and alteration
of byelaws.
P.H., s. 115.

Urban
bye-laws
under Public
Health Acts.

Urban bye-
laws under
other Acts.

Sect. 182. All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

BYE-LAWS.

Note.

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Subjects for Bye-laws.

The following are subjects in respect of which bye-laws may be made by an urban district council under the Public Health Acts and the Acts incorporated therewith:—1. Scavenging and cleansing.¹ 2. Nuisances.² 3. Public sanitary conveniences.³ 4. Common lodging-houses.⁴ 5. Lodgings.⁵ 6. Offensive trades.⁶ 7. Mortuaries.⁷ 8. Cemeteries.⁸ 9. New streets and buildings.⁹ 10. Public pleasure grounds.¹⁰ 11. Markets.¹¹ 12. Slaughter-houses.¹² 13. Hackney carriages.¹³ 14. Omnibuses.¹⁴ 15. Public bathing.¹⁵ 16. Horses, etc., for hire.¹⁶ 17. Pleasure boats.¹⁷ 18. Swings, shooting galleries, etc.¹⁸ 19. Hop-pickers and fruit-pickers.¹⁹ 20. Burial grounds.²⁰ 21. Telegraph wires.²¹ 22. Chimneys.²² 23. Seashore.²³ 24. Esplanades.²⁴ 25. Porters and messengers.²⁵ 26. Servants' registries.²⁶

Urban district councils may also make bye-laws under other Acts for the following purposes:—27. Baths and wash-houses.²⁷ 28. Tramways.²⁸ 29. Electric lighting.²⁹ 30. Tents, caravans, etc.³⁰ 31. Open spaces.³¹ 32. Commons.³² 33. Museums and gymnasiums.³³ 34. Seamen's lodging-houses.³⁴ 35. Public libraries.³⁵ 36. Factory fire escapes.³⁶ 37. Advertisements.³⁷

(1) See s. 44, *ante*, p. 124; and P. H. Am. Act, 1890, s. 26, *post*, Part I., Div. II.
(2) See s. 44, *ante*, p. 124.
(3) See P. H. Am. Act, 1890, s. 20, *post*, Part I., Div. II.; and P. H. Am. Act, 1907, s. 47, *post*, Part I., Div. III.
(4) See s. 80, *ante*, p. 165.
(5) See s. 90, *ante*, p. 171; H. W. C. Act, 1885, s. 8, *ante*, p. 171; and P. H. Am. Act, 1890, s. 62, *post*, Part I., Div. II.
(6) See s. 113, *ante*, p. 217; and P. H. Am. Act, 1907, s. 51, *post*, Part I., Div. III.
(7) See s. 141, *ante*, p. 264.
(8) *Ibid.*, and P. H. (Interments) Act, 1889, s. 2, *post*, Vol. II., p. 1635.
(9) See s. 157, *ante*, p. 373; P. H. Am. Act, 1890, s. 23, *post*, Part I., Div. II.; and P. H. Am. Act, 1907, s. 24, *post*, Part I., Div. III.
(10) See s. 164, *ante*, p. 422.
(11) See s. 167, *ante*, p. 435; and M. & F. Cl. Act, 1847, s. 42, *post*, Vol. II., p. 1430.
(12) See s. 169, *ante*, p. 436; and T. Imp. Cl. Act, 1847, s. 128, *post*, Vol. II., p. 1632.
(13) See s. 171, *ante*, p. 438; and T. P. Cl. Act, 1847, s. 68, *post*, Vol. II., p. 1670.
(14) See T. P. Cl. Act, 1889, s. 6, *post*, Vol. II., p. 1676.
(15) See s. 171, *ante*, p. 438; and T. P. Cl. Act, 1847, s. 69, *post*, Vol. II., p. 1671.
(16) See s. 172, *ante*, p. 439.
(17) *Ibid.*, and P. H. Am. Act, 1890, s. 44, *post*, Part I., Div. II.
(18) See P. H. Am. Act, 1890, s. 38, *post*,

Part I., Div. II.
(19) See s. 314 and Note, *post*.
(20) See Sched. V., Part III., *post*.
(21) See P. H. Am. Act, 1890, s. 13, *post*, Part I., Div. II.
(22) See P. H. Am. Act, 1907, s. 24, *post*, Part I., Div. III.
(23) *Ibid.*, s. 82.
(24) *Ibid.*, s. 83.
(25) *Ibid.*, s. 84 (2).
(26) *Ibid.*, s. 85 (2).
(27) See B. & W. Act, 1846, s. 34, and Sched. A., *post*, Vol. II., p. 1388; B. & W. Act, 1878, s. 6, *post*, Vol. II., p. 1395.
(28) See T. Act, 1870, s. 46, *post*, Vol. II., p. 1361.
(29) See E. L. Act, 1882, s. 6, *post*, Vol. II., p. 1279.
(30) See H. W. C. Act, 1885, s. 9, *ante*, p. 174.
(31) See O. S. Act, 1906, s. 15, *post*, Vol. II., p. 1483.
(32) See C. Act, 1899, ss. 1, 10, *post*, Vol. II., pp. 1471, 1473.
(33) See M. & G. Act, 1891, s. 7, *post*, Vol. II., p. 1398.
(34) See *ante*, p. 162.
(35) See P. L. Act, 1901, s. 3, *post*, Vol. II., p. 1416.
(36) See F. & W. Act, 1901, s. 15, *post*, Vol. II., p. 2147.
(37) See A. R. Act, 1907, s. 2, *post*, Vol. II., p. 2203.

With regard to other bye-laws which may be made by borough councils, see the Note to sect. 187. **Sect. 182, n.**

Rural district councils may make bye-laws in respect of the subjects numbered (1, except as regards the carriage of offensive matter through the streets), (4), (5), (7), (8), (9, only as regards structure of walls, floors, foundations, height of rooms, space about buildings, ventilation, drainage, water-closets, earth-closets, privies, ash-pits and cesspools, buildings unfit for habitation, and the alteration of buildings in a manner contravening the bye-laws ³⁸), (19), (29), (30), (31), (32), (34), and (35). If they desire to make bye-laws on any of the other subjects on which urban district councils may make bye-laws, they may apply to the Minister of Health for an order conferring the necessary powers upon them.³⁹

**Rural
bye-laws.**

Sets of model bye-laws and regulations were issued by the Local Government Board for the convenience of local authorities, with an invitation to adopt them subject to such modifications as local circumstances might require.

**Model
bye-laws.**

These model bye-laws are in seventeen series, namely:—I. Scavenging and cleansing (No. 1, *supra*). II. Nuisances (No. 2, *supra*). III. Common lodging-houses (No. 4, *supra*). IV. New streets and buildings (No. 9, *supra*). IVa. New buildings in rural districts (No. 9, *supra*). IVc. New streets and buildings (intermediate model for small towns, etc.) (No. 9, *supra*). V. Markets (No. 11, *supra*). VI. Slaughter-houses (No. 12, *supra*). VII. Hackney carriages (No. 13, *supra*). VIII. Public bathing (No. 15, *supra*). IX. Baths and wash-houses (No. 27, *supra*). X. Pleasure grounds (No. 10, *supra*). XI. Horses, etc., for hire (No. 16, *supra*). XII. Pleasure boats (No. 17, *supra*). XIII. Lodgings (No. 5, *supra*). XIV. Cemeteries (No. 8, *supra*). XV. Mortuaries (No. 7, *supra*). XVI. Offensive trades (No. 6, *supra*).

Several un-numbered model sets of bye-laws were also issued by the Board, relating to the following subjects:—Hop-pickers and fruit-pickers lodgings (No. 19, *supra*). Tents, vans, etc., used for habitation (No. 30, *supra*). Locomotives (for county councils, and councils of boroughs with populations of not less than 10,000 according to the census of 1881).⁴⁰ Public libraries (No. 35, *supra*).

The Board also issued model bye-laws with respect to the prevention of waste or misuse, etc., of water, for use in places where local Acts authorise the making of such bye-laws. And they issued model regulations with respect to the removal to hospital of persons on ships or boats who are suffering from infectious disease ⁴¹ (such regulations requiring the approval of the Minister of Health, but not being made and confirmed with the same formalities as bye-laws); with respect to dairies, cowsheds, and milkshops ⁴² (such regulations being subject to disallowance by the Minister); with respect to the letting of allotments and otherwise carrying out the Allotments Acts ⁴³ (such regulations requiring confirmation by the Minister in the same manner and under the same conditions as bye-laws under the present Act).

**Model
regulations.**

Making of Bye-laws.

The provisions of the present section and sects. 183 to 186 are applied to bye-laws made under the Public Health Acts Amendment Act, 1907,⁴⁴ except that the Secretary of State is the confirming authority for bye-laws made under Part VII. (police).

**Public Health
Act, 1907.**

The bye-laws must be duly confirmed by the Minister of Health under sect. 184 before they can come into force; and the practice is for the district council proposing to make bye-laws to submit a draft of the proposed bye-laws to the Minister for his preliminary approval before actually sealing them with the common seal, and formally applying for confirmation. The notices required by sect. 184 must also be given, and a copy of the proposed bye-laws must be deposited for inspection as mentioned in that section. Some further instructions as to procedure which were issued by the Local Government Board will be found in the Note to that section.

Confirmation

The Burgh Police (Scotland) Act, 1892,⁴⁵ enables local authorities to "make byelaws and issue notices and orders" regulating street traffic. Confirmation by the Sheriff and Secretary for Scotland is necessary in case of bye-laws, but there is no such provision with regard to notices or orders. A local authority issued an

(38) See P. H. Am. Act, 1890, s. 23 (3), *post*, Part I., Div. II.

(39) See s. 276, *post*, and P. H. Am. Act, 1890, s. 5, *post*, Part I., Div. II.

(40) See H. & L. Am. Act, 1878, ss. 26, 35, *post*, Vol. II., pp. 1791, 1795, and s. 6 of Act of 1898, *ibid.*, p. 2310.

(41) See s. 125, *ante*, p. 244.

(42) Dairies, etc., Order, 1885, *post*, Vol. II., Part V.

(43) See S. H. & A. Act, 1908, s. 28, *post*, Vol. II., p. 1509.

(44) See s. 9, *post*, Part I., Div. III.

(45) 55 & 56 Vict. c. 55, s. 385.

Sect. 182, n.

order prohibiting the turning of omnibuses in certain streets. It was held that, as this order was intended to be permanent, it could only be made by a bye-law duly confirmed. A conviction under it was accordingly quashed.⁴⁶ But notices required to be posted by local authorities under bye-laws do not need confirmation.⁴⁷

Delegation to parochial committee.

The Local Government Board stated that they did not consider the power of making and enforcing bye-laws such a power as can, in the case of a rural district council, be delegated by the council to a parochial committee.

Mandamus to make bye-laws.

An insurance company, granting assurances against loss, injury, or damage arising from accidents due to collisions of traffic, and having their registered office in a district in which a special Act imposed on the local authority the duty of making bye-laws under the Tramways Act, 1870, for prescribing the distances at which tramcars should follow one after the other, were held to have a sufficient interest in the matter to support an application for a *mandamus* to compel the local authority to perform such duty.⁴⁸

Repeal and alteration of bye-laws.

Bye-laws, which were made under the repealed Sanitary Acts and were in force at the time of the passing of the present Act, are only repealed by sect. 315 so far as they are inconsistent with this Act: in other respects they are continued in force by sect. 326. The repeal of an Act under which a bye-law is made abrogates the bye-law, unless the repealing Act preserves the bye-law by a saving clause or otherwise.⁴⁹

With regard to the effect of the repeal or alteration of bye-laws before the completion of work to which they relate, see the Note to sect. 157.^{49a}

A bye-law, under which a local authority had made an order for prohibiting the occupation of a building certified to be unfit for human habitation, was repealed by a new set of bye-laws containing a saving for things done under the repealed bye-laws. Lord Alverstone, C.J., expressed the opinion that the repeal did not have the effect of annulling the order.⁵⁰

Penalties.

Sect. 183 provides for the imposition by the bye-laws of penalties upon persons who offend against the provisions of such bye-laws.

Validity of Bye-laws.

Scope of bye-laws.

Local authorities have no general power to make bye-laws for carrying out the purposes of the present Act, but only such as carry out the special powers with respect to which they are expressly authorised by the Act to make bye-laws. *Per* Lord Campbell, C.J.: "We cannot by any strained construction apply the words of the statute to cases which they do not include."¹ And if a local authority in making a bye-law exceed their jurisdiction, the subsequent allowance of the bye-laws by the Local Government Board or Minister of Health will not preclude inquiry into the validity of the bye-law.²

Pollock, C.B., said, with regard to bye-laws which were *ultra vires*: "persons empowered to make bye-laws have no right to invest themselves with powers which the law will not sanction."³

Powers given to make bye-laws, though in general terms, are limited to objects contemplated by the statute; and a general power to make bye-laws for the good management of a navigation was held not to authorise a bye-law that the navigation should not be used on a Sunday.⁴

Though an Irish statute enacted that a printed copy of bye-laws purporting to be made and confirmed thereunder "shall be conclusive evidence of the *validity* of such bye-laws," it was held that a bye-law, as to the "time and mode" of vessels passing through a bridge, was invalid, because it imposed an unauthorised charge of £1 for the opening of the bridge at certain times.⁵

Avory, J.,⁶ held that a local tramway Act "only authorised byelaws to be made in relation to the physical construction and condition of carriages," and added:

(46) *Taylor v. Nicol*, 1912 S. C. (S.) 38; 49 Sc. L. R. 552; 3 Glen's Loc. Gov. Case Law 94.

(47) See *Slee's Case*, *post*, p. 500 (45).

(48) *Rex (Wiseman and National Motor, etc., Insurance Union) v. Manchester Cpn.*, L. R. 1911, 1 E. B. 560; 80 L. J. K. B. 263; 104 L. T. 54; 75 J. P. 73; 9 L. G. R. 129.

(49) *Watson v. Winch* (as to bicycles), *post*, Vol. II., p. 1949.

(49a) *Ante*, p. 373.

(50) *Sleight or Slight v. Portsmouth Cpn.* (1906), 95 L. T. 356; 70 J. P. 359; 4 L. G. R. 635.

(1) *Reg. v. Wood*, *infra*.

(2) *Reg. v. Wood* (1855), 5 E. & B. 49; s.c. *nom. Reg. v. Rose*, 24 L. J. M. C. 130; 1 Jur. (N.S.) 802; 19 J. P. 676.

(3) *Brown v. Holyhead Loc. Bd.*, *ante*, p. 383 (9). See also the *Garston Case*, *ante*, p. 393 (18).

(4) *Calder Navigation Co. v. Pilling* (1845), 14 M. & W. 76; 14 L. J. Ex. 223; 9 Jur. 377.

(5) *Waterford Cpn. v. Murphy*, 1920 Ir. K. B. 165.

(6) In *Monkman v. Stickney*, *post*, Vol. II., p. 1671 (3). For quotation, see L. R. 1913, 2 K. B. at pp. 381, 382.

"If the byelaw in question purports to regulate the passengers' use of them, I think it may fairly be said to be *ultra vires*." **Sect. 182, n.**

Words used in bye-laws have the same meaning as in the Act under which they are made.⁷ They are entitled to a "benevolent interpretation."^{7a} **Construction of bye-laws.**

With reference to a bye-law about scales on coal carts, and the construction of the word "sold," Ridley, J., said that it must be construed "in the sense which ordinary people would put upon the word."⁸

Channell, J., in a case relating to the number of persons to be in charge of road locomotives,⁹ said that the court must, "if possible, construe a bye-law as being consistent with the Act under which it is made, rather than put on it a strained construction which will make it bad." And in a case relating to stevedores, Lord Hewart, C.J., said that, if there are two ways in which a bye-law may be construed, one of which leads to a reasonable result, and the other to an unreasonable result, "one would take the reasonable meaning and not the other."^{9a}

A bye-law required that every house should have 500 square feet in front or rear free from any erection. A person was convicted of infringing the bye-law by erecting fences so as to diminish the open space provided in rear of certain houses. On the question whether the bye-law was valid or *ultra vires*, the court were clear that the local authority had power to make such a bye-law to carry out the object of the enactment, and affirmed the conviction.¹⁰ **Ultra or intra vires.**

Where a local board made a bye-law that, wherever any open space had been left adjoining to any building, such space should never afterwards be built upon without the consent of the board, and without leaving an open space belonging to such building of a specified size and dimensions, it was held that if the bye-law applied to open spaces belonging to old buildings it was bad, as exceeding the powers conferred by the Act.¹¹ And so was a bye-law that, "where an open space has been left belonging to a building, after sanction obtained for its erection, such space shall not afterwards be built on without approval"¹²; and, it being impossible to provide an open space at the rear of an addition to an existing building, it was held that a bye-law which required this was *ultra vires*.¹³ See also sect. 158 and the Note to that section with reference to the approval of the local authority. A bye-law as to access to privies was held *ultra vires*.^{13a}

In deciding that a bye-law was *ultra vires* because it did not subserve any provision or purpose of the Watermen's and Lightermen's Amendment Act, 1859, which authorised the Court of the Company of Watermen and Lightermen to make bye-laws for the government and regulation of lightermen and watermen and "for carrying into effect the purposes of this Act and the several powers and authorities hereby vested in the said company,"¹⁴ Wills, J., pointed out that it did not follow that, because large words were used in the preamble to the Act, everything to which they could be referred was within the scope of the Act, and that, though the preamble might be useful to a limited extent in helping to interpret doubtful passages or phrases in the Act, it did not extend its provisions or its scope beyond what the enacting parts of the Act contained.¹⁵

A bye-law may not be repugnant to the existing law. But one which provided that no person should frequent and use any street or other public place for the purpose of betting was held to be valid and not to be repugnant to the Metropolitan Streets Act, 1867,¹⁶ which prohibited three or more persons from assembling in a street for the purpose of betting. *Per Darling, J.*: "If the statutory enactment and the bye-law were both aiming at the same thing, and the former was coupled with a condition which the latter was without, I should then be of opinion that they were repugnant."¹⁷ **Bye-laws repugnant to existing law.**

(7) Interpretation Act, 1889, s. 31, *post*, Vol. II., p. 1969. And see *Blashill's Case*, *ante*, p. 389 (27).

(7a) *Roberts v. Williams* (*re* employment of children) (1922, K. B. D.), 127 L. T. 363; 86 J. P. 153; 20 L. G. R. 487; applying *Kruse v. Johnson*, *post*, p. 501.

(8) *Hunting v. Matthews*, *post*, Vol. II., p. 1969. For other rules of construction, see *post*, Vol. II., pp. 1962, 1963.

(9) *Williams v. Wood*, *post*, Vol. II., p. 2131 (3). For quotation, see 12 L. G. R. at p. 651.

(9a) *Owner v. King & Sons* (1922), 128 L. T. 307; 86 J. P. 218; 20 L. G. R. 791, at p. 796. See also *post*, p. 499 (30).

(10) *Adams v. Bromley Loc. Bd.* (1872),

37 J. P. 662.

(11) *Tucker v. Rees* (1861), 7 Jur. (N.S.) 629; 25 J. P. 789.

(12) *Quinby v. Liverpool Cpn.* (1888), 53 J. P. 213; see also *Clark v. Bloomfield*, *ante*, p. 402; *Reg. v. Sidebottom*, *ante*, p. 391 (46).

(13) *Repton School Governors v. Repton R.D.C.*, L. R. 1918, 2 K. B. 133. Further as to this case, see Note to P. H. Am. Act, 1907, s. 23, *post*, Part I., Div. III.

(13a) See *Waite's Case*, *ante*, p. 393 (18).

(14) 22 & 23 Vict. c. cxxxiii. s. 80.

(15) *Kennaird v. Cory & Son*, L. R. 1898, 2 Q. B. 578; 67 L. J. Q. B. 809; 78 L. T. 816; 62 J. P. 580.

(16) 30 & 31 Vict. c. 134, s. 23.

(17) *White v. Morley*, L. R. 1899, 2 Q. B.

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repugnant to
existing law
—continued.

This was approved by the Court of Appeal with reference to a similar bye-law providing that no person should frequent and use any street, on behalf of himself or of any other person, for the purpose of bookmaking or betting, or agreeing to bet or wager with any person, or paying, receiving, or settling bets.¹⁸

Per Martin, B.,¹⁹ a bye-law "must necessarily superadd something to the common law, otherwise it would be idle." And *per* Channell, J.: "A bye-law is not repugnant to the general law merely because it creates a new offence, and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful. It is repugnant if it expressly or by necessary implication professes to alter the general law of the land."²⁰

A bye-law may be repugnant to the general law, and yet valid if it comes within the provisions of a private Act altering the general law.²¹

A contention that a bye-law as to a communication cord from a locomotive to the rearmost wagon could not be complied with without employing three men, and that a statute,²² passed after the confirmation of the bye-law, rendered such employment unnecessary, and that therefore the bye-law had become repugnant to the general law, was overruled on the ground that the provision of the cord did not in fact render three men necessary.²³

A bye-law requiring persons to pass over level crossings "at a walking pace" was held to be repugnant to a statute requiring persons to pass over them "with all convenient speed."²⁴

Where a summons for breach of a local authority's bye-law was dismissed on the ground, among others,²⁵ that it conflicted with the Board of Trade bye-law on the same subject, and the latter bye-law was held to be "uncertain," Avory, J., said: "A bye-law which is certain cannot be repugnant to one which is uncertain."

Repugnant
to context.

The definitions in the model bye-laws issued by the Local Government Board are qualified by the words "unless such meanings be repugnant to or inconsistent with the context or subject matter in which such words or expressions occur." With reference to the application of these words to the definition of "domestic building" in certain bye-laws, in a case in which a local authority sought to enforce, with respect to a wooden stable with no living room, a bye-law requiring open spaces to be provided in the rear of domestic buildings, Lord Alverstone, C.J., said: "The justices would have been wrong if they had held this to be a domestic building, looking only at the group of bye-laws which includes No. 59 [the bye-law in question]; and if they were to have extended the meaning of 'domestic building' by referring to the interpretation clause they would have disregarded the words 'repugnant' and 'inconsistent.'"²⁶

Unreasonable
bye-laws.

The bye-laws must not only be in terms authorised by the statute, but must be reasonable. *Per* Lord Russell, C.J.²⁷: "If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.'"

A bye-law as to river shooting was held not to be "unequal in its operation between different classes" merely because it exempted riparian proprietors,²⁸ and a similar decision was arrived at in connection with a bye-law, as to the slaughtering of animals, which was alleged to be specially favourable to those of the Jewish faith.²⁹

34; 68 L. J. Q. B. 702; 80 L. T. 761; 63 J. P. 550. See also *Lord v. Barnsley*, *post*, Vol. II., p. 1646.

(18) *Thomas v. Sutters*, L. R. 1900, 1 Ch. 10; 69 L. J. Ch. 27; 81 L. T. 469.

(19) *In Reg. v. Saddler's Co.* (1861), 30 L. J. Q. B., at p. 197.

(20) *Gentel v. Rapps*, *post*, p. 501 (58). See also *Batchelor v. Sturley* (1905), 93 L. T. 539; 69 J. P. 398; 3 L. G. R. 1056.

(21) *Onions v. Clarke*, *post*, p. 503.

(22) 6 & 7 Geo. V. c. 12, s. 11.

(23) *Morgan v. Ennion* (1920, K. B. D.), 123 L. T. 399; 84 J. P. 205; 18 L. G. R. 401.

(24) *Rex v. Broad*, L. R. 1915 A. C. 1110; 87 L. J. P. C. 247; 31 T. L. R. 599.

(25) See *Monkman v. Stickney*, *ante*, p. 496 (6), and *post*, p. 504 (95). Cf. as to alleged conflict between bye-law as to heavy motor traffic over bridge and Local Government Board regulations, *Lloyd v. Ross*, L. R. 1913, 2 K. B. 332; 82 L. J. K. B. 578; 109 L. T. 71; 77 J. P. 341; 11 L. G. R. 503.

(26) *Collins v. Greenwood* (1910), 103 L. T. 36; 74 J. P. 327; 8 L. G. R. 702. Further as to this case, see *ante*, p. 390 (36).

(27) *In Kruse v. Johnson*, *post*, p. 501.

(28) See the *Great Yarmouth Case*, *post*, p. 506 (21).

(29) *Dodd v. Venner* (1922, K. B. D.), 127 L. T. 746; 86 J. P. 130; 20 L. G. R. 574. Further as to this case, see *ante*, p. 437 (13a).

Per Lord Alverstone, C.J.³⁰: "The court never, if it can avoid it, holds a bye-law to be unreasonable, but if it must construe it in a way which makes it unreasonable the court will so declare."

Per Pallet, C.B.³¹: "We all acknowledge the right of representative bodies, such as the appellants here, to be largely judges of what is necessary in their own localities, and we abide fully by the judgment of Lord Russell, C.J., in *Kruse v. Johnson*, which ever since it has been pronounced has been regarded as the leading authority on the subject. . . . But I am of opinion that this bye-law³² is unreasonable, even though we apply to it fully the principles laid down in the two cases I have mentioned. . . . In my opinion the vice of this bye-law is that while the danger to be provided against is of a temporary nature, which could as well be provided against by a structure of a temporary, and therefore comparatively cheap, character, the bye-law requires a structure of a permanent nature . . . with the result of throwing a large and unnecessary expense upon persons trying to carry on a business of this description."

Where a bye-law of a borough provided that no person should erect any booth, or place any caravan for the purpose of any show or public entertainment, in any public place within the borough, without the licence of the mayor, and that any such licence given at any other time than fair time should be revoked by the mayor, if three inhabitant householders, residing within one hundred yards of the place for which it was granted, should memorialise the mayor to revoke it, such bye-law was held to be unreasonable, and therefore bad³³; and so was another bye-law imposing a penalty on a person who should play upon a musical or noisy instrument in any street without a licence from the mayor.³⁴

A bye-law, prohibiting the exposure of food on stances not allotted by the market officer, and making his decision final, was held not to be unreasonable.³⁵

A bye-law under sect. 316 of the Burgh Police (Scotland) Act, 1892,³⁶ provided that "no person shall convey material of any description along the streets or courts in the burgh in carts or carriages so loaded that any part of the load fall on any street or court within the burgh." A contention that the bye-law was "unreasonable" because a cart might be properly loaded and yet part of the load might fall off, *e.g.*, through driving over a brick, was dismissed because in such a case the justices should hold that the bye-law had not been contravened, Macdonald, L.J.C., saying that the fact that the justices "might act unreasonably" was "no ground for holding that the bye-law itself is unreasonable."³⁷

Certain bye-laws relating to the structure of new buildings and deposit of plans, etc., were held not to be applicable to a temporary building erected for storing workmen's tools, or to a brick-kiln; but the court said that if the bye-laws had been applicable to such buildings they would have been unreasonable.³⁸

The Weights and Measures Act, 1889, gives power to make bye-laws with respect to the weighing of coal sold in small quantities; but a bye-law requiring the person in charge of the vehicle carrying the coal to re-weigh it on the request of the purchaser or any one on his behalf or of an inspector of weights or of any constable, was held to be unreasonable.³⁹

A bye-law requiring lighted lamps on vehicles was not bad because it made a person criminally liable for the neglect of a servant.⁴⁰

A bye-law made by a municipal corporation⁴¹ prohibiting a person from playing upon a musical instrument, or singing or making a noise in a street, or near a house, after having been required by any householder resident in the street or house, or by any police constable, to desist, "either on account of the illness of any inmate of such house or for any reasonable cause," was held to be reasonable and valid.⁴² And a conviction of a member of the Salvation Army for playing a concertina in the street to the annoyance of the inhabitants was upheld under a

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bye-laws—
continued.

(30) In *Collins v. Greenwood*, ante, p. 498 (26).

(31) In *Enniscorthy U.D.C. v. Field* (K. B. D., I.), 1904 Ir. K. B. 518.

(32) Requiring whirlicigs to be, *inter alia*, "separated from any street or road by a wall not less than 14 inches in thickness."

(33) *Ellwood v. Bullock* (1844), 6 Q. B. 383; 13 L. J. Q. B. 330; 8 Jur. 1044. And see *Quinby v. Liverpool Cpn.*, ante, p. 497.

(34) *Munro v. Watson* (1887), 57 L. T. 366; 51 J. P. 660.

(35) *McCall v. Mitchell*, post, Vol. II., p. 1438.

(36) 55 & 56 Vict. c. 55, s. 316.

(37) *Ronaldson v. Williamson*, 1911 S. C. (J.) 102.

(38) *Fielding v. Rhyl Improvement Comrs.* (1878), L. R. 3 C. P. D. 272; 38 L. T. 223; 26 W. R. 881.

(39) *Alty v. Farrell*, L. R. 1896. 1 Q. B. 636; 65 L. J. M. C. 115; 74 L. T. 492; 60 J. P. 373.

(40) *Heiton v. McSweeney*, 1905 Ir. K. B. 47.

(41) Under M. C. Act, 1882, s. 23, post, Vol. II., p. 1808.

(42) *Reg. v. Powell* (1884), 51 L. T. 92; 48 J. P. 740.

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bye-laws—
continued.

bye-law, which prohibited persons from blowing horns or using other noisy instruments to the annoyance of any of the inhabitants of the borough.⁴³ In this case some inhabitants had proved that they were annoyed, and it was held not to be necessary to prove that the playing of the concertina was a nuisance to all the inhabitants. And in a subsequent case it was held unnecessary to prove that more than one inhabitant had been annoyed.⁴⁴ A power to make bye-laws "for the preservation of order and good conduct among persons frequenting the parades, foreshores, etc.," of a seaside town was held to justify a bye-law prohibiting the delivery of speeches or holding of public assemblages, except upon such portions of the foreshore as the corporation should from time to time appoint and subject to such conditions and regulations as they might prescribe; and the Court accordingly upheld the conviction of a person who had held an admittedly orderly Salvation Army service on a spot on the foreshore on which such services had for many years been held, and which had at one time been appointed as a place for orderly public assemblages.⁴⁵ Under a bye-law prohibiting a person from using indecent language "to the annoyance of the inhabitants or passengers," evidence that indecent language used by a person inside his house was heard by two police constables outside was held sufficient to justify a conviction.⁴⁶ The court, however, quashed the conviction, under a bye-law of a county council prohibiting the use of indecent language in any street or public place to the annoyance of "passengers," of a publican who, in his own bar parlour, used language alleged to be indecent to two constables who had entered the premises in the course of their duties under the Children Act, 1908. Hamilton, J., was also of opinion that the language used, involving merely the vulgar use of the word "bloody," was not "indecent"; and *per* Lord Alverstone, C.J.: "It would be most extravagant to hold that a person who has gone into a public-house on business is a passenger in a street or public place."⁴⁷

On the other hand, a municipal bye-law prohibiting the playing of musical instruments in the streets,⁴⁸ and another made by a county council,⁴⁹ prohibiting persons from singing profane or obscene songs in any street or public place or on land adjacent thereto,⁵⁰ had been held to be bad for want of a limitation that the act must be done so as to cause annoyance; while, in a subsequent case, a similar bye-law which did contain the words "to the annoyance of any person in such street or public place" had been upheld.⁵¹ But a bye-law under the Municipal Corporations Act, 1882, imposing a penalty on any person who should frequent or use any street or other public place within the borough for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager, with any other person⁵²; others made by county councils⁴⁹ that "a person shall not together with any other person or persons assemble in any street or public place for the purpose of betting,"⁵³ and that "a person shall not frequent and use a street or other public place on behalf of himself or of any other person for the purpose of betting, etc.,"⁵⁴ even in a rural as distinguished from a town district⁵⁵; another requiring persons having charge of vehicles to carry lighted lamps from the end of the first hour after sunset to 2 a.m., except between the rising and setting of the moon⁵⁶; and another made by a tramway company under the Tramway Act, 1870,⁵⁷ that no person should swear or use offensive or obscene language whilst in or upon any carriage, although there was a local Act

(43) *Booth v. Howell* (1889), 53 J. P. 678.

(44) *Innes v. Newman*, L. R. 1894, 2 Q. B. 292; 63 L. J. M. C. 198; 70 L. T. 689; 58 J. P. 543.

(45) *Slee v. Meadows* (1911), 105 L. T. 127; 75 J. P. 246; 9 L. G. R. 517.

(46) *Brabham v. Wookey* (1901, K. B. D.), 18 T. L. R. 99.

(47) *Russon v. Dutton* (No. 2) (1911), 104 L. T. 601; 75 J. P. 209; 9 L. G. R. 558.

(48) *Johnson v. Croydon Cpn.* (1886), L. R. 16 Q. B. D. 708; 55 L. J. M. C. 117; 54 L. T. 295; 50 J. P. 487.

(49) Under L. G. Act, 1888, s. 16 (1) and M. C. Act, 1882, s. 23, *post*, Vol. II., pp. 1906, 1808.

(50) *Strickland v. Hayes*, L. R. 1896, 1 Q. B. 290; 65 L. J. M. C. 55; 74 L. T. 137; 60 J. P. 164.

(51) *Mantle v. Jordan*, L. R. 1897, 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. 552; 61 J. P. 119.

(52) *Burnett v. Berry*, L. R. 1896, 1 Q. B. 641; 65 L. J. M. C. 118; 74 L. T. 494; 60 J. P. 375; followed in *Jones v. Walters* (1898, Q. B. D.), 78 L. T. 167; 62 J. P. 374. See also *Kitson v. Ashe*, L. R. 1899, 1 Q. B. 425; 68 L. J. Q. B. 286; 80 L. T. 323; 63 J. P. 325.

(53) *Godwin v. Walker* (1896), 60 J. P. 308, n. See also *Bonnar v. Walker* (1896, Sc. Sess.), 60 J. P. 135; and *White v. Morley*, *ante*, p. 497.

(54) *Thomas v. Sutters*, *ante*, p. 498.

(55) *Hickey v. Hay* (1900, K. B. D.), 65 J. P. 232. See, now, Street Betting Act, 1906, *post*, Vol. II., p. 1656.

(56) *Walker v. Stretton* (1896), 44 W. R. 525; 60 J. P. 313, followed in *Williams v. Groves* (1896), 12 T. L. R. 450. See now, Lights on Vehicles Act, 1907, *post*, Vol. II., pp. 1651, 1950.

(57) See s. 46, *post*, Vol. II., p. 1361.

in force imposing a penalty on any person who should use any obscene language to the annoyance of the inhabitants or passengers⁵⁸; have been held not to be *ultra vires* or unreasonable, although they were not limited to cases in which persons should be actually annoyed by the practices prohibited. In a case already cited,⁵⁹ it was held that the complaint, under a bye-law as to dropping substances in streets from carts, need not allege that the substance which had fallen (manure) had caused annoyance, because this "necessarily constituted in itself a nuisance." The court also upheld a bye-law which prohibited persons from keeping shooting galleries, etc., "in a street or public place or land adjoining thereto, except at a lawful fair," although it was applicable to private land.⁶⁰

On a Divisional Court of seven judges being specially constituted to review the previous cases, it was held⁶¹ that the court ought to be slow to hold that a bye-law made by a public representative body was void for unreasonableness; and a bye-law made by a county council prohibiting a person from playing music or singing in a highway within fifty yards of any dwelling-house after being requested by any constable, or an inmate of such house, or his or her servant, to desist, was decided to be valid.⁶²

In holding that a bye-law, requiring all new streets over 100 feet long to be 36 feet wide, was not so unreasonable as to be bad, Parker, J., said that in making and insisting on the observance of bye-laws the local authority were entitled to consider what might happen in the future, and that it was of importance to such authorities that bye-laws of that sort should be observed, even if the present necessity for them were not at first sight obvious.⁶³

In a Scottish case⁶⁴ the House of Lords upheld a bye-law restricting the hours of business of ice-cream vendors (alleged to be unreasonable because it deprived such vendors of two of their busiest business hours) on the ground that the statute under which the bye-law was justified gave the local authority a specific discretion in the matter, and they had exercised such discretion in good faith.

A bye-law prohibiting persons from placing pleasure vans on a common without licence from the conservators and without payment of a prescribed fee was held to be justified by a provision for the making of bye-laws "for the prevention of and protection from nuisances, and for keeping order on the common."⁶⁵ And a bye-law made under sect. 164 prohibiting persons from selling any articles or letting chairs on the seashore or esplanades which belonged to the urban authority was held good, a distinction being drawn between such bye-laws and those made for the good government of a town.⁶⁶

A bye-law was, however, held to be unreasonable, and therefore invalid, which prohibited a person from selling, hawking, or offering for sale any article, except in pursuance of an agreement with the corporation, on the beach or foreshore, which had been leased to the improvement commissioners who preceded the corporation, on the ground that the bye-law withdrew altogether from those who might have to interpret it, and consider its validity, any question as to whether the agreement referred to in it was a reasonable agreement or not, and put it into the power of the corporation to make any agreement they liked.⁶⁷ And one prohibiting bathing from the seashore, "except at such places as may from time to time be appointed" by the local authority, was held to be *ultra vires*.⁶⁸

A local Act authorised the making of bye-laws for regulating the selling and hawking of articles on the seashore. A bye-law, purporting to be made under this enactment, prohibited such selling and hawking, except on such parts of the shore as should be indicated by notices. One of such notices required persons desirous of selling articles on the portion of the shore indicated by the notice to apply for weekly permits, for which the charge would be 2s. 6d., and stated that permits would only be given to persons resident in the district. This notice was

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(58) *Gentel or Geutel v. Rapps* (K. B. D.), L. R. 1902, 1 K. B. 160; 71 L. J. K. B. 105; 85 L. T. 683; 66 J. P. 117.

(59) *Ronaldson v. Williamson*, ante, p. 499.

(60) *Teale v. Harris* (1896), 60 J. P. 744.

(61) *Mathew, J., diss.*

(62) *Kruse v. Johnson* (Q. B. D., Special Court), L. R. 1898, 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 62 J. P. 469. Further as to this case, see ante, p. 498 (27).

(63) *A.G. v. Gibb*, L. R. 1909, 2 Ch. 265; 78 L. J. Ch. 521; 101 L. T. 16; 73 J. P. 343; 7 L. G. R. 754. See also *Roberts' Case*, ante,

p. 381 (45); and the *Hendon Case*, ante, p. 382 (47). But see *Rudland's Case*, ante, p. 381 (37).

(64) *Da Prato v. Partick Provost, &c.*, L. R. 1907 A. C. 153; 96 L. T. 398.

(65) *Nash v. Manning* (1894), 58 J. P. 718.

(66) *Gray v. Silvester*, ante, p. 427.

(67) *Parker v. Bournemouth Cpn.* (1902, K. B. D.), 86 L. T. 449; 66 J. P. 440. See also the Note to s. 164, ante, p. 422.

(68) *McGregor v. Disselduff* (1906), 44 Sc. L. R. 77.

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continued.

held to be incorporated with the bye-law, and to render it *ultra vires* and unreasonable.⁶⁹

In another case relating to hawking on the seashore,⁷⁰ Channell, J., said: "The cases go to the length of saying that, under the pretence of regulating, the corporation would have no power to prohibit. But I certainly think that regulating may include prohibiting in one part and allowing in another part. If you set apart for the thing that you may not prohibit a space that is wholly insufficient and obviously illusory, so that you are in substance prohibiting the thing being done at all, then that bye-law would be bad. But, to make it bad on that ground, you want some tribunal knowing the facts to find the facts, and to find that it is illusory"; and *semble*, per Lord Coleridge, J.: "Where a local authority have power to make bye-laws for preventing danger, obstruction, nuisance, and annoyance to persons using the seashore, they may make a bye-law prohibiting hawking altogether if such hawking amounts to such danger, obstruction, nuisance, or annoyance."

*Moorman's Case*⁶⁹ was distinguished in one in which a local Act authorised bye-laws for prohibiting or regulating the erection on the foreshore of any booth or other erection which in the opinion of the local authority might be a cause of danger, obstruction, nuisance, or annoyance. A bye-law prohibited the erection of any booths or other erections, subject to a proviso that the prohibition should not apply if permission were obtained from the local authority and any conditions imposed by them were complied with. The Divisional Court upheld a conviction under this bye-law of a person who brought a coffee stall on wheels upon the foreshore, although the reference to danger, etc., was omitted from the bye-law. The ground of the decision was that the Act made the local authority the judges of what constituted a danger, etc.; that it enabled them to say that *prima facie* any erection on the foreshore was an obstruction; and that the proviso allowed them to make an exception when they considered that there was ground for making it; and the general prohibition was, therefore, not unreasonable.⁷¹ The person convicted then brought an action against the council for an injunction to restrain the local authority from interfering with his selling from the coffee stall, or otherwise from the foreshore, as well as for a declaration that the stall was not an "erection," and that the bye-law and another bye-law (prohibiting the sale of goods on the foreshore, except in parts appointed by the local authority for the purpose) were *ultra vires*. But Neville, J., whose judgment was affirmed by the Court of Appeal, held that the stall was an "erection," and followed the decision of the Divisional Court as regards the validity of the bye-laws, and also⁷² declined to make a declaratory order.⁷³

A power to make bye-laws "for the government, good order, and regulation" of persons using towpaths was held not to justify "total prohibition [of riding or driving any horse on the towpath except when towing a vessel] when the conduct prohibited does not necessarily damage or injure the towpath or interfere with the free navigation of the river."⁷⁴

With reference to a bye-law prohibiting non-members of a club from playing golf on a common between certain hours,⁷⁵ Darling, J., said⁷⁶: "If the conservators had allowed the Prince's Golf Club altogether to exclude the public so frequently and for so long that the public had very few rights left, I should say that the rule was *ultra vires*; but seeing that it only gives a very small preference to the golf club, and that it is not a preference in excess of what is necessary to induce the golf club to maintain the ground, I have come to the conclusion that the regulation by which that preference is given is not *ultra vires*."

A bye-law is not necessarily unreasonable because it does not contain qualifications which commend themselves to the court. And a bye-law "for regulating

(69) *Moorman v. Tordoff* (1908, K. B. D.), 98 L. T. 416; 72 J. P. 142; 6 L. G. R. 360. See also the *Waterford Case*, ante, p. 496 (5), and the *Enniscorthy Case*, ante, p. 499.

(70) *Cassell v. Jones* (1913), 108 L. T. 806; 77 J. P. 197; 11 L. G. R. 488; 23 Cox C. C. 372.

(71) *Williams v. Weston-super-Mare U.D.C.* (No. 1) (1907, K. B. D.), 98 L. T. 537; 72 J. P. 54; 6 L. G. R. 92.

(72) Following the case of *Grand Junction Water Co. v. Hampton U.D.C.*, ante, p. 371 (23), and post, p. 650 (15).

(73) *Williams v. Weston-super-Mare U.D.C.* (No. 2) (1910), 103 L. T. 9; 74 J. P. 370; 8 L. G. R. 843. See also the *Sutton Harbour Case*, post, p. 506.

(74) Per Scrutton, J., in *Thames Conservators v. Kent*, L. R. 1918, 2 K. B., at p. 292; 85 L. J. K. B. 537; 120 L. T. 16; 83 J. P. 85; 17 L. G. R. 88.

(75) *Harris v. Harrison* (1914) 111 L. T. 534; 78 J. P. 398; 12 L. G. R. 1304. See also *Mitcham Common Conservators v. Cox*, ante, p. 427.

(76) 78 J. P., at p. 400, col. i.

the interment of the dead" was held by the Privy Council not to be *ultra vires* because it had the effect of prohibiting interment altogether in a particular cemetery, and destroyed the private property of the owners of burial places therein.⁷⁷ The Salmon Fishery Act, 1873,⁷⁸ authorising a board of conservators for a fishery district to make bye-laws to determine the description of nets to be used for taking salmon, was held to enable them to make a bye-law prohibiting the use of a certain kind of net altogether.⁷⁹

Nor is a bye-law unreasonable merely because it does not contain a provision under which it may be dispensed with by the local authority in exceptional cases. In such cases the justices may, under the Probation of Offenders Act, 1907,⁸⁰ treat the breach of the bye-law as a trifling offence and dismiss the information.⁸¹ And it was held (in a case arising under the Bread Act, 1822⁸²) that, although a defendant has been previously convicted, a magistrate may hold the second offence to be trifling.⁸³

Two bye-laws under the Public Health (London) Act, 1891,⁸⁴ one requiring the "landlords" (as distinguished from the "keepers") of houses let in lodgings to provide a certain amount of water-closet accommodation, and the other requiring them to cause the premises to be cleansed in the first week of April in every year, were held to be bad on the ground that they did not also require some notice to be given to the owners before the penalties imposed by the bye-laws were incurred, and were therefore unreasonable and bad.⁸⁵

In a subsequent case, however, a new bye-law having provided for notice being given to the landlord before proceedings were taken against him, Lord Alverstone, C.J., reconsidered the opinion which he was reported to have expressed against the objection that the landlord had no right of entry on the premises, and the Divisional Court unanimously held that the provision requiring the landlord to cause the house to be cleansed annually in the course of certain months was bad and unenforceable. It was also held that the provision in the Public Health (London) Act, 1891,⁸⁶ enabling the owner of premises, when prevented by the occupier from complying with "any provision of this Act," to obtain an order from a petty sessional court requiring the occupier to permit compliance with the Act, would not apply where the occupier prevented the owner from complying with the bye-law.⁸⁷

Where an Act authorised bye-laws preventing fishing which would be "prejudicial to the salmon fisheries," and a bye-law prohibited all nets within certain limits, and justices dismissed a summons on the ground that, as some nets were not prejudicial to such fisheries, this bye-law was *ultra vires*, the court refused to disturb their finding, as they were "the proper judges of the fact" whether nets were or were not so prejudicial.⁸⁸

An appeal against a conviction for breach of a bye-law, made for the protection of the crab industry and prohibiting trawling in a certain bay, was dismissed on the ground that it was *intra vires*, and the Divisional Court held that its reasonableness was a question of fact for the justices.⁸⁹ But where justices dismissed a summons for breach of a fishery bye-law on the ground that it was "unjust and unreasonable," and the case did not set out the finding of fact upon which they arrived at their conclusion, the case was sent back for a conviction.⁹⁰

The opinion of the Local Government Board having been sought as to the power of an urban district council to make bye-laws for the prevention of spitting in public streets and places, the Board stated that they were unaware of any provision under which such a council were empowered to deal with the matter; but they pointed out, however, that bye-laws for good rule and government may be made by the

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Spitting.

(77) *Slattery v. Naylor* (1888), L. R. 13 A. C. 446; 57 L. J. P. C. 73; 59 L. T. 41.

(78) 36 & 37 Vict. c. 71, s. 39.

(79) *Clayton v. Peirse* (K. B. D.), L. R. 1904, 1 K. B. 424; 73 L. J. K. B. 268; 90 L. T. 119; 68 J. P. 233.

(80) See s. 1, post, p. 657.

(81) *Salt v. Scott-Hall*, L. R. 1903, 2 K. B. 245; 72 L. J. K. B. 627; 88 L. T. 868; 67 J. P. 306; 1 L. G. R. 753; followed in *Pomeroy v. Malvern U.D.C.* (1903), 89 L. T. 555; 67 J. P. 375; 1 L. G. R. 825.

(82) 3 Geo. IV. c. vi.

(83) *Vinters or Venters v. Freedman* (1901, K. B. D.), 71 L. J. K. B. 48; 85 L. T. 628;

66 J. P. 135.

(84) 54 & 55 Vict. c. 76, ss. 39, 94.

(85) *Nokes v. Islington B.C.*; *Stiles v. Gallinski* (1904), L. R. 1904, 1 K. B. 610, 615; 73 L. J. K. B. 100, 485; 90 L. T. 22, 437; 68 J. P. 95, 183; 2 L. G. R. 334, 341.

(86) 54 & 55 Vict. c. 76, s. 116 (2).

(87) *Arlidge v. Islington B.C.*, L. R. 1909, 2 K. B. 127; 78 L. J. K. B. 553; 100 L. T. 903; 73 J. P. 301; 7 L. G. R. 649.

(88) *Wood v. Venton* (1890), 54 J. P. 662.

(89) *Friend v. Brehout* (1914), 111 L. T. 832; 79 J. P. 25; 30 T. L. R. 587.

(90) *Onions v. Clarke* (1917), 86 L. J. K. B. 740; 116 L. T. 335; 81 J. P. 77.

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town council of a borough under sect. 23 of the Municipal Corporations Act, 1882, and that county councils have the same powers under sect. 16 of the Local Government Act, 1888⁹¹; and they accordingly suggested that the district council should communicate with the county council as to whether the subject were one which might be dealt with under those powers.

Uncertain
bye-laws.

A bye-law may be void for uncertainty, as in the case of one made by a municipal corporation under the repealed Municipal Corporations Act, 1835,⁹² that "no person shall wilfully annoy passengers in the public streets."⁹³

Per Mathew, J., "From many decisions upon the subject it would seem clear that a bye-law to be valid must, among other conditions, have two properties—it must be certain, that is, it must contain adequate information as to the duties of those who are to obey, and it must be reasonable."⁹⁴

A bye-law referring to the "hindmost end" of a tramcar was held to be "vague and uncertain," *Avory, J.*,⁹⁵ saying: "It is impossible from reading that bye-law to say which end is to be the exit when the carriage is standing at a terminus." And one requiring persons passing over level crossings to comply with a direction on notice boards ("Stop. Look out for the engine.") was held to be invalid for "ambiguity."⁹⁶

It was contrary to the practice of the Local Government Board to approve bye-laws under which discretionary powers are left to an officer of the district council, since the existence of such powers would render the bye-laws uncertain in their operation; and the Board expressed their opinion that bye-laws enforceable by penalties should, as far as possible, prescribe definite requirements, and should not be dependent in any way upon the exercise of a discretionary power reserved to the local authority or their officers.

A bye-law was, however, considered valid which provided that persons laying out a new street should lay it of the width required by the local board, and, if it were a carriage-way, of the width of 20 feet; and no objection to the bye-law appears to have been raised because it left the width to the discretion of the board in each case.¹ And *Lord Alverstone, C.J.*, and *Channell, J.*, expressed the opinion that bye-laws relating to the construction of buildings ought to have something in the nature of a dispensing power, enabling the local authority or their officer to say that a particular building is of an exceptional character and that the hard and fast rules laid down by the bye-laws ought not to apply to it.² As to the "relaxation" of bye-laws, see the Note to sect. 157.³

In a subsequent case a bye-law, made by a county council, prohibiting persons from frequenting and using any street or public place for the purpose of selling and distributing papers or written or printed matter devoted wholly or mainly to giving information as to the probable result of races or other competitions, was held (*Phillimore, J.*, dissenting) to be invalid, *per Lord Alverstone, C.J.*, both on the ground of uncertainty as to what a man might or might not sell, and also on the ground that it extended to the sale of papers which did not conduce to the mischief it was desired to prevent, namely, street betting, and *per Kennedy, J.*, on the ground that it was unreasonable to prohibit the sale of a paper, independently of the question of nuisance, merely because it might lead to betting.⁴

Under a clause of the Weights and Measures Act, 1889,⁵ empowering certain authorities to make bye-laws, subject to the approval of the Board of Trade, "requiring, either generally or in specified classes of cases, a weighing instrument, of a form approved by the local authority, to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser," a county council made,

(91) *Post*, Vol. II., pp. 1808, 1906.

(92) 5 & 6 Wm. IV. c. 76, s. 90.

(93) *Nash v. Finlay* (1901, K. B. D.), 85 L. T. 682; 66 J. P. 183.

(94) In *Kruse v. Johnson*, ante, p. 501.

(95) In *Monkman v. Stickney*, ante, p. 498 (25). Cf. *Dudderidge v. Rawlins*, post, Vol. II., p. 1645, where an order under a local Act as to street traffic was held not to be "uncertain"; and *Maldens and Coombe U.D.C. v. Stapeley* (1913, Kingston P. S.), 77 J. P. Jo. 388, where a bye-law as to mortar was held not to be "uncertain" though it did not distinguish between slaked and unslaked lime. For another mortar case, see *Shaw v. Solihull Guardians*, ante, p. 396.

(96) *Rex v. Broad*, ante, n. 498.

(1) *Reg. v. Goole Loc. Bd.*, L. R. 1891, 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. 595; 55 J. P. 535. As to leaving details to officers, see *McCall's Case*, ante, p. 499.

(2) In *Salt v. Scott-Hall* (K. B. D.), L. R. 1903, 2 K. B. 245; 72 L. J. K. B. 627; 88 L. T. 863; 67 J. P. 306; 1 L. G. R. 753; and *Pomeroy v. Malvern U.D.C.*, ante, p. 503 (81), and post, p. 508 (13). See also *Leyton U.D.C. v. Chew*, post, p. 505.

(3) *Ante*, p. 375.

(4) *Scott v. Pilliner* (K. B. D.), L. R. 1904, 2 K. B. 855; 73 L. J. K. B. 998; 91 L. T. 658; 68 J. P. 518; 2 L. G. R. 1018.

(5) 52 & 53 Vict. c. 21, s. 28.

and the Board of Trade approved, a bye-law that "the person in charge of every vehicle carrying coal for sale or delivery to a purchaser shall carry therewith a weighing instrument of a form approved by the county council." The council subsequently passed and published, at the same time that the bye-law was published, a resolution that "until special forms may be adopted, such forms of weighing instruments as are now in use for the sale of coal, which balance and are in equilibrium when the weights in the two pans are equal, be and are hereby approved." The justices refused, subject to a special case, to convict a person who used a weighing machine which was not in accordance with the resolution and had not otherwise been approved by the council, on the ground that as the resolution could not be read as part of the bye-law, which did not itself definitely state the description of machine to be carried, the bye-law was invalid for want of certainty. The court, however, held that the bye-law was not too vague, but was valid.⁶

Again, a bye-law required a person constructing a new street not less than 40 feet wide for use as a carriage road to construct on each side a proper channel not less than 12 inches wide and 6 inches deep, either of granite cubes laid on a bed of cement concrete at least 6 inches in thickness "or otherwise in a suitable manner and with suitable materials." Objection was taken that the bye-law was inconsistent with sect. 150 of the present Act, that it did away with the right of appeal to justices under sect. 7 of the Private Street Works Act, 1892,⁷ and that it was bad on the ground of uncertainty. The Divisional Court, however, held that there was no inconsistency between the bye-law and the general enactments referred to, which applied to a different state of circumstances, and that the bye-law, having fixed a certain standard for the work, was not bad for uncertainty merely because it gave some latitude as to what might be lawful short of that standard.⁸

On the other hand an Act authorising a local authority to make bye-laws prescribing the distance at which tramcars should be allowed to follow one after the other, was held not to justify a bye-law providing that a tramcar should follow a preceding tramcar at such distance as might be regulated by the police.⁹

A bye-law must not be uncertain as regards the penalty imposed by it; and one which left the penalty to the arbitrary assessment of the makers of the bye-law according to circumstances would be invalid, even though the maximum penalty were limited.¹⁰ The bye-law may, however, fix a certain penalty, subject to a power to mitigate it.¹¹

A bye-law, whether by charter or statute, cannot be made in forfeiture of a right unless expressly authorised.¹² Thus, a bye-law for regulating a market must not be so restrictive as to prevent a frequenter of it from resorting to it without leave.¹³ And a bye-law making it unlawful to carry on a lawful trade in a lawful manner is not authorised by the general power to make bye-laws for the good government of a municipality, if no question of apprehended nuisance is raised.¹⁴ But a bye-law inconsistent with a private right of way was upheld.^{14a}

A local Act prohibited the sale of goods on the public highways of a town under a penalty, but provided that no person should be liable to such penalty for selling goods in such parts of the town as had been theretofore used for that purpose at the time of the usual markets. A local board was established for the town by an Act which repealed portions of the local Act, but left its provisions unrepealed as regards the above matters, and incorporated the powers of regulating the market given by the Markets and Fairs Clauses Act, 1847. The local board, acting under these provisions, made a bye-law that no meat should be sold in a particular part of the market held in the town; and it was held that the bye-law was valid and a reasonable regulation of the market, and that for a breach of

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Bye-laws in
forfeiture of
rights.

(6) *Martin v. Clark* (1893, Q. B. D.), 62 L. J. M. C. 178.

(7) *Ante*, p. 341.

(8) *Leyton U.D.C. v. Chew*, L. R. 1907, 2 K. B. 283; 76 L. J. K. B. 781; 96 L. T. 727; 71 J. P. 355; 5 L. G. R. 837.

(9) *Rex v. Manchester Cpn.*, *ante*, p. 496 (48).

(10) 2 Kyd on Corporations, p. 156.

(11) *Piper v. Chappell* (1845), 14 M. & W. 624.

(12) *Kirk v. Nowill* (1786, Lord Mansfield, C.J.), 1 T. R. 118.

(13) *Wortley v. Nottingham Loc. Bd.* (1869), 21 L. T. 582; 33 J. P. 806. See also *Byrne v. Brown*, *ante*, p. 440 (9).

(14) *Toronto Cpn. v. Virgo*, L. R. 1896 A. C. 88; 65 L. J. P. C. 4; 73 L. T. 449; applied in the *Thames Conservancy Case*, *ante*, p. 502.

(14a) See *A.G. v. Hodgson*, *ante*, p. 427 (3a).

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it a penalty might be enforced, notwithstanding the provision of exemption incorporated from the local Act.¹⁵

Where a bye-law of a market imposed a penalty on all persons who left carts in the market-place for a longer time than was necessary for loading or unloading, and an innkeeper, by direction of a carter who put up at his inn, left a cart in the market-place for an hour, carts having for many years been so left while the owners attended market, it was held that the innkeeper was liable to be convicted for putting the cart in the market-place.¹⁶

A harbour company found great difficulty in disposing of the offal of dog fish, and accordingly, under their statutory power to regulate a fish market, made a bye-law prohibiting the gutting of dog fish in the market altogether. It was held by the Court of Appeal, overruling a decision of the Divisional Court,¹⁷ and reversing Russell, J., that, though the bye-law would have the effect of altering or restricting the dog fish industry, it would not put an end to it, and was in the circumstances reasonable and valid.¹⁸

Bye-laws partly valid.

A bye-law may be good in part and bad in part, and so may be enforceable as regards the good part.¹⁹ But this is only where the two parts are entire and distinct from each other.²⁰ And a bye-law is not necessarily wholly *ultra vires* because it contains a provision unauthorised by the Act under which it is made. Thus, where a local Act authorised a bye-law as to the use of firearms and a bye-law under it dealt with airguns as well as firearms, the court refused to quash a conviction for unlawfully using a firearm.²¹ But Avory, J., intimated that, if the statute had only authorised the prohibition of shooting over the river, the bye-law, which prohibited shooting in any direction, would have been *ultra vires*. In the same case it was held that the bye-law was not *ultra vires* as being "manifestly partial and unequal in its operation between different classes"²² merely because it exempted from its operation riparian proprietors. Darling, J., however, offered the following advice to framers of bye-laws: "They should put in one bye-law all the parts that they are absolutely certain of as being good law, but if there are any other parts as to which they are uncertain they should put each one of those in a separate bye-law by itself, and then, the bye-laws having to be construed separately, they would not find that the bad parts acted as a poison to destroy the life of the rest."

Mode of questioning validity of bye-law.

The validity of a bye-law may be tested and tried in proceedings brought to recover the penalty.²³

The invalidity of a bye-law under which a person has been convicted is not an "error of law apparent on the record."²⁴ The question of the validity of a bye-law cannot therefore be taken to the Court of Appeal in criminal proceedings.²⁵

Effect of Bye-laws.

Statutory force.

A bye-law has the same force within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large.²⁶

Waiver.

As to the waiver and relaxation of bye-laws,²⁷ and the power to insert dispensing clauses,²⁸ see the pages referred to below.

Power to impose penalties on breach of bye-laws. P.H., s. 115.

Sect. 183. Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such

(15) *Savage v. Brook or Savage*, (1863), 15 C. B. (N.S.) 264; 33 L. J. M. C. 42; 10 Jur. (N.S.) 587; 9 L. T. 334.

(16) *De Caux v. Powley* (1864), 28 J. P. 806.

(17) *Sutton Harbour Improvement Co. v. Foster* (No. 1) (1920), 89 L. J. K. B. 829; 84 J. P. 57; 18 L. G. R. 232.

(18) *Sutton Harbour Improvement Co. v. Foster* (No. 2) (1920), 89 L. J. Ch. 540; 123 L. T. 549; 84 J. P. 217; 18 L. G. R. 557.

(19) *Reg. v. Lundie* (1862), 31 L. J. M. C. 157; 5 L. T. 830; 10 W. R. 267.

(20) *Rex v. Faversham Hundred* (1799), 8 T. R. 352.

(21) *Smith v. Great Yarmouth Haven*

Comrs. (1919, K. B. D.), 88 L. J. K. B. 1190; 83 J. P. 193; 17 L. G. R. 477.

(22) *Within Kruse v. Johnson*, ante, n. 501.

(23) See (as to penalties recoverable by action or by distress) *Moir v. Munday* (1755), Sayer, 181. 185.

(24) *Within* 36 & 37 Vict. c. 66, s. 47.

(25) *Burnett v. Berry* (1896, C. A.), 60 J. P. 550.

(26) *Hopkins v. Swansea Cpn.* (1839), 4 M. & W. 640, per Lord Abinger, C.B., affirmed (in Ex. Ch., 1841) 8 M. & W. 901.

(27) *Ante*, pp. 375, 376.

(28) *Ante*, n. 504.

byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty. **Sect. 183.**

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

Note.

A penalty in a bye-law may not be higher than the penalty imposed by a statute for the same offence. *Per Rolfe, B.* :¹ "It would be strange, when the Legislature has said that Sunday travelling by water shall be punished by a penalty of 5s., that a canal company should be able to make offenders pay £5 into their pockets for the same offence."

The penalties are only recoverable before a court of summary jurisdiction in the manner and within the time prescribed by the Summary Jurisdiction Acts; and proceedings for recovering them can only be taken by a district council, or by a person who is "aggrieved" by the infringement of the bye-law, unless the prosecutor has obtained the consent of the Attorney-General to the prosecution.²

Compliance with a bye-law can, however, be enforced by injunction in an action by the Attorney-General, at the relation of the local authority, with the local authority as co-plaintiffs; but not in an action by the local authority in their own name alone.³

With regard to the application of the penalties, see sect. 254.

In a prosecution for infringing a bye-law, made by the Board of Trade with respect to a steam tramway, that "no smoke or steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public," the information only charged the driver of an engine with having permitted smoke to escape "contrary to the bye-laws of the Board of Trade," without stating whether the smoke gave ground of complaint to the passengers or to the public. A conviction on this information was quashed on the ground that the bye-law created two offences, and the information did not specify which of them was the subject of the charge.⁴ So also a conviction was quashed where it was uncertain on the face of it whether it was for "laying out" or for "constructing" a new street in contravention of the bye-laws of a local authority.⁵ The justices may, however, put the council to their election of the offence in respect of which they will proceed.⁶

An offence such as that of encroaching on a highway⁷ is not a continuing offence so as to allow a penalty to be recovered summarily more than six months after the encroachment was made.⁸ A person having been previously convicted under a bye-law (made in pursuance of the Local Government Act, 1858, which did not contain the provision as to continuing offences now contained in sect. 158 of the present Act) for having built a party-wall not of the prescribed thickness, was, after parting with the house, again convicted in respect of the same wall, and adjudged to pay a penalty of 5s. a day. The court quashed the conviction, reading the words "continuing offence"⁹ as meaning an offence which was from its nature susceptible of continuance—such as improper drainage, etc.—and not applying to the case of a party-wall when once finished.¹⁰

With reference to the decision in *Marshall's Case*, *supra*, Hawkins, J., is reported to have said in a later case¹¹ that if sect. 158 had been passed before

Amount of penalty.

Recovery of penalties.

Uncertainty of information.

Continuing penalty.

(1) In *Calder Nav. Co. v. Pilling*, *ante*, p. 496 (4). For quotation, see 14 L. J. Ex., at p. 225.

(2) See ss. 251-253 of the present Act, *post*, and P. H. Am. Act, 1907, s. 6, *post*, Part I., Div. III., and the Notes to those sections.

(3) *A.G. v. Ashbourne Recreation Grounds Co.*, and *Devonport Cpn. v. Tozer & Son*, *ante*, p. 209.

(4) *Cotterill v. Lempriere* (1890, C. A.), L. R. 24 Q. B. D. 634; 59 L. J. M. C. 133; 62 L. T. 695; 54 J. P. 583. See also *Reg. v. Fry and Stoker* (1898, Q. B. D.), 14 T. L. R. 445; and *Parke's Case*, *post*, p. 656 (47).

(5) *Rex (Bowler) v. Slater* (1903, K. B. D.), 67 J. P. 299.

(6) *Rogers v. Richards*, L. R. 1892, 1 Q. B. 555; 66 L. T. 261; 56 J. P. 281.

(7) 27 & 28 Vict. c. 101, s. 51.

(8) *Ranking v. Forbes* (1869), 34 J. P. 486; *Coggins v. Bennett* (1877), L. R. 2 C. P. D. 568.

(9) In 11 & 12 Vict. c. 63, s. 115. Further as to when an offence is a "continuing" one, see the Note to s. 251, *post*, p. 652.

(10) *Marshall v. Smith* (1873), L. R. 8 C. P. 416; 42 L. J. M. C. 108; 28 L. T. 538; 37 J. P. 471, distinguished in *Rumball v. Schmidt*, *ante*, p. 371 (25). See also *Hull v. London C. C.*, L. R. 1901, 1 Q. B. 580; 84 L. T. 160; 65 J. P. 309; distinguished in *Chepstow Electric Light Co. v. Chepstow Gas Co.*, see Note to P. H. Act, 1890, s. 22, *post*, Part I., Div. II.

(11) *Reay v. Gateshead Cpn.* (1886, Q. B. D.), 55 L. T. at p. 102; 50 J. P. 805, at p. 823, col. ii, mid; 34 W. R. 682.

Sect. 183, n.
Continuing
penalty—
continued.

the decision the penalties would have been properly imposed; but this statement was not strictly accurate, as Channell, J., subsequently pointed out,¹² when deciding that the person liable must be the person who actually continues the offence, and that therefore a builder, although duly convicted for the original infringement of a building bye-law, was not responsible for the continuance of the offence after he ceased to be in possession and had no right to go on the premises. And, in a subsequent case,¹³ it was laid down that in order that a person, who has caused a new building to be erected in contravention of a bye-law, may be convicted of a continuing offence, he must be shown to have such control over the building at the time of the alleged continuance of the offence as renders him responsible for the continuance of its existence in that state.

The court upheld a conviction, for neglecting to give notice and deposit plans of a new building, imposing a penalty of forty shillings and twenty shillings for each day that the work should continue or remain contrary to the provisions of bye-laws made under the Local Government Act, 1858.¹⁴ An objection that there were two distinct penalties, while only one offence was charged, was overruled in this case; but the objection that the penalties were prospective was not raised. The latter objection was, however, successfully taken in a subsequent case.¹⁵

An offence against a bye-law and the continuing of that offence are not separate offences, though they have separate penalties attached to them, so that both may be included in one information without invalidating it; so also if a person is responsible for the original construction of works which offend against a bye-law, and also for their maintenance, the construction and maintenance of such works are not two offences but one.¹⁶

In the last cited case,¹⁶ it was also held that, if a notice which intimates the breach of a bye-law contains a statement that the person offending against the bye-law is liable to a daily penalty during the continuance of the offence, the information need not allege that the offence is a continuing offence in order that a daily penalty may be imposed.

The owner of a building which exceeded the height allowed by the Metropolis Management Act was held liable to penalties for continuing the offence.¹⁷

It is to be noticed that the present section only allows the continuing penalty to be imposed as from the service of notice of the offence.¹⁸

Confirmation
of bye-laws.

P.H., s. 115.
P.H. 1874, s. 48.
P.H. 1874, s. 46.

Sect. 184. Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the [Minister of Health], which [Minister] is hereby empowered to allow or disallow the same as [he] may think proper; nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A byelaw required to be confirmed by the [Minister of Health] shall not require confirmation allowance or approval by any other authority.

(12) In *Welsh & Son v. West Ham Cpn.*, L. R. 1900, 1 Q. B. 324; 69 L. J. Q. B. 114; 82 L. T. 262.

(13) *Pomeroy v. Malvern U. D. C.* (1903, K. B. D.), 89 L. T. 555; 67 J. P. 375; 1 L. G. R. 825. See also the *Blackpool Case*, ante, p. 372 (26).

(14) *James v. Wyvill* (1884), 51 L. T. 237; 48 J. P. 725. See also *Reay v. Gateshead Cpn.*, ante, p. 507 (11).

(15) *Reg. v. Struve* (1895), 59 J. P. 584.

(16) *Airey v. Smith*, ante, pp. 392, 403.

(17) *London C. C. v. Worley*, L. R. 1894, 2 Q. B. 826; 63 L. J. M. C. 218; 71 L. T. 487. See also *Metropolitan Bd. of Works v. Anthony* (1884), 54 L. J. M. C. 39; 33 W. R. 166; *Daw v. London C. C.*, ante, p. 382.

(18) See the judgment of Hawkins, J., in *Reay v. Gateshead Cpn.*, ante, p. 507.

Note.

Sect. 184, n.

Where bye-laws or regulations were forwarded to the Local Government Board for confirmation, the Board required the following conditions to be observed ("Minister" being substituted for "Board") :—

Procedure.

1. The bye-laws or regulations should be in print, and care should be taken that the print agrees with the draft approved by the [Minister], before being formally adopted by the council, as it is desirable that no written alterations should appear in the print. If any written corrections in the print are unavoidable, they should be initialled by the person or persons who attest the sealing of the bye-laws or regulations.

2. The bye-laws or regulations should be under the common seal of the corporation or council, as the case may be. The sealing should be properly attested, and the actual date of the sealing should be inserted in the attestation.

3. Ample space should be left at the end of the bye-laws or regulations for the [Minister's] seal and certificate of confirmation. Two or more series of bye-laws or regulations relating to different matters should be separately adopted and sealed.

4. Before application for confirmation is made, not less than one calendar month's notice of the intention to apply must be given in at least one local newspaper circulating in the borough or district. In this notice the subject of the bye-laws may be described in general terms, *e.g.*, "with respect to nuisances" or "with respect to new streets and buildings" or "with respect to new buildings and certain matters in connection with buildings," care being taken that the description covers the whole of the bye-laws. If the subjects of the several bye-laws or regulations are described in detail, or if reference is made to the Act or Acts under which the bye-laws or regulations are made, such description or reference should be complete and accurate. It is desirable that the notice of intention to apply for confirmation should be extended so as to give notice of the deposit referred to in paragraph 5 of this memorandum, and that the place and commencement of the month of deposit should be clearly indicated.

5. For a full calendar month after the date of the publication of the newspaper containing the notice, a copy of the bye-laws or regulations must be deposited at the office of the council for the inspection of the ratepayers.

6. It is essential that the copy of the bye-laws or regulations so deposited should be correct, as the correction of any errors or omissions of a material character may render necessary a fresh compliance with the preliminary requirements of sect. 184 of the Public Health Act, 1875, before confirmation can be given. If it is thought desirable, the draft approved by the [Minister] may also be deposited.

7. Having regard to the terms of sect. 184 of the Public Health Act, 1875, the application for confirmation should be in specific terms, and the [Minister] should be definitely informed that a copy of the bye-laws or regulations as submitted for confirmation has been deposited for inspection for a full calendar month subsequent to the date of publication of the newspaper. When the approved draft has also been deposited this should be stated.

8. The application for confirmation, *which should not be made until the month of deposit has expired*, should be accompanied by :—

(a) The draft revised by the [Minister] :

(b) The sealed bye-laws or regulations : and

(c) A copy of the newspaper containing the notice of intention to apply for confirmation, with the advertisement clearly marked therein. If the notice was published more than once, the newspaper in which it *first* appeared should be sent.

Sect. 3 of the Public Health (Confirmation of Bye-laws) Act, 1884,¹ which is to be "construed as one with" the present Act,² enacts that "every bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any local Act, or any provisional order or any Act confirming such provisional order, and every rule and regulation made or to be made by an urban authority under sect. 48 of the Tramways Act, 1870, shall be deemed to have required or to require the confirmation of the confirming authority,

**Bye-laws
under incor-
porated
enactments.**

(1) 47 Vict. c. 12, s. 3.

(2) *Ibid.* s. 1.

Sect. 184, n.
Bye-laws
under incor-
porated
enactments
continued.

and not to have required, or to require any other confirmation, allowance, or approval."

This enactment was passed in consequence of a decision of the court that regulations under the Tramways Act, 1870, required confirmation under the Towns Improvement Clauses Act, 1847,³ instead of under the Public Health Act, 1875.⁴

"In this Act,⁵ if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; (that is to say,) 'Incorporated enactments' means sect. 128 of the Towns Improvement Clauses Act, 1847, sects. 68 and 69 of the Towns Police Clauses Act, 1847, and sect. 42 of the Markets and Fairs Clauses Act, 1847, which Acts are hereinafter referred to as the incorporated Acts: 'Confirming authority' means, as regards bye-laws, rules, and regulations confirmed prior to the 19th day of August, 1871, or made under any of the incorporated enactments by reason of the incorporation thereof with any local Act and confirmed prior to the 10th day of August, 1872, one of [His] Majesty's Principal Secretaries of State; and as regards other bye-laws, rules, and regulations, the Local Government Board," now the Minister of Health.

The bye-laws referred to under the Towns Improvement Clauses Act, 1847, relate to slaughter-houses⁶; those under the Towns Police Clauses Act, 1847, to hackney carriages⁷ and public bathing⁸; and those under the Markets and Fairs Clauses Act, 1847, to markets.⁹

The 10th August, 1872, was the date of the passing of the Public Health Act, 1872, which transferred from the Secretary of State to the Local Government Board the power of confirming bye-laws under local Acts.

The Act¹⁰ is not to "invalidate the confirmation, allowance, or approval of any bye-law, rule, or regulation confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with any local Act, if such bye-law has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the local Act and without reference to the provisions with respect to confirmation, allowance, or approval of bye-laws in any of the incorporated Acts, such bye-law is required to be confirmed, allowed, or approved otherwise than by the confirming authority."

Regulations.

Regulations made under sect. 125 of the present Act with respect to the removal to hospital of infected persons on board ship need the approval of the Minister of Health; but the requirements of the Act as to confirmation by the Minister, publication, etc., in the case of bye-laws do not apply in the case of any regulations made under other sections of the present Act.^{10a} They must be "reasonable."^{10b}

Regulations, however, which are made under the Small Holdings and Allotments Act, 1908,¹¹ with respect to the letting of allotments, require confirmation by the Minister in the same manner as bye-laws under the present Act.

Bye-laws to be
printed, &c.
P.H., s. 115.
P.H. 1874, s. 48

Sect. 185. All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

Note.

Publication
of bye-laws.

Bye-laws were held to be sufficiently published by being "printed and hung up in the office" of the local authority in pursuance of the Public Health Act, 1848,¹² and publication under the Towns Improvement Act, which was incorporated in the local Act of the district, was not necessary.¹³

(3) 10 & 11 Vict. c. 34, s. 202.
(4) *Wallasey Tramway Co. v. Wallasey Loc. Bd.* (1883, Q. B. D.), 47 J. P. 821, n.
(5) 47 Vict. c. 12, s. 2.
(6) See s. 128, *post*, Vol. II., p. 1632.
(7) See s. 68, *post*, Vol. II., p. 1670.
(8) See s. 69, *post*, Vol. II., p. 1671.
(9) See s. 42, *post*, Vol. II., p. 1437.
(10) 47 Vict. c. 12, s. 4.

(10a) As to subjects of such regulations, see Note to s. 188, *post*, p. 512.
(10b) See *Gooding's Case*, *ante*, n. 395 (41).
(11) See s. 28, *post*, Vol. II., p. 1509.
(12) 11 & 12 Vict. c. 63, ss. 115, 116.
(13) *Fielding v. Rhyl Improvement Comrs.* (1878), L. R. 3 C. P. D. 272; 38 L. T. 223; 26 W. R. 881.

Questions having arisen as to the power of a council under the present section, to advertise and issue notices respecting new bye-laws, with the view of giving publicity to them, the Local Government Board stated that they were not aware of any necessity to advertise the bye-laws in a newspaper *in extenso*, but that they saw no objection to the insertion of notices in a newspaper calling attention generally to the provisions of the bye-laws and to the fact that copies could be obtained, and they also thought that copies might, in the case of a rural district, be sent to each parish council in addition to the overseers.

Probably non-publication would be no defence to proceedings for breach of a bye-law made under the present Act.¹⁴

Sect. 306 imposes a penalty not exceeding £5 on any person destroying or defacing any board on which a bye-law is inscribed.

Sect. 185, n.

Defacing
notice-boards.

Sect. 186. A copy of any byelaws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making, confirmation and existence of such byelaws without further or other proof.¹⁵

Evidence of
bye-laws.

Sect. 187. Byelaws made by the council of any borough under the provisions of [sect. 90 of the *Municipal Corporations Act*, 1835], for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to byelaws shall apply to the byelaws so made as if they were made under this Act.

Bye-laws made
under s. 90 of
5 & 6 W. 4, c. 76,
to be submitted
to [Minister of
Health.]
P.H. 1874, s. 46.

Note.

The *Municipal Corporations Act*, 1835,¹⁶ was repealed by the *Municipal Corporations Act*, 1882. By sect. 23 of that Act,¹⁷ the council of any municipal borough may make bye-laws "for the good rule and government of the borough, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough"; and bye-laws made under its provisions are to be sent to the Secretary of State, and are liable to be disallowed by the Crown on the advice of the Privy Council; but the section concludes with the following clause:—"Nothing in this section shall interfere with the operation of sect. 187 of the *Public Health Act*, 1875; and that section shall have effect as if this section were therein referred to instead of sect. 90 of the *Municipal Corporations Act*, 1835; but nothing in the *Public Health Act*, 1875, shall be construed as having restricted the meaning or scope of the *Municipal Corporations Act*, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances." The result is that the bye-laws which are made by a borough council for the suppression of nuisances must be submitted for confirmation to the Minister of Health, while those relating to the better administration of the borough will remain under the jurisdiction of the Secretary of State for the Home Department.¹⁸

Municipal
bye-laws.

By sect. 24 of the *Municipal Corporations Act*, 1882,¹⁹ the production of a written copy of a bye-law made by the council under that or any other Act of Parliament, if authenticated by the corporate seal, is *prima facie* evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the confirming authority.

Proof of
bye-laws.

The copy of the bye-laws must itself be sealed. A woodcut of the common seal was held to be insufficient.²⁰

On production of the sealed copy, it is unnecessary to prove publication of the

(14) See *Duncan v. Knill*, cited in Note to P. H. Am. Act, 1907, s. 85, *post*, Part I., Div. III.

(15) As to proof of bye-laws, see Note to s. 187, *infra*.

(16) 6 Wm. IV., c. 76, s. 90.

(17) *Post*, Vol. II., p. 1808.

(18) See *per* Lindley, L.J., in *Strickland v. Hayes* (1896), 60 J. P. at p. 165, col. ii, bot.

(19) *Post*, Vol. II., p. 1809.

(20) *Timothy v. Fenn* (1910, K. B. D.), 102 L. T. 283; 74 J. P. 123; 8 L. G. R. 156.

Sect. 187, n. bye-laws,²¹ or their proper sealing or certification.²² The term "writing" includes print, and "written" includes printed.²³

Where the point is taken that the prosecution have failed to prove a bye-law strictly, the justices should adjourn the case and not acquit.²⁴

Bye-laws of county council.

Sect. 16, sub-sect. (1) of the Local Government Act, 1888,²⁵ which enables county councils to make bye-laws in relation to their county for the purposes mentioned in sect. 23 of the Municipal Corporations Act, 1882, also extends the present section to such bye-laws.

As to regulations of local authority.

Sect. 188. The provisions of this Act relating to byelaws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

Note.

Subjects for regulations.

District councils may make regulations under the present Act with respect to the mode of making communications between drains and sewers,²⁶ the removal to certain hospitals of persons infected with dangerous infectious disorders who are brought within their district by ships or boats,²⁷ and the management of places provided for *post-mortem* examinations.²⁸ Urban district councils may also make regulations with respect to the duties and conduct of the officers and servants appointed or employed by them,²⁹ and with respect to committees appointed by them.³⁰ And any district councils (other than municipal councils, whose proceedings are regulated by the Municipal Corporations Act, 1882) may make regulations with respect to the summoning, notice, place, management, and adjournment of their meetings, and generally with respect to the transaction and management of their business under the Act.³¹

Under the adoptive Act of 1890 regulations may be made as to public conveniences³² and cabmen's shelters.³³

All such regulations must be reasonable.³⁴

(21) *Robinson v. Gregory* (K. B. D.), L. R. 1905, 1 K. B. 534; 74 L. J. K. B. 367; 92 L. T. 171; 69 J. P. 161; 3 L. G. R. 308.

(22) See Evidence Act, 1845, 8 & 9 Vict. c. 113, s. 1.

(23) See M. C. Act, 1882, s. 7, *post*, Vol. II., p. 1808; and Interpretation Act, 1889, s. 20, *post*, Vol. II., p. 1968.

(24) See *Duffin v. Markham* (1918, K. B. D.), (as to proof of Bread Order, 1917), 88 L. J. K. B. 581; 119 L. T. 149; 82 J. P. 281; 16 L. G. R. 807.

(25) *Post*, Vol. II., p. 1907.

(26) See s. 21, *ante*, p. 85.

(27) See s. 125, *ante*, p. 244. These require approval by M. of H.

(28) See s. 143, *ante*, p. 268.

(29) See s. 189, *post*, p. 513.

(30) See s. 200, *post*.

(31) See Sched. I. (1), r. 1, *post*, and L. G. Act, 1894, s. 59 (1), *post*, Vol. II., p. 2094.

(32) See s. 20 (1), *post*, Part I., Div. II.

(33) *Ibid.*, s. 40 (2).

(34) See *Gooding's Case*, *ante*, p. 395 (41).

OFFICERS AND CONDUCT OF BUSINESS OF LOCAL
AUTHORITIES.

OFFICERS OF LOCAL AUTHORITIES.

Sect. 189. Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, [sanitary inspector], clerk, and treasurer : Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.

Subject, in the case of officers any portion of whose salary is paid out of [*moneys voted by Parliament*], to the powers of the [Minister of Health] under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries wages or allowances as the urban authority may think proper ; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure.

Appointment of
officers of urban
authority.
P.H., s. 37.
P.H. 1872, s. 10.

Note.

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L.G.B. and M. of H. Orders.

The reference in the latter part of the present section to officers, any portion of whose salary is paid out of moneys provided by Parliament, is now to be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of the Local Government Act, 1888.¹ The cases of whole-time officers of a county borough where payment was so made before it became a county borough are also dealt with by the Public Health (Officers) Act, 1921.²

The Minister of Health is authorised by sect. 191 of the present Act to prescribe the qualification, mode of appointment, duties, salary, and tenure of office of any officer whose salary is thus paid ; and the Local Government Act, 1888,³ requires the county council to pay half the salary of a medical officer of health, or inspector of nuisances (now called " sanitary inspector "), whose qualification, appointment, salary, and tenure of office are in accordance with the orders of the Local Government Board or Minister of Health. The qualification and duties of medical officers of health whose salaries are not so paid may be prescribed under sect. 191. The Local Government Board Orders of 1872, 1880, and 1891 were rescinded by one of 1910,⁴ which was itself revoked by Art. III. of the Order of the Minister of Health of 1922.⁵ See also the Public Health (Officers) Act, 1921, quoted later in this Note.⁶

Grants for
officers'
salaries.

Powers of
Minister of
Health.

Appointment of Officers.

The Local Government Board pointed out that, having regard to Sched. I., Part I., rule 6 of this Act, the appointment of an officer by ballot is invalid.

An Irish local authority having refused to appoint a sanitary officer, it was held that the Local Government Board were entitled to a writ of *mandamus*.⁷

Appointment
by ballot.

Enforcing
appointment.

(1) See s. 24 (2) (c), (3), *post*, Vol. II., p. 1913.

(2) See ss. 1, 2, *post*, pp. 529, 530.

(3) See s. 24 (2) (c), *post*, Vol. II., p. 1913.

(4) Set out in 8 L. G. R. (Orders) 360.

(5) Referred to later in this Note, and set out in full *post*, Vol. II., Part V.

(6) *Post*, p. 529.

(7) *Rex (L. G. Bd. for Ireland) v. Kilmallock R.D.C.* (C. A., I.), 1911 Ir. K. B. 56.

Sect. 189, n.
Appointment
of ex-
members.

In a Circular of the 5th May, 1911,⁶ the Local Government Board stated that they agreed with the recommendation of the Royal Commission on the Poor Laws and Relief of Distress "that a local authority should not be allowed to appoint an ex-member as a paid officer unless he or she has ceased to be a member of the local authority for a period of, say, twelve months before appointment," and "feel assured that councils generally recognise the impropriety of appointing to paid offices persons who are or have recently been members of their own body," and "intimate generally that in future, unless very special grounds are shown, they will not be prepared to sanction the appointment to any office, in respect of which their sanction may be requested, of any person who is or has been within twelve months a member of the council making the appointment."

Authentica-
tion of
appointment.

The appointment of an officer need not be by an instrument under seal,⁷ but it should be by resolution entered in the minutes of the meeting of the local authority at which it is made, so that the fact of the appointment having been made may be capable of proof.

Temporary
appointments.

With reference to the appointment of persons to temporary offices, Mathew, J., in holding that an architect appointed by a school board by minute signed by the chairman and countersigned by the clerk in accordance with a regulation as to the appointment of officers contained in a schedule to the Elementary Education Act, 1870,⁸ could recover payment for his services without contract or appointment under seal, said that it was argued that the architect was not such an officer of the board as was contemplated by the regulation referred to, as it could not be supposed that his services were to be more than of a temporary character; but he was not prepared to adopt that construction. By the minute the plaintiff was appointed the architect of the board, and although the duties of the architect might not be onerous, he saw no reason to suppose that it was not intended that he should continue to act whenever his services were necessary.⁹

Joint Officers.

Joint officers may be appointed in certain cases.^{9a}

Appointment
to more than
one office.

With regard to the appointment of the same person to more than one office under the council, see sect. 192 and the Note to that section.¹⁰

Persons
employed
by officers.

A clerk of a local board, who was also a collector of rates, engaged a law stationer to assist him in copying the valuation list in the rate book, and also in copying the rate accounts. The clerk having absconded, the local board were held not to be liable for the law stationer's bill.¹¹ Nor could a contractor, employed by the duly appointed engineer of a local authority, recover from that authority payment for work which he had done.¹²

Forgery of
testimonial.

Uttering a forged testimonial as to character, knowing it to be forged, with intent to deceive and thereby obtain a situation of emolument, is a misdemeanour at common law.¹³

Security.

Under sect. 194 security is to be given by all officers and servants who are to be entrusted with money.

Stamp duty.

The stamp duties formerly charged under the Stamp Act, 1870,¹⁴ on the "admission and appointment or grant by any writing to or of any office or employment," were abolished in 1875.¹⁵

Duties of Officers.

Regulations.

Under the Public Health Act, 1848,¹⁶ the duties of officers were regulated by bye-laws, but now, except in regard to offices and matters governed by orders of the Minister of Health, they may be the subject of regulations which do not require confirmation by the Minister of Health—see sect. 188. The duties of medical officers of health, and of those sanitary inspectors whose salaries are partly paid by the county council, are prescribed by the Order of 1922.¹⁷

(6) 9 L. G. R. (Orders) 48.

(7) *Smart v. West Ham Union* (1855), 10 Ex. 867; 24 L. J. Ex. 201; *Reg. v. Greene* (1852), 17 Q. B. 793; 21 L. J. M. C. 137; 16 Jur. 663; *Smith v. Hirst* (1871), 23 L. T. 665. But see *Dyte's* and other cases cited in Note to s. 174, ante, p. 454. In *Rex v. Newry R.D.C.* (1909, K. B. D., I.), 43 Ir. L. T. 172, the court, though the election of a clerk was irregular in mode and declaration, refused to order a fresh election, as this would have had the same result.

(8) 33 & 34 Vict. c. 75, Sch. III. r. 7.

(9) *Scott v. Clifton Sch. Bd.* (1884), L. R. 14 Q. B. D. 500; 52 L. T. 105; Cab. & E. 435; affirmed in C. A., see Cab. & E., p. x. (Addendum). But see the *Hackney Case*,

ante, p. 459 (6).

(9a) See post, pp. 538, 542 (re M. O. H. and S. I.), and ante, p. 411 (s. 4 (3) (a)) (re joint gas examiners).

(10) Post, p. 543.

(11) *Meredith v. Radcliffe Loc. Bd.* (1879), 43 J. P. 819.

(12) *Young & Co. v. Royal Leamington Spa Cpn.*, ante, p. 455.

(13) *Reg. v. Sharman* (1854), 23 L. J. M. C. 51; 18 Jur. 157; 6 Cox C. C. 312; Dears. C. C. 285.

(14) 33 & 34 Vict. c. 97.

(15) 38 Vict. c. 23, s. 14.

(16) 11 & 12 Vict. c. 63, s. 37.

(17) Post, Vol. II., Part V.

Under sect. 265 officers of local authorities are protected from personal liability in actions brought against them in respect of acts done by them *bonâ fide* in the execution of the Act.

Salaries of Officers.

By the Apportionment Act, 1870,¹⁸ salaries "shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly."

A teacher of a local education authority, whose engagement was subject to three months' notice, to be given by either party at any time, on being asked to send in his resignation, gave notice in March to terminate his engagement on the 31st August, at the end of the holidays; but the authority gave a counter-notice in April, terminating it on the 31st July, the end of the summer term. The teacher contended that, as he had been engaged at a yearly salary, and, by the 31st July, had performed two-thirds of his year's work, he was entitled to two-thirds of his year's pay, namely, eight months' salary; but it was held that the authority's notice prevailed, and that the teacher was not entitled to salary for the month of August.¹⁹

Under sect. 189 "reasonable allowances" may be granted to officers, but "there is no power to give *gratuities* out of rates."²⁰ And the Local Government Board considered that a district council were not empowered to pay a gratuity to one of their workmen who met with an accident for which they were not legally responsible. But see sect. 23 of the adoptive Act of 1922, set out below in this Note under the heading "Superannuation of Officers"; and Art. 13 of the Sanitary Officers Order, 1922.²¹

On 2nd May, 1918, the Local Government Board issued a circular,²² to clerks to guardians, saying that they would favourably consider applications under the Local Authorities (Expenses) Act, 1887,²³ for their sanction to payment of gratuities to registrars of births and deaths in cases of hardship.

Payments to officers for extra work, done by them during the war when the staff was reduced, were held to be emoluments and not "gratuities."²⁴

The practice of the dock companies to pay the income tax on the wages of their servants was regarded by Astbury, J., as "in the nature of bounty," and not as a "usage forming an implied term in the contracts," and the Port of London Authority were held not bound to keep it up.²⁵

Before military service became compulsory a local authority passed a resolution offering those of their staff "who have been or may be called out for active service during the present war" full civil pay. They also issued a circular, saying that they had "decided to pay the salaries of those teachers who are serving or who may volunteer." The plaintiff accordingly joined up voluntarily. A year afterwards this resolution was rescinded, and a new scheme of payment adopted less favourable to the staff. Then sect. 1 of the Local Government (Emergency Provisions) Act, 1916,²⁶ retrospectively authorised such payments. It was held (1) that the joining up on the faith of the offer in the resolution and circular constituted a contract; (2) that the rescission was invalid without the consent of the plaintiff; and (3) that, assuming that the contract was *ultra vires*, the Act of 1916 had made it *intra vires*.²⁷

As to war bonuses, see the circulars referred to below.²⁸

The payment of £100 to the surveyor of a local board of health for services rendered by him as an engineer beyond the scope of his ordinary duties was held to have been legal, and not a mere gratuity.²⁹ And a road foreman was held to be entitled to payment beyond his wages for overtime.³⁰ The officer may not,

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officers.

Apportion-
ment of
salary.

Gratuities.

War service
allowances.

Additional
allowances
for services.

(18) 33 & 34 Vict. c. 35, ss. 2, 5.
(19) *Hann v. Plymouth Cpn.* (1910, K. B. D.), 9 L. G. R. 61; 1 Glen's Loc. Gov. Case Law 20. See also *Hurt v. Sheffield Cpn.* (1916, K. B. D.), 85 L. J. K. B. 1684; 14 L. G. R. 614; 32 T. L. R. 393.
(20) *Per Blackburn, J.* in *Ex parte Mellish* (1863), 8 L. T. 47.
(21) *Post*, Vol. II., Part V.
(22) Set out in 16 L. G. R. (Orders) 636.
(23) Set out in Note to s. 246, *post*.
(24) *Rex v. Lyon, post*, p. 523.
(25) *Meek v. Port of London Authority*, L. R. 1918, 2 Ch. 96; 87 L. J. Ch. 376; 119 L. T. 196; 82 J. P. 225; 16 L. G. R. 483.
(26) 6 & 7 Geo. V. c. 12, s. 1.
(27) *Davies v. Rhondda U.D.C.* (1917,

C. A.), 87 L. J. K. B. 166; 117 L. T. 622; 82 J. P. 25; 15 L. G. R. 805. See also (successful petition of right by postal servant) *Sutton v. A.G.* (1923, H. L.), 67 Sol. J. & W. R. 422; 58 L. J. Jo. 124.
(28) 11th March, 1918 (transport workers), 16 L. G. R. (Orders) 35; 15th October, 1918 (civil service scale), 16 L. G. R. (Orders) 462; 11th December, 1918 (staff of local authorities), 16 L. G. R. (Orders) 653; 30th Aug., 1922 (reduced cost of living), 20 L. G. R. (Orders) 202; 27th Feb., 1923 (civil service bonus), 21 L. G. R. (Orders) 43.
(29) *Reg. v. Gloucester Cpn.* (1859), 33 L. T. (O.S.) 145; 23 J. P. 709.
(30) *Fearn v. Ilford U.D.C.*, 1902 Loc. Gov. Chron. 223.

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continued.

however, enter into any contract with the local authority beyond the acceptance of his appointment or employment : see sect. 193, and the Note to that section.³¹

At the audit of the accounts of an urban district council the district auditor disallowed certain sums representing payments to the council's surveyor for his supervision of the making of house-drainage connections with the sewer of the council, on the ground that the supervision of house-drainage connections was one of the ordinary duties of the surveyor to an urban district council, and that he was under an obligation to do work of this character in consideration of the salary received by him as surveyor, and the payments in question were therefore illegal gratuities. The members of the council who authorised the payments were also surcharged with the amount. It appeared, however, that subsequently to the surveyor's appointment (at which time he was assigned an annual salary), the council resolved that he should be paid a fee for supervising the making of each house connection with the council's sewer, and the charges made were in accordance with the sum so resolved to be paid. And on an appeal being made to the Local Government Board, the Board stated that it seemed to them that, whether the work in question did or did not form part of the ordinary duties which the surveyor was required to perform in consideration of the remuneration assigned to him upon his appointment, it was competent to the district council to pass the subsequent resolution, and that the effect of that resolution was to alter his remuneration as from that date; and they accordingly reversed the disallowance and surcharge.

A surveyor attended the House of Commons on behalf of his council, gave expert evidence in opposition to a Bill, and was paid three guineas a day for his services. It was held that such attendance was outside the scope of his ordinary duties, and that he was entitled to an extra fee therefor, and that the auditor's surcharge must be quashed by *certiorari*.³² But an action by the surveyor of a local authority for £15,000 for extra work in promoting various Bills in Parliament over a period of thirty-eight years was dismissed on the ground that there was not sufficient evidence of a contract to pay extra for such work.³³

An urban district council proposed that their surveyor should receive a percentage allowance on the cost of private street works as remuneration for the preparation of plans and specifications. But the Local Government Board informed them that it appeared to the Board to be doubtful whether, having regard to sect. 193 of the Act, the contemplated arrangement could properly be carried out.³⁴ It was suggested, however, that the object which the council had in view might be attained by their increasing the salary of the surveyor for a specified period, the period and amount of the increase being so calculated as to make the actual benefit of the surveyor equal to that which would accrue to him if the proposed payment were made in a lump sum. At the same time, the Board pointed out that, if the council adopted this course, the period for which the increase of salary was awarded must be prospective, *i.e.*, must commence not sooner than the date of the resolution of the council awarding such increase. And the Board expressed a similar opinion with reference to payment to the clerk and surveyor of part of the commission chargeable under sect. 9, sub-sect. (2) of the Private Street Works Act, 1892; pointing out that in the case of the clerk to a rural district council the sanction of the Board to any increase of remuneration would be necessary.

The order of the Minister of Health with respect to officers whose salaries are partly payable from the county grant expressly provides that the officer may, with the approval of the Minister, be paid a "reasonable gratuity on account of extraordinary services performed by him, or on account of other unforeseen or special circumstances connected with his duties or the necessities of the district or districts for which he is appointed."³⁵ With reference to the corresponding provision in the rescinded Order of 1891, the Board stated that, in their opinion, the county council are only liable to repay a moiety of the *salary* of the officer, and that they did not regard the gratuity above mentioned (there called "compensation") as forming part of such salary.

Where a local authority refuse to pay for services performed by an officer outside his duties, the officer's remedy is the prerogative writ of *mandamus*. A rule for such a writ was made absolute in a case where overseers refused to pay a vestry

(31) *Post*, p. 544.

(32) *Rex (O'Neill) v. Newell* (No. 1), 1911 Ir. K. B. 535; 2 Glen's Loc. Gov. Case Law 80.

(33) *Mackison v. Dundee Magistrates*, L. R. 1910 A. C. 285 (scanty report); 1910 S. C.

(H. L.) 27 (full report); 1 Glen's Loc. Gov. Case Law 7 (digest only).

(34) See *Ex parte Mellish*, ante, p. 515; *Reg. v. Ramsgate Cpn.*, post, p. 548 (24).

(35) S. O. Order, 1922, Arts. XIII., XVII., post, Vol. II., Part V.

clerk for verifying the returns as to inhabitant occupiers, the court holding that this did not come within his ordinary duties, and that there was no equally convenient alternative remedy.³⁶

An action for salary was successful in the following circumstances. One of the terms upon which the head teacher at a school was engaged was that she should only be entitled to one month's salary "during illness." Four months before her expected confinement the education committee requested her to absent herself until after the birth of the child. She returned to her duties a month after the birth, having been absent for five months. It was held that she was entitled to her salary during the whole of her absence. *Per Channell, J.* : "An absence of three or four months before an expected event of this kind is not an absence through illness. . . . If they choose to request her to stay away, they must pay her for the period of her absence."³⁷

The Local Government Board stated that, in their opinion, an urban district council can legally pay the premium for insuring their workmen against accidents if it is arranged with the workmen that the payment, so far as made for the purpose of insuring them, shall be treated as paid on their behalf and as being part of their wages. And with reference to a proposal of an urban district council to insure the members of a voluntary fire brigade against accident while engaged in the work of extinguishing fires, the Board pointed out that by section 32 of the Towns Police Clauses Act, 1847,³⁸ an urban district council were empowered to employ a proper number of persons to act as firemen, and to give the firemen such salaries as the council thought fit, and they stated that they were of opinion that under this enactment a council might properly pay to the members of the fire brigade such salaries as would enable them to pay the premium upon an insurance, but that, unless the members of the brigade were employed by the council, the latter could not legally make any such payments, either to the members or on their behalf.

The Board also stated generally that it appeared to them that, if the circumstances of the employment of any workmen are such as to involve risk of loss to the district council through compensation for injuries, a premium upon a policy of assurance against such loss might legally be paid, but that it would rest with the district auditor to decide whether the assurance was a reasonable precaution on the part of the council.

As to the position of employees of local authorities under the National Health and Unemployment Insurance Acts, see the Note referred to below.³⁹

An alteration in the remuneration of a medical officer of health or inspector of nuisances, whose salary is to be repayable out of the county fund, constitutes a fresh arrangement with respect to the terms of his appointment, and the Local Government Board required fresh proposals to be submitted to them in the prescribed form. The Board refused to sanction a retrospective alteration, holding that it must be "prospective."

A county council accountant was sued by his sureties in respect of a loan which they had to repay. They obtained an order for payment by instalments, and he wrote to the county council treasurer directing him to pay the instalments and deduct them from his salary. The county council refused to pay such instalments on the grounds (1) that the letter to their treasurer was not an assignment in law or equity, and (2) that, if it was, it was of part only of the debt and therefore invalid. It was held that the letter amounted to a valid equitable assignment, and that the county council must pay.⁴⁰

A borough council passed a resolution : "That the sum of £800 be granted to the mayor for the purpose of defraying any expenditure he may incur in celebrating the coronation of His Majesty King George V. in this borough." A rule *nisi* for *certiorari* quashing the resolution was granted. The resolution was then rescinded, and the following passed instead : "That the mayor do receive for his services in respect of the year of his office now current such remuneration as the council thinks reasonable, and that the council thinks that the sum of £850 is a reasonable remuneration, and that the same be paid to the mayor forthwith." The applicant

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Insurance premium.

Health and unemployment insurance.

Alteration of salary.

Assignment of salary.

Payment to mayor.

(36) *Rex (Peake) v. Davies*, L. R. 1911, 2 K. B. 669; 80 L. J. K. B. 993; 104 L. T. 778; 75 J. P. 265; 9 L. G. R. 564.

(37) *Davies v. Ebbw Vale U.D.C.* (1911), 75 J. P. 533; 9 L. G. R. 1226.

(38) *Post*, Vol. II., p. 1657.

(39) *Post*, Vol. II., p. 2232. A school

cleaner and an office caretaker were held exempt from unemployment insurance as "domestic servants" in *Ex parte Berks C.C.* (1922), 38 T. L. R. 255.

(40) *Conlan v. Carlow C.C.*, 1912 Ir. K. B. 535; 46 Ir. L. T. 183; 4 Glen's Loc. Gov Case Law 15.

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for the rule then agreed to abandon the proceedings if the council would agree that the rule be discharged without costs. The rule was accordingly discharged without costs.⁴¹

Superannuation of Officers.

Voluntary fund.

Provision is made by sect. 309 for the payment of compensation to officers in certain cases for loss of office, but, apart from the adoptive Act of 1922 set out below in this Note, there is no provision for the payment of superannuation allowances, or for the creation of a superannuation fund by means of deductions from officers' salaries. Thus, where an urban district council, desiring to award a retiring allowance to their late collector of rates, who had for many years held the office, made inquiry of the Local Government Board as to their powers in the matter, they were informed that the Board were not aware of any legal provision under which a pension to the officer could be granted. In the case of retiring surveyors, etc., local authorities sometimes recognise their long services by appointing them as "consultants" for a period after their retirement.

The School Board for London, before the passing of the Elementary Teachers (Superannuation) Act, 1898,¹ had without express statutory authority established for their officers a superannuation fund provided by annual deductions made from the officers' salaries in pursuance of contracts between them and the board, and the fund had for some ten years been applied to the purposes for which it was established. It was held that, if it was *ultra vires* on the part of the board to pay the expenses of managing the fund out of the rates, it was no part of the contracts that this should be done, and such contracts were therefore not *ultra vires*, and that, even if the board could not undertake the management of the fund at all, there was no failure of consideration, and therefore the officers who had contributed to it by deductions from their salaries could not recover from the board the amounts so deducted.²

Where such a voluntary fund exists, and any officer or servant of the local authority is injured or killed while employed afloat or on shore out of the United Kingdom by or under the Admiralty or Army Council in connection with warlike operations in which His Majesty is engaged, or by or under the Postmaster-General in connection with certain work for his department arising out of the operations of the war, the existence of the fund, not being statutory, would not disentitle him or his widow or dependants to the benefits of the Injuries in War (Compensation) Acts of 1914 and 1915,³ unless, apparently, an Order in Council under the Act otherwise directs.

The amounts deducted from the salary of a clerk to guardians under the Poor Law Officers Superannuation Act, 1896,⁴ had been held to be duties or other sums payable or chargeable on his salary by virtue of an Act of Parliament, so as to entitle him to deduct them for the purposes of the assessment of the income tax on his salary.⁵ But the Court of Appeal declined to apply this to deductions from salaries made under a scheme established in pursuance of the Manchester Corporation Act, 1891, for a thrift fund, whether the officers came under the scheme voluntarily or compulsorily.⁶

The fact that a large number of members had been returned at a vestry election pledged to the abolition of pensions to salaried officers was held not to afford sufficient evidence of bias to support a rule for a *mandamus* calling upon a vestry to consider and determine the question of the retiring pension of their rate collector.⁷

The Board of Trade may make special orders authorising gas undertakers to establish "superannuation, pension, and other like funds."^{7a}

By sect. 1 of the Local Government and other Officers' Superannuation Act, 1922,⁸ "This Act shall come into operation as respects any local authority as from such date as may be specified in the resolution of that local authority adopting this Act, which date is hereinafter referred to as the appointed day."

Gas undertakers.

Superannuation Act of 1922.

(41) *Rex (Pond) v. Wimbledon Cpn.* (1911, K. B. D.), *Times*, Apr. 26, p. 3; 75 J. P. Jo. 195; 2 Glen's Loc. Gov. Case Law 76.

(1) 61 & 62 Vict. c. 57.

(2) *Phillips v. London Sch. Bd.*, L. R. 1898, 2 Q. B. 447; 67 L. J. Q. B. 874; 79 L. T. 50.

(3) 4 & 5 Geo. V. c. 30, s. 1; 5 Geo. V. c. 18, s. 1; 5 Geo. V. c. 24, s. 1.

(4) 59 & 60 Vict. c. 50, s. 12.

(5) *Beaumont v. Bowers*, L. R. 1900, 2 Q. B. 204; 69 L. J. Q. B. 600; 64 J. P. 552.

(6) *Hudson v. Gribble*, L. R. 1903, 1 K. B.

517; 72 L. J. K. B. 242; 88 L. T. 186; 67 J. P. 85; 1 L. G. R. 292. See also *Lyon's Case*, *post*, p. 523 (36).

(7) *Reg. v. Bromley Vestry* (1896), 60 J. P. 725; 13 T. L. R. 1.

(7a) See s. 10 (2) (e) of Act of 1920, *ante*, p. 415.

(8) 12 & 13 Geo. V. c. 59, s. 1. The above short title is given by s. 32. As to Scotland and Ireland, see s. 31. See M. H. Circular on Act in 21 L. G. R. (Orders) 1.

By sect. 2,⁹ " This Act shall not apply to a local authority unless and until—
(a) it shall have been adopted by such local authority by a resolution passed by a majority consisting of not less than two-thirds of the members of such local authority, present and voting at a meeting called for the purpose, of which a month's previous notice shall be given to each member of such local authority, together with an estimate certified by an actuary of the cost to the local authority of adopting this Act; and (b) such resolution shall also have been confirmed by such local authority at a regular meeting held not less than one month after the passing of such resolution; and (c) such resolution shall have been approved by the Minister."

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Adoption of Act.

By sect. 3,¹⁰ " In this Act unless the context otherwise requires—' Service ' means whole-time or part-time service in the permanent employment of a local authority after an officer or servant has attained the age of eighteen years, other than service in respect of which the officer or servant is entitled to any superannuation allowance or gratuity under any other enactment, and when used in relation to service after the appointed day means continuous service, and when used in relation to service rendered before the appointed day means service whether continuous or not; ' Contributing service ' means service rendered by an officer or servant in respect of which he is a contributor to the superannuation fund; ' Non-contributing service ' means service rendered to any local authority before the appointed day by an officer or servant occupying, on the appointed day, a post designated as an established post; ' Local authority ' means the council of any county, county borough, municipal borough, metropolitan borough, urban district, or rural district, and any other authority within the meaning of the Local Loans Act, 1875,¹¹ and includes any combination of local authorities under this Act: Provided that no local authority or combination of local authorities shall be entitled to adopt this Act unless there are in the service of such authority or of the authorities so combining, as the case may be, not less than fifty officers or servants occupying posts proposed to be designated as established posts for the purposes of this Act; ' Officer,' or ' servant,' means an officer or servant in the permanent service of the local authority occupying a post designated as an established post for the purposes of this Act by a resolution of the local authority,¹² and whether in receipt of salary or wages; ' Salary ' or ' wages ' means all salary, wages, fees, poundage and other payments ¹³ (including any war bonus) paid or made to any officer or servant as such for his own use, also the money value of any apartments, rations or other allowances in kind appertaining to his office or employment, but does not include payments for overtime or any allowance paid to him to cover cost of office accommodation or clerks' assistance; ' Superannuation fund ' means a fund to be established by the local authority in the manner prescribed and provided in section eighteen of this Act; ' Actuary ' means a fellow of the Institute of Actuaries . . . [Scotland]; ' Minister ' means the Minister of Health."

Definitions.

By sect. 4,¹⁴ " (1) Where a local authority who have adopted this Act propose to designate at any subsequent date any further posts as established posts for the purposes of this Act, the date of such subsequent designation shall be deemed to be the appointed day as respects the officers or servants occupying the posts so designated at the date of designation, and the provisions of sect. 2 and sect. 18 (1) (e) of this Act shall apply accordingly, unless and to the extent to which in any particular case the Minister otherwise directs. (2) A local authority may, with the consent of the Minister and in accordance with a scheme approved by him, establish separate superannuation funds for officers and servants respectively, and any such scheme may provide for the transfer of officers or servants from one fund to the other and for making such financial adjustments between the funds in the event of such transfer as may be necessary."

Subsequent designation of posts; and establishment of separate funds for officers and servants.

Neville, J., held that a public vaccinator was not an officer entitled to superannuation under the Act of 1896,¹⁵ as " he was in the position of a person who had contracted with them to render certain services for certain payments, and was not a person who had entered into an engagement of service." ¹⁶

Officer.

The plaintiff had acted for thirty-seven years as an officer executing distress warrants for rates on behalf of the defendant council, and his name was regularly

Designated officer.

(9) 12 & 13 Geo. V. c. 59, s. 2.

(10) *Ibid.*, s. 3.

(11) *Post*, Vol. II., p. 1711.

(12) See s. 4 and Note, *infra*.

(13) See Note to s. 15 of this Act, *post*, p. 523.

(14) 12 & 13 Geo. V. c. 59, s. 4.

(15) 59 & 60 Vict. c. 50, ss. 2, 3, 12, 13, 19.

(16) *Per* Neville, J., in *Lawson v. Marlborough Guardians*, L. R. 1912, 2 Ch. 154; 81 L. J. Ch. 525; 106 L. T. 838; 76 J. P. 305; 10 L. G. R. 443.

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inserted in their warrants of distress. He was also described in many resolutions of the council as the "warrant officer." On being appointed to that post he had entered into a bond, and the question of his remuneration had from time to time been considered by the council. The plaintiff brought an action against the defendant council, claiming that on his retirement he, as an officer in an established capacity, was entitled as of right to a pension under an Act of 1908,¹⁷ which contained in the definition of "officer" the words "designated as an officer in an established capacity by a resolution of the council." Channell, J., held (1) that he was not so entitled, on the ground that "designated" meant specially described as and something more than merely "called" an officer, and that, there being no resolution designating him an officer, his claim must be dismissed; but (2) that the council would be justified under the Superannuation (Metropolis) Act, 1866,¹⁸ in granting him a pension. The Court of Appeal also held that he was not a "designated" officer.¹⁹

Combinations of local authorities.

By sect. 5,²⁰ "(1) The following local authorities, namely:—(a) the council of any county and any local authority whose area is wholly or partly situate within the county; and (b) any two or more local authorities whose areas are situate wholly or partly in the same county; may enter into combination for the purposes of this Act: Provided that such combination shall not take effect unless a combination scheme has been submitted to and approved by the Minister. (2) A scheme of combination under this section may provide for making such modifications in this Act as appear to the Minister to be necessary or expedient for the purpose of applying this Act to combinations of local authorities, and may contain such supplemental and consequential provisions as appear necessary or expedient. (3) Any local authority to which this Act applies may, on such terms and conditions as they think fit and with the approval of the Minister, admit any officers or servants of—(a) any local authority, not being a local authority to which this Act applies, whose area is situate wholly or partly within the area of such first-mentioned local authority; or (b) any undertakers exercising any of their powers within the area of such first-mentioned local authority under any Act of Parliament or any order having the force of an Act; to participate in the benefits prescribed by this Act in the like manner as though they were officers and servants of such first-mentioned local authority. Any authority or undertakers any of whose officers or servants are admitted as aforesaid shall have all such powers as may be necessary for the purpose of giving effect to such terms and conditions as aforesaid, and any payments under those terms or conditions shall be made out of the same funds, rates, or revenues as those out of which the salaries or wages of such officers or servants are paid."

Title to superannuation allowances.

By sect. 6,²¹ "(1) Subject to the provisions of this Act, every officer and servant—(a) who shall have completed ten years' service and shall become incapable of discharging the duties of his office or employment with efficiency by reason of permanent ill-health or infirmity of mind or body; or (b) who shall have attained the age of sixty years and have completed forty years service; or (c) who shall have attained the age of sixty-five years; shall be entitled on resigning or otherwise ceasing to hold his office or employment, to receive during life a superannuation allowance according to the scale by this Act provided. (2) Save as is otherwise by this Act provided, every such superannuation allowance shall be paid out of the superannuation fund. (3) Where an officer or servant has attained the age of sixty-five years, he shall cease to hold his office or employment: Provided that the local authority may, with the consent of the officer or servant, by resolution extend the period of service or employment of any such officer or servant for one year or any less period and so from time to time as they may deem expedient: Provided also that no contribution shall be made by the local authority or by any officer or servant to the superannuation fund in respect of any such extended period, and any such extended period shall be disregarded in calculating any superannuation allowance out of the superannuation fund."

Scale of superannuation allowances.

By sect. 7,²² "Subject to the provisions of section sixteen of this Act and to any other provisions of this Act, the superannuation allowance to be made to an officer or servant under this Act shall be made out of the superannuation fund and shall be on the following scale:—(a) after ten years' service, ten-sixtieths

(17) St. M. B. C. (Superannuation) Act, 1908 (8 Edw. VII. c. xxi.), s. 2.

(18) 29 Vict. c. 31, ss. 1, 4.

(19) *Newton v. St. Marylebone B.C.* (1915, C. A.), 84 L. J. K. B. 1721; 113 L. T. 531;

79 J. P. 410; 13 L. G. R. 711.

(20) 12 & 13 Geo. V. c. 59, s. 5.

(21) *Ibid.*, s. 6.

(22) *Ibid.*, s. 7.

of the average amount of his salary or wages during the five years which immediately precede the day on which the officer or servant ceases to hold his office or employment, or attains the age of sixty-five years, whichever be the earlier; (b) after eleven years' service, eleven-sixtieths of such average amount; (c) and so on up to a maximum after forty or more years' service of forty-sixtieths of such average amount: Provided that any part of a superannuation allowance which is calculated by reference to a war bonus or other similar allowance shall be calculated and liable to variation in accordance with the rules for the time being in force with respect to superannuation allowances of members of His Majesty's Civil Service: Provided also that, for the purpose of calculating the superannuation allowance of a full-time officer who has formerly served as a part-time officer, the period of part-time service shall be treated as though it were whole-time service for a proportionately reduced period."

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By sect. 8,²³ "(1) Where an officer or servant transfers from the service of one local authority who have adopted this Act, with the consent of that authority, to a designated post in the service of another local authority who have adopted this Act, within six months of leaving the service of the first-mentioned authority, and has been a contributor to the superannuation fund of that authority, the first-mentioned local authority shall pay out of the superannuation fund to the local authority to whom the officer or servant so transfers, a transfer value ascertained in accordance with rules made for the purpose by the Minister, and in that case the officer or servant shall be entitled to such rights in respect of service before the date of transfer as he would have been entitled to if such service had been with the local authority to whom he has transferred: Provided that any officer or servant may appeal to the Minister against the refusal of a local authority to give their consent to any such transfer, and the Minister after consulting the local authority may give his consent, which shall be equivalent to the consent of the local authority. (2) Where an officer or servant transfers from the service of a local authority who have not adopted this Act to the service of a local authority who have adopted this Act, within six months of leaving the service of the first-mentioned authority, he shall, if he pays in lieu of transfer value a sum or sums to be ascertained in accordance with rules to be made by the Minister, be entitled to reckon service with that authority in whole or part in accordance with the amount of the sum so paid and in accordance with such rules. (3) No service with another local authority shall be reckoned under this section unless the officer or servant transferring has, within six months after the transfer, satisfied the local authority to whom he transfers that he has been in the service of another authority or authorities."

Reckoning service in case of transfer.

By sect. 9,²⁴ "An officer or servant who is dismissed or resigns or otherwise ceases to hold his office or employment in consequence of any offence of a fraudulent character or of grave misconduct shall forfeit all claim to any superannuation allowance under this Act: Provided that, in the case of any such officer or servant, the local authority may, if they see fit, return to him out of the superannuation fund, or pay to his wife or family out of that fund, a sum equal to the amount of all his contributions thereto under this Act, or to such part thereof as the local authority shall think fit."

Forfeiture for fraud, &c.

In December, 1907, the plaintiff was engaged by the New River Company as assistant engineer to superintend certain works, but no limitation of his employment was ever communicated to him, nor was there any limitation upon the authority of the chief engineer who engaged him. On the transfer of the undertaking of the company to the defendants, he continued to act as assistant engineer. In December, 1909, the clerk to the defendants wrote to the plaintiff: "The above named works having been completed, I am instructed by the Board to intimate to you that they will not require your services after the expiration of three months from this day." In an action for a declaration that he was entitled to a superannuation allowance under the Acts of 1866 and 1902,²⁵ and that the proper allowance was £83 14s. 9d. a year, for payment of arrears, and for all necessary enquiries, it was held (1) that he was an "existing officer" who had been "dismissed" on a ground other than misconduct: and (2) that the superannuation allowance was not limited to permanent officers; but (3) that the amount of the allowance was in the discretion of the defendants.²⁶

Dismissal.

(23) 12 & 13 Geo. V. c. 59, s. 8.

c. 41, s. 47.

(24) *Ibid.*, s. 9.(26) *Webster v. Metrop. Water Bd.* (1912,

(25) 29 Vict. c. 31, ss. 1, 4; 2 Edw. VII.

K. B. D.), 76 J. P. 474; 10 L. G. R. 1025.

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Grave
misconduct.**

An officer of certain poor law guardians claimed a declaration that he was entitled to a superannuation allowance in respect of his offices as relieving officer, collector, vaccination officer, and registrar of births and deaths. The guardians admitted that he was entitled to an allowance in respect of the two last mentioned offices, but contended that, as he had resigned the other two offices after committing acts of grave misconduct, he had forfeited his allowance in respect of them under sect. 7 of the Act of 1896.²⁷ It was contended by the officer (1) that, as the acts in question (using money collected and paying it back by the aid of money borrowed for the purpose, debiting his accounts with 3s. a week for 13 weeks for relief to a man who was dead, etc.) had been found by the guardians to have been due to a mistake and not to fraudulent intent, they were not "grave misconduct"; and (2) that he had ceased to hold office because he had become incapable of discharging his duties with efficiency by reason of "permanent infirmity of mind and body." It was held, as to (1) that "grave misconduct" need not be *ejusdem generis* with the preceding words "offence of a fraudulent character," and as to (2), that, as he had only gone to see a doctor after his acts had been discovered, this contention failed also, and that the contention of the guardians must be upheld.²⁸

**Return of
contributions
with interest
in certain
cases.**

By sect. 10,²⁹ "An officer or servant who has not become entitled to a superannuation allowance, and who loses his office or employment by reason of a reduction of staff, the abolition of his office or the termination of a joint appointment, or ceases to hold his office or employment by reason of ill-health, mental infirmity, or bodily injury, or is required to retire on marriage, shall be entitled to receive out of the superannuation fund a sum equal to the amount of all his contributions to such fund, together with compound interest thereon, calculated to the date of his loss of office or employment or resignation, at the rate of three per centum per annum by half-yearly rests."

**Return of
contributions
without
interest in
certain cases.**

By sect. 11,³⁰ "(1) In the event of an officer or servant voluntarily resigning his office or employment or being dismissed for incapacity (fraud or misconduct not being alleged) before he has, under the provisions of this Act, become entitled to a superannuation allowance, the local authority shall pay to him out of the superannuation fund a sum equal to the amount of the contributions made by such officer or servant under this Act. (2) Notwithstanding anything in this or the last preceding section, the local authority shall not make any return of contributions with or without interest in the case of an officer or servant who transfers to the service of another local authority, where on such transfer a transfer value is paid by the first-mentioned local authority."

**Return of
contributions
in case of
death.**

By sect. 12,³¹ "(1) In the event of an officer or servant dying before becoming entitled to or receiving a superannuation allowance under this Act, the local authority shall pay to his legal personal representative out of the superannuation fund, a sum equal to the amount of the contributions made by such officer or servant under this Act, together with compound interest thereon, calculated to the date of his death, at the rate of three per centum per annum by half-yearly rests. (2) In any case in which any contributor shall die, after he has become entitled to a superannuation allowance under this Act, and before he shall have received by way of superannuation allowance an amount equal in the aggregate to the amount of his contributions under this Act together with compound interest thereon calculated to the date of his retirement at the rate of three per centum per annum by half-yearly rests, the local authority shall pay to his legal personal representative out of the superannuation fund the difference between the total amount which such contributor has received by way of superannuation allowance and the aggregate amount of his contributions under this Act, together with compound interest thereon at the rate and calculated as aforesaid up to the date of his retirement."

**Notice of
certain
proposals.**

By sect. 13,³² "At least one month's notice in writing shall be given to every member of the local authority of the meeting at which any proposal to return contributions to an officer or servant who has been dismissed or resigns or to make any payment in accordance with the provisions of section nine of this Act or any proposal to grant a gratuity under this Act will be considered."

**Allowance not
assignable.**

By sect. 14,³³ "Every superannuation allowance or gratuity granted under

(27) 59 & 60 Vict. c. 50, s. 7.

(28) *Poad v. Scarborough Guardians*, L. R. 1914, 3 K. B. 959; 84 L. J. K. B. 209; 111 L. T. 491; 78 J. P. 465; 12 L. G. R. 1044.

(29) 12 & 13 Geo. V. c. 59, s. 10.

(30) *Ibid.*, s. 11.

(31) *Ibid.*, s. 12.

(32) *Ibid.*, s. 13.

(33) *Ibid.*, s. 14.

this Act shall be payable to or in trust for the officer or servant, and shall not be assignable or chargeable with his debts or other liabilities."

By sect. 15,³⁴ "(1) Subject to the provisions of this Act, every officer and servant shall, as from the appointed day, contribute to the superannuation fund an amount equal to five per centum of his salary or wages which amount shall be deducted from the salary or wages payable to him by the local authority or persons paying the same, and shall be carried to the credit of and form part of the superannuation fund. (2) Subject to the provisions of subsection (2) of section eight of this Act, nothing in this Act shall require any officer or servant to make any contribution for the purposes of this Act in respect of any period previous to the appointed day. (3) The provisions of this section shall not apply to any officer or servant who is fifty-five years of age or more on the appointed day or at the date of his appointment, and no such officer or servant shall contribute for the purposes thereof, unless such officer or servant shall be appointed after the appointed day, and his service or any part of his service with any other local authority is, under the provisions of this Act, reckoned as contributing service."

A district auditor surcharged sums paid to certain officers on the ground that they ought to have been deducted and carried to the superannuation fund under the Asylum Officers' Superannuation Act, 1909.³⁵ They were payments for extra work done during the war when the staff was reduced. It was contended that they were "gratuities," but held (upholding surcharge) that they were "emoluments."³⁶

By sect. 16,³⁷ "(1) Non-contributing service shall be reckoned for determining whether an officer or servant is entitled to a superannuation allowance under this Act, and, in calculating the superannuation allowance of any officer or servant who is so entitled, his allowance in respect of his non-contributing service shall be at the rate of one one-hundred-and-twentieth (or in the case of any officer or servant in which the local authority by resolution so decide at such rate as the local authority may determine, not exceeding the rate of one-sixtieth) of the average amount of his salary or wages for the last five years of his service in respect of each year (not exceeding forty years) of his service, and, in reckoning the non-contributing service of any officer or servant, any portion of a year during which such officer or servant has served for more than six months shall be reckoned as a year: Provided that the amount of any superannuation allowance granted in respect of non-contributing service, so far as it exceeds one one-hundred-and-twentieth of such average amount as aforesaid in respect of each year of service, shall not be paid out of the superannuation fund but shall be chargeable upon the same funds, rates and revenues as those upon which the salary or wages of the officer or servant to whom the allowance is granted are charged. (2) In the case of an officer or servant of a local authority adopting this Act, no period of service with any other local authority shall be reckoned for the purposes of this Act unless such officer or servant shall, within six months from the appointed day, prove to the reasonable satisfaction of the local authority employing such officer or servant that he has been in the service of any such authority. (3) Notwithstanding anything to the contrary contained in this Act, an officer or servant who has served successively as a teacher and on an administrative staff shall have the years of service which would be recognised under any Act for the time being relating to the superannuation of school teachers recognised for the purposes of this Act as if such service had been wholly on an administrative staff: Provided that any such last-mentioned officer or servant shall not be entitled to any greater superannuation allowance from the local authority under this Act than shall be sufficient, together with any superannuation allowance under any such Act as aforesaid, to make up the amount to which he would have been entitled had his service been wholly on the administrative staff of such local authority, and, for the purpose of this section, account shall be taken in such manner as the Minister shall prescribe of any capital sum paid or payable to the officer or servant under the provisions of any such Act. (4) In the case of an officer or servant occupying a designated post on the appointed day who is fifty-five years of age or more on that day, service after the appointed day in a designated post shall be deemed to be non-contributing service."

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Officers and servants to contribute.

Deductions.

Allowance for previous service.

(34) 12 & 13 Geo. V. c. 59, s. 15.

(35) 9 Edw. VII. c. 48, s. 8.

(36) *Rex (Harrison) v. Lyon*, L. R. 1921, 1 K. B. 203; 90 L. J. K. B. 278; 124 L. T. 243; 85 J. P. 78; 18 L. G. R. 816. See also, as to deductions for income tax purposes,

Finance Act, 1922 (12 & 13 Geo. V. c. 17), s. 31; *Hudson v. Gribble*, ante, p. 518 (6); and *Bruce v. Hatton*, L. R. 1922, 2 K. B. 206; 91 L. J. K. B. 958; 127 L. T. 244.

(37) 12 & 13 Geo. V. c. 59, s. 16.

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Contributors
for less than
ten years.

By sect. 17,³⁸ "If any officer or servant in service on the appointed day—(a) retires after contributing service of less than ten years, owing to his becoming incapable of discharging the duties of his office or employment with efficiency by reason of permanent ill-health or infirmity of mind or body, or (b) retires after having attained the age of sixty years and after a contributing service of less than ten years, the period of his contributing service shall be reckoned as non-contributing service and shall be added to the period of non-contributing service for the purpose of calculating any superannuation allowance under this Act, and he shall also be entitled to receive from the superannuation fund a sum equal to the aggregate amount of his contributions under this Act, together with compound interest thereon calculated to the date of his retirement at the rate of three per centum per annum by half-yearly rests."

Superannua-
tion fund.

By sect. 18,³⁹ "(1) The local authority shall establish and administer a superannuation fund, to which shall be carried and credited in each year—(a) the amounts deducted in such year under the provisions of this Act from the salaries and wages of officers and servants contributing to the superannuation fund; (b) a sum equal in amount to the sum which during such year has been contributed to the superannuation fund by officers or servants (in this Act referred to as "the equivalent contribution") and such further sums, if any, as the local authority may become liable to carry and contribute thereto under the provisions of this Act; (c) all dividends and interest arising in such year out of the investment or use of the superannuation fund or any part thereof; (d) the amount of any transfer values or payments in lieu of transfer values received by the local authority under this Act; and (e) such amount as may be certified by an actuary, as soon as may be after the appointed day, as necessary in order that the superannuation fund may be solvent, to be calculated so as to cast upon the local authority, so far as may be, an equal annual charge for a period not exceeding forty years from the appointed day. (2) The equivalent contribution and the equal annual charge shall be made out of the same funds, rates, and revenues as those upon which the salaries or wages from which the said amounts so deducted are charged."

Actuarial
investigation.

By sect. 19,⁴⁰ "(1) Once at least in every five years the condition of the superannuation fund shall be submitted by the local authority to an actuary, who shall consider the same and shall make an actuarial valuation of the assets and liabilities of the superannuation fund. (2) Where on any such valuation the actuary certifies that a deficiency or a disposable surplus is disclosed, the local authority shall submit to the Minister a scheme for making good the deficiency by means of payments by the local authority into the superannuation fund, or by means of an increase in the contributions as provided by this Act of the local authority, or (as the case may require) for disposing of the surplus by reducing those contributions. (3) Where on any such valuation the actuary certifies that in order to maintain an equality of value, as respects persons becoming contributors after the date of the scheme, between the amounts to be contributed by or in respect of such persons and the amounts of benefit to which such persons will become entitled, it is expedient to increase or decrease the contribution as provided by this Act in respect of such persons, provision may be made by the scheme for such increase or decrease as the case may require, to be applied in equal proportions as between the local authority and such persons. (4) Where any such scheme is approved by the Minister, this Act shall have effect subject to the provisions of the scheme. (5) The local authority shall send a copy of the actuary's report to the Minister, and, if within six months of the receipt of such report the local authority fail to submit a scheme under this section, or to submit a scheme of which the Minister approves, the Minister may himself make a scheme, which shall have the same effect as a scheme submitted by the local authority and approved by him."

Use of moneys
of super-
annuation
fund.

By sect. 20,⁴¹ "The local authority may use for the purpose of any statutory borrowing power possessed by them any moneys forming part of the superannuation fund and not for the time being required for payments to be made under this Act, subject to the following conditions:—(a) The moneys so used shall be repaid to the superannuation fund within the period, by the methods and out of the fund, rate or revenue within, by and out of which a loan raised under the

(38) 12 & 13 Geo. V. c. 59, s. 17.

(39) *Ibid.*, s. 18.

(40) *Ibid.*, s. 19.

(41) *Ibid.*, s. 20. As to borrowing powers, see ss. 233-244, *post*.

statutory borrowing power would be repayable; (b) Interest shall be paid to the superannuation fund on any moneys so used and for the time being not repaid to the fund. Such interest shall be calculated at a rate per centum per annum to be determined by the local authority and equal as nearly as may be to the rate of interest which would be payable on a loan raised on mortgage under the statutory borrowing power, and shall be paid out of the fund, rate or revenue which would be applicable to the payment of interest on a loan raised under the statutory borrowing power; and (c) The statutory borrowing power for the purpose of which the moneys are so used shall be deemed to be exercised by such use as fully in all respects as if a loan of the same amount had been raised in exercise of the power."

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By sect. 21,⁴² "The surplus of the annual income of the superannuation fund above the expenditure thereout shall from time to time be invested in securities in which trustees are authorised to invest, or be used in the manner hereinbefore provided, and the income arising from time to time from such investment or use shall be paid into that fund."

Investment of surplus income.

By sect. 22,⁴³ "Any question which may arise between the local authority and any officer or servant as to the right to or the amount of a superannuation allowance, or the right to any return of contributions under this Act, or the amount of the contribution of such officer or servant shall, in default of agreement, be referred to and determined by an arbitrator to be agreed upon between the local authority and such officer or servant, or, failing such agreement, appointed by the Minister, and subject as aforesaid the provisions of the Arbitration Act, 1889,⁴⁴ shall apply to any such reference."

Arbitration.

By sect. 23,⁴⁵ "(1) The local authority may, in any case in which an officer or servant is permanently incapacitated by an injury sustained by him in the actual discharge of his duty and without his own default, and specifically attributable to the nature of his duty, grant to such officer or servant, subject to such conditions as they may think fit, such gratuity either by way of a lump sum or periodical payments as they may consider reasonable having regard to all the circumstances of the case, including any statutory right to compensation or any allowance or gratuity under this Act, so however that the sums received by him shall not exceed in the aggregate the amount of any allowance or gratuity to which he would have been entitled if he had already attained the age of sixty-five at the date when he became incapacitated. (2) The local authority may grant to any officer or servant who is not entitled to a superannuation allowance under this Act, on his retiring from service, such gratuity as the local authority may by resolution determine, not exceeding a sum equal to twice the amount of the salary or wages of such officer or servant during the year which immediately precedes his retirement. (3) Any gratuity granted under this section shall not be paid out of the superannuation fund, but shall be chargeable upon the same funds, rates, and revenues as those upon which the salary or wages of the officer or servant to whom the gratuity is granted are charged."

Gratuities.

By sect. 24,⁴⁶ "(1) If this Act be adopted by a local authority having any superannuation scheme or other scheme for ensuring benefits to an officer or servant on retirement in operation, such local authority shall prepare a scheme for substituting for such superannuation scheme a superannuation fund or scheme under the provisions of this Act, with such modifications and adaptations as may be required, and providing for (among other things) the application, transfer, or disposal of any then existing funds, securities, or policies of insurance or the proceeds thereof, and for adequately protecting the rights and interests of the various parties interested in such first mentioned scheme. (2) A scheme under this section shall be submitted by the local authority to the Minister for his approval, and this Act shall not become operative in the case of such local authority until such scheme, with or without modification, shall have been approved by the Minister."

Scheme to be submitted where Act adopted by local authority having a superannuation fund in operation.

By sect. 25,⁴⁷ "Any payments or expenses made or incurred by any local authority under the provisions of this Act or in carrying the provisions of this Act into execution, and not otherwise provided for, shall, in the case of any officer or servant in respect of whom any payment or expense is made or incurred, be paid out of

Payments and expenses under Act.

(42) 12 & 13 Geo. V. c. 59, s. 21.

(43) *Ibid.*, s. 22.

(44) 52 & 53 Vict. c. 49. See Note to s. ante.

(45) 12 & 13 Geo. V. c. 59, s. 23.

(46) *Ibid.*, s. 24.

(47) *Ibid.*, s. 25.

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Saving in
respect of
Exchequer
grants.Act not to
apply to
certain Poor
Law
authorities,
officers, &c.Provision as
to existing
clerks of
the peace.Saving for
Superannu-
ation
(Metropolis)
Act.Saving for
express
provisions
affecting
officers or
servants.Tenure of
office.Disqualifica-
tion of
officers.Notice of
dismissal.

the same funds, rates, or revenues as those upon which the salary or wages of such officer or servant is or are charged, and, subject as aforesaid, shall be made and paid out of such fund, rate, or revenue as such local authority shall determine."

By sect. 26,⁴⁸ "Nothing in this Act shall entitle a local authority to any payment out of moneys provided by Parliament towards any contribution made by them to a superannuation fund."

By sect. 27,⁴⁹ "This Act shall not apply to any guardians or managers of district schools and sick asylums to whom the Poor Law Officers Superannuation Act, 1896,⁵⁰ applies, or to the managers of the Metropolitan Asylums District, or to any officer or servant as respectively defined in that Act in respect of service in the employment of any such guardians or managers."

By sect. 28,⁵¹ "(1) This Act shall apply in the case of a clerk of the peace or deputy clerk of the peace, and to any person in the permanent employment of a clerk of the peace for the purposes of any office held by him as such clerk, as though such clerk, deputy clerk, or person were in the service of the county council: Provided that—(a) any clerk of the peace holding office upon the appointed day shall be entitled by notice in writing to the county council within six months from the appointed day to elect to continue to hold office upon the same terms as he held immediately before the appointed day, and this Act shall not apply to any such clerk of the peace who has given such notice; and (b) the county council may, in designating any person employed as aforesaid by a clerk of the peace, make such conditions with regard to increases of salary after the appointed day and the date of retirement of such persons as they may think fit. (2) Save as otherwise expressly provided in section six of this Act, nothing in this Act shall affect the tenure of office of any clerk of the peace to whom this Act applies."

By sect. 29,⁵² "(1) Notwithstanding anything contained in this Act, or the adoption of this Act by any local authority, the Superannuation (Metropolis) Act, 1866,⁵³ shall continue to apply and have effect in the case of officers or servants in the service on the appointed day of any local authority to which the said Act of 1866 applies, and any such officer or servant shall not be deemed to be an officer or servant for the purposes of this Act: Provided that at any time within six months after the appointed day any such officer or servant may signify in writing to such local authority his desire to become an officer or servant for the purposes of this Act, and thereupon the said Act of 1866 shall cease to apply in the case of such officer or servant as from the appointed day, and such officer or servant shall be deemed to be and to have been an officer or servant for the purposes of this Act. (2) Where this Act is adopted by a local authority to whom the said Act of 1866 applies, a scheme made under section twenty-four of this Act may provide that any allowances already granted under the said Act may as from the appointed day be charged upon the superannuation fund."

By sect. 30,⁵⁴ "Nothing in this Act shall prejudice or affect any express provision contained in any Act of Parliament or any order confirmed by or having the effect of an Act of Parliament relative to any superannuation or retiring allowance or any other allowance of a similar character in the case of any officer or servant referred to in such provision."

Removal from Office.

As to the tenure of office of whole-time medical officers of health and sanitary inspectors, part of whose salary is paid out of moneys voted by Parliament, see the Public Health (Officers) Act, 1921, quoted later in this Note under the heading "Sanitary Officers"; and as to other such officers, see the Note to sect. 191.

With regard to the disqualification of officers who become interested in bargains or contracts with their councils, see sect. 193.

A conviction for treason or felony will vacate any public office, which the person convicted may hold.¹

Where there is a discretionary power to remove, it may be exercised without notice to the party and without any statement of the grounds of removal,² at all

(48) 12 & 13 Geo. V. c. 59, s. 26.

(49) *Ibid.*, s. 27.

(50) 59 & 60 Vict. c. 50.

(51) 12 & 13 Geo. V. c. 59, s. 28.

(52) *Ibid.*, s. 29.

(53) 29 & 30 Vict. c. 31.

(54) 12 & 13 Geo. V. c. 59, s. 30.

(1) 33 & 34 Vict. c. 23, s. 2.

(2) *Reg. v. Darlington Governors* (1844), 6 Q. B. 682; 14 L. J. Q. B. 67; *Wright v. Marquis of Zetland* (C. A.), L. R. 1908, 1 K. B. 63; 77 L. J. K. B. 152; 97 L. T. 867.

events, in the absence of an express contract as to notice.³ Thus, the Poor Law Commissioners (now the Minister of Health) had a discretion to remove the paid officers of any parish or union; and it was held that they might order the removal of one of such officers, though no charge had been made, nor any notice given to the officer, nor an opportunity afforded him for making any defence.⁴

The court refused a *quo warranto* against the clerk to a local board at the instance of a former clerk who had been dismissed, because the board had power to dismiss the clerk at their pleasure, and the intention of the majority of the board being to dismiss him, it would be idle to reinstate him. *Semble*, the resolution dismissing an officer is a fresh and independent resolution, and not a rescission of the original resolution appointing him, so as to require a month's notice to be given before moving it in accordance with the board's regulations as to meetings and proceedings.⁵

Where certain town commissioners in Ireland had resolved that their then clerk be dismissed and another person appointed, and no notice of the proposal to do this had been given to the commissioners before the meeting, in pursuance of sect. 43 of the Commissioners Clauses Act, 1847,⁶ which requires notice to be given of "any business other than ordinary business," the dismissal and appointment were held to have been illegal.⁷

But where a dismissal was invalid for the same reason, it was held that the defect was cured, because, at a subsequent meeting which was called "to appoint a temporary clerk and assistant overseer," another person was appointed to the post, Peterson, J., holding that this was "either a confirmation of the invalid dismissal or a separate and valid dismissal."⁸

Where notice is expressly required, but no length is specified, it must be a "reasonable" notice.⁹

A resolution terminating the engagement of all married women teachers was held not to be *ultra vires* or contrary to public policy.^{9a}

A teacher at a national school received three months' notice from the managers in accordance with the terms of the agreement under which he was employed. Before the expiration of the three months, the schools were transferred to a new body of managers by the Education Act, 1902, which rendered the consent of the local educational authority necessary to the dismissal of a teacher. In an action by the teacher to restrain the new managers from preventing him from exercising his duties until they had obtained the requisite consent to his dismissal, the Court of Appeal held that his employment terminated at the expiration of the three months without any dismissal by the new managers, and that the consent of the local educational authority was not requisite.¹⁰

Officers whose salaries are prejudiced by amalgamation schemes must claim compensation, and not proceed by way of *mandamus*.¹¹

The Minister of Health may, under sect. 309,^{11a} direct a district council to pay a specified amount or an annuity to an officer who is removed from office, or deprived of all or part of his emoluments, in pursuance of the present Act or of any provisional order made under it.

With regard to the compensation payable to officers affected by the Local Government Acts, 1888 and 1894, or orders, etc., made under those Acts, see sect. 120 of the former and sect. 81 of the latter Act,¹² and the Note to the former of those sections.

Clerk.

The clerk to an urban district council was appointed to perform for a specified salary "all the duties of his department, legal, parliamentary, and otherwise," and to devote the whole of his time to the duties of his office. On taxation of the

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Notice of dismissal—
continued.

Public policy.

Transfer of officer to new authority.

Compensation to officers.

Clerk and solicitor.

(3) *Wood v. East Ham U.D.C.* (1907, C. A.), 71 J. P. 129; 5 L. G. R. 403.

(4) *Ex parte Teather* (1850), 1 L. M. & P. 7; s. c. *nom. Re Teather and Poor Law Comrs.*, 19 L. J. M. C. 70; and see *Donahoo v. Local Government Bd.* (1882), 46 L. T. 300; s. c. *nom. Donahoo v. Dodson*, 30 W. R. 334.

(5) *Ex parte Richards* (1878), L. R. 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. 684; s. c. *nom. Reg. v. Jones*, 42 J. P. 614.

(6) 10 & 11 Vict. c. 16, s. 43.

(7) *Reg. v. Cunningham* (1885), 16 L. R. Ir. 206.

(8) *Longfield P.C. v. Wright* (1918), 88 L. J. Ch. 119 (short report); 6 L. G. R. 865

(full report).

(9) *Payzu, Ltd. v. Hannaford*, L. R. 1918, 2 K. B. 348; 87 L. J. 1017; 119 L. T. 282; 82 J. P. 216.

(9a) *Price v. Rhondda U.D.C.* (1923, Eve, J.), W. N. 158.

(10) *Jones v. Hughes*, L. R. 1905, 1 Ch. 180; 74 L. J. Ch. 57; 92 L. T. 218; 69 J. P. 33; 3 L. G. R. 1.

(11) *Rex (Pollard) v. Hertford Overseers*, *post*, Vol. II., p. 1959.

(11a) Superseded in practice, see footnote (1), *post*, p. 778.

(12) *Post*, Vol. II., pp. 1955, 2110.

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costs of an action which had been brought against the council and dismissed with costs, a sum claimed by the council in respect of the clerk's services as solicitor was disallowed. The disallowance was, however, reversed on the ground that the plaintiffs in the action could not show that the sum in dispute had not been paid to the solicitor as part of his salary, or that he had not earned that amount of salary by rendering the services in question.¹³

The clerk to a district council, who is a solicitor, need not deliver a signed bill in pursuance of the Attorneys Act, 1843,¹⁴ in respect of his salary.¹⁵

Payment of workmen.

Where there is a surveyor, the clerk should not pay the wages of the workmen engaged on works for the council.^{15a}

Appearance in court.

As to the right of the clerk to appear in court in legal proceedings, see sect. 259 and Note, *post*.

Absence from offices.

Per Ridley, J.¹⁶: "Where the clerk to a council goes away, he should leave some person with authority to produce the minute book to anyone entitled to see it."

Privilege *re* interrogatories.

A municipal corporation, ordered to answer interrogatories in an action "by their town clerk or some other qualified person," answered by their town clerk, who, being a solicitor, claimed privilege on the ground that his information was derived from communications received by him in his capacity of solicitor; but it was held that, as the corporation had elected to answer by their town clerk, his privilege was waived.¹⁷ Where, however, the order was only made "for the examination of S. B., the town clerk of the plaintiffs," the last-cited case was distinguished and the claim of privilege allowed.¹⁸ The Court of Appeal have decided that an officer of a company, in answering interrogatories on their behalf, is only bound to answer as to his knowledge acquired in the course of his employment by the company, and as to the result of inquiries made by him of the other officers and agents of the company with regard to their knowledge acquired in the same way; and that he is not bound to answer as to his own knowledge acquired accidentally or in some other capacity, for the company can only be required to answer as to that with respect to which an individual litigant in their position would have been bound to answer.¹⁹

Further as to interrogatories for the examination of local authorities, see the cases cited below.²⁰

Solicitor.

Appointment of solicitor.

With regard to the employment of a solicitor by a local authority, it was held that it was within the scope of the authority of certain commissioners invested with rating powers, and powers to appoint officers, to employ an attorney, and that the attorney so employed might recover in an action against the clerk of the commissioners in a succeeding year—the commissioners suing and being sued by their clerk.²¹

It has been laid down that a municipal corporation cannot retain a solicitor otherwise than under their common seal, except in the City of London.²² But it was held, on an objection to the signatures to a notice of appeal to quarter sessions, that the retainer of a solicitor for a corporation, whose directors had express power under their special Act to appoint officers and enter into contracts, need not be under seal.²³ And in an action by a local board for a *mandamus* to their clerk, who was a solicitor, to deliver up certain papers on which he claimed a lien for costs, James, L.J., is reported to have said that a suggestion that the plaintiffs intended to raise the point that the defendant had not been appointed their solicitor under seal was a suggestion that they were going to do a most dishonest thing;

(13) *Henderson v. Merthyr Tydfil U.D.C.*, L. R. 1900, 1 Q. B. 434; 69 L. J. Q. B. 335; 48 W. R. 332.

(14) 6 & 7 Vict. c. 73, s. 37.

(15) *Bush v. Martin* (1863), 2 H. & C. 311; 9 Jur. (N. S.) 851; 8 L. T. 509.

(15a) See the *Wembley Case*, *post*, p. 550 (10).

(16) In the *Andover Case*, *post*, Vol. II., p. 2093 (4). For quotation, see 77 J. P., at p. 296.

(17) *Swansea Cpn. v. Quick* (1879), L. R. 5 C. P. D. 106; 49 L. J. C. P. 157; 41 L. T. 758; 44 J. P. 378. See also, as to privileged documents, *Russell v. Royston U.D.C.*, *post*, Vol. II., p. 2093 (8).

(18) *Salford Cpn. v. Lever* (1890), L. R.

24 Q. B. D. 695; 59 L. J. Q. B. 248; 62 L. T. 434; 54 J. P. 519.

(19) *Welsbach Incandescent Gas Lighting Co. v. New Sunlight Incandescent Co.*, L. R. 1900, 2 Ch. 1; 69 L. J. Ch. 546; 83 L. T. 58.

(20) *Doyle's Case*, *ante*, p. 76 (5); *Leeke's Case*, *post*, Vol. II., p. 2044 (6); and the *Morpeth Case*, *post*, Vol. II., p. 1779 (4).

(21) *Hall v. Taylor* (1858), E. B. & E. 107; 27 L. J. Q. B. 311; 4 Jur. (N.S.) 877; 23 J. P. 20.

(22) *Arnold v. Poole Cpn.* (1842), 4 Man. & Gr. 860; *Sutton v. Spectacle Makers Co.* (1864), 10 L. T. 411; 12 W. R. 742.

(23) *Reg. v. Cumberland J.J.* (1848), 5 D. & L. 431, n.; 17 L. J. Q. B. 102; 12 Jur. 1025.

but he did not think that point could be raised with success.²⁴ But in a case at *nisi prius*, Lopes, J., on the authority of the Wimbledon case,²⁵ ruled that a solicitor, not retained under seal, could not recover the amount of his bill of costs for opposing a Railway Bill on behalf of a highway board, nor even his out-of-pocket expenses, as the petitioning against the Bill was not incidental to the purposes for which the board was constituted.²⁶ If, however, the bill is paid by the local authority, the want of a retainer under seal does not render the payment illegal.²⁷

Treasurer.

It is necessary that some responsible individual should be appointed treasurer : the Act is not satisfied by the appointment of a banking company as treasurer.²⁸

The opinion of the Local Government Board having been sought as to whether an urban district council could accept the guarantee of a banking company as security for their treasurer, the Board stated that, though they had no jurisdiction as to the nature of the security to be given by a treasurer, they saw no objection to the acceptance of such a guarantee as that suggested.

Guardians were held to be entitled to recover from the sureties of their treasurer, notwithstanding the stoppage of the bank at which he had kept his union account, as they had not acknowledged the bankers as their own bankers.²⁹ It would have been otherwise if they had so acknowledged them.³⁰

The Board stated that it was desirable that all orders of urban district councils upon their treasurers should be signed at a meeting of the council or their duly authorised committee by two members at least of the council or committee, and should be countersigned by the clerk.

The Board confirmed (though they remitted) a disallowance in the accounts of the treasurer to an urban district council of amounts representing interest on temporary overdrafts, where it appeared that the treasurer had no cheque or order or other sufficient authority from the council enabling him to take credit for the sums in his account at the time the charges were made, and that the district council had ordered payment of the amounts after the treasurer had made the charges. The Board stated that they did not consider that the action of the council ratified the charges, and that, inasmuch as the amounts claimed were for interest on money illegally borrowed, the council could not lawfully authorise payment of them.³¹

With regard to the liability of a treasurer of a local authority for money belonging to the authority in his hands placed to different accounts, the following decision is important. A local authority kept three separate accounts at their bankers, viz. :— 1. “ The Corporation of Preston Account ”; 2. “ The Corporation Baths and Wash-houses Revenue Account ”; and 3. “ The Preston Local Board of Health Account.” Upon the first account they were indebted to the bank, and upon the other two the bank was indebted to them in an equal amount. In an action brought by the banker to recover the balance due to him on account No. 1, it was held that the corporation were entitled to set off the debts due to them on the other two accounts, for though the accounts were separate the defendants were creditors in the first account and debtors in the second, and in the same right.³²

Sanitary Officers.

Special provisions with regard to medical officers of health and sanitary inspectors are contained in sect. 191, and matters relating to those officers respectively are separately dealt with in the Note to that section, *post*.

The Public Health (Officers) Act, 1921,¹ contains provisions with regard to both of these sanitary offices, and is accordingly set out here :—

“ 1. In cases to which this section applies, the medical officer of health of a local

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Security for treasurer.

Orders on treasurer.

Payment of interest on overdrafts.

Accounts of treasurer.

P.H. (Officers) Act, 1921.

(24) *Newington Loc. Bd. v. Eldridge*, *Times*, July 26, 1879, p. 5, col. vi. This observation is not in L. R. 12 Ch. D. 349.
(25) *Hunt v. Wimbledon Loc. Bd.*, *ante*, p. 453.
(26) *Phelps v. Upton Snodsbury Highway Bd.* (1885), 49 J. P. 408. But see *Baker's Case*, *ante*, p. 456 (18).
(27) *Reg. v. Prest*, *ante*, p. 458.
(28) See *In re West of England and South Wales District Bank; Ex parte Swansea Friendly Society* (1879), L. R. 11 Ch. D. 768; 48 L. J. Ch. 577; 40 L. T. 551; 43 J. P. 637.
(29) *Cosford Union v. Grimwade*, 1892 Loc.

Gov. Chron. 814.
(30) *Colchester Union v. Moy* (1893), 68 L. T. 564; 57 J. P. 265.
(31) And see *De Winton's Case*, cited in Note to s. 233, *post*.
(32) *Pedder v. Preston Cpn.* (1862), 12 C. B. (N.S.) 535; 9 Jur. (N.S.) 496; 31 L. J. C. P. 291; 6 L. T. (N.S.) 540.
(1) 11 & 12 Geo. V. c. 23, ss. 1-7. The Act does not apply to Scotland or Ireland, s. 8. “ Except so far as it relates to London,” it “ shall be read as one with the Public Health Acts,” s. 9. The above short title is given by s. 10, which also provides that

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Tenure of
office of
medical
officer of
health.

authority who by the terms of his appointment is restricted from engaging in private practice as a medical practitioner shall not be appointed for a limited period only and shall be removable by the authority with the consent of the Minister of Health or by the Minister and not otherwise. This section applies to—(a) the medical officer of health of a county borough where any portion of the salary of the medical officer was paid out of moneys voted by Parliament before it was constituted a county borough; (b) the medical officer of health of a county district any portion of whose salary is paid out of the county fund of the county in which the district is situate and charged to the Exchequer contribution account."

Tenure of
office and
appointment
of sanitary
inspectors.

2.—(1) In cases to which this subsection applies, the sanitary inspector of a local authority who is required by the terms of his appointment to devote the whole of his time to the duties of his office or to the duties of that office and of any other office or offices held by him under any local or public authority, shall not be appointed for a limited period only and shall be removable by the authority with the consent of the Minister of Health or by the Minister and not otherwise. This subsection applies to—(a) the sanitary inspector of a county borough where any portion of the salary of the sanitary inspector was paid out of moneys voted by Parliament before it was constituted a county borough; (b) the sanitary inspector of a county district any portion of whose salary is paid out of the county fund of the county in which the district is situate and charged to the Exchequer contribution account: Provided that, where more than one sanitary inspector is appointed by a local authority, the foregoing paragraphs (a) and (b) of this sub-section shall apply only to the senior sanitary inspector as determined by the local authority. (2) An urban sanitary authority shall have power to appoint two or more sanitary inspectors."

Definition of
"sanitary
inspector."

"3.—(1) In this Act the expression 'sanitary inspector' includes an inspector of nuisances appointed under the Public Health Act 1875, and an inspector of nuisances shall henceforth be designated a sanitary inspector. (2) In this Act the expression 'local authority' means an urban or rural sanitary authority within the meaning of the Public Health Acts or a port sanitary authority."

Temporary
appointments.

"4. Nothing in this Act shall prevent a local authority from making, with the sanction of the Minister of Health, a temporary arrangement for the performance of all or any of the duties of a medical officer of health or sanitary inspector, and any person appointed by virtue of any such arrangement to perform those duties or any of them, shall, subject to the terms of his appointment, have all the powers and liabilities of a duly appointed medical officer of health or sanitary inspector as the case may be."

Application
to existing
officers.

"5. The provisions of this Act relating to the removal from office of medical officers of health and sanitary inspectors shall apply to such officers and inspectors whether appointed before or after the commencement of this Act."

Application
of L.G. Act,
1888, s. 24 (2).

"6. Sect. 24 of the Local Government Act, 1888² (which provides for payments by county councils to local authorities in respect of the salaries of medical officers of health and sanitary inspectors), shall have effect as if the reference in sub-sect. (2) thereof to the Public Health Act, 1875, included a reference to this Act."

Provisions as
to London.

"7.—(1) The provisions of sect. 108, sub-sect. (2) (b) and (c) of the Public Health (London) Act, 1891³ (which relate to the removal and appointment of medical officers of health of metropolitan borough councils), shall apply to the chief or senior sanitary inspectors of metropolitan borough councils and to the medical officers of health and the chief or senior sanitary inspector of the port sanitary authority of the Port of London as they apply to the medical officers of health of metropolitan borough councils, and those provisions shall have effect accordingly. (2) Save as provided by this section, this Act shall not apply to the administrative county of London."

Surveyor.

Surveyor's
report.

A civil engineer, who had been in the employment of a local board as assistant-surveyor, was on the death of the surveyor appointed "surveyor to the board until a permanent surveyor be appointed." It was held that he was not competent to make a report, as "surveyor" of the board, under sect. 16, with respect to the necessity for carrying a sewer through certain private land.⁴ Kekewich, J., distinguished the foregoing case in one which arose under the Metropolis Manage-

the Act is to "come into operation" on the 1st April, 1922.

(2) *Post*, Vol. II., p. 1913.

(3) 54 & 55 Vict. c. 76, s. 108 (2).

(4) *Lewis v. Weston-super-Mare Loc. Bd.*, ante, p. 62.

ment Act, 1855, and held that the expression “ the surveyor for the time being ” of a local authority was applicable to a person who, having previously been assistant-surveyor, was acting as interim surveyor.⁵

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As to the performance by solicitors of the surveyor’s duties in connection with highway diversions, see the case cited below.⁶

As to surveyor’s reports in rural districts, see the case cited below.⁷

In one case questions were raised, but not decided, whether a person can be appointed surveyor, *pro hac vice*, to make or sign an apportionment of the expenses of private street improvements, and whether such an appointment can be ratified. In that case there was no evidence of such appointment or ratification, and the apportionment was held to be a nullity.⁸

Surveyor’s apportionment.

By Art. 6 of the Local Boards Account Order of the 22nd March, 1880 (which is applicable to urban district councils), the surveyor is required to keep a wages account and a stores account. Where proposals were submitted to the Local Government Board that these accounts should be made up by the accountant to the council, the Board offered no objection, provided that the surveyor certified the correctness of the particulars entered on his behalf.⁹

Surveyor’s accounts.

See also the Note to sect. 229 on “ orders for goods,” *post*.

The Local Government Board considered the employment of the surveyor of an urban district council as clerk of works which are to be carried out by the council, to be open to serious objection; for it is impossible for one person to act efficiently in both capacities, the latter requiring him to be always on the spot while any men are at work. As to the respective duties of the surveyor and the clerk of the works, see the case cited below.¹⁰

Clerk of works.

The Minister of Transport is prepared to defray part of the surveyor’s salary, subject to certain conditions.^{10a}

Grants towards salary.

Collector.

In connection with an application by an urban district council for the issue of an order under the Local Government Act, 1894,¹¹ conferring powers upon the council, the Local Government Board stated that they were not aware of any objection in ordinary circumstances to the same person holding the offices of assistant overseer and collector of the general district rate. They pointed out, however, that in cases where they confer on the council of an urban district the power to appoint and to revoke the appointment of assistant overseers, it is their practice to provide by their order that nothing therein contained shall affect any existing holder of the office.

Collector and assistant overseer.

The attention of the Board having been drawn to the fact that the offices of clerk and collector of an urban district council were held by the same person, the Board stated that their experience in recent years had satisfied them that it was generally undesirable that the clerk or any other officer employed upon or having access to the accounts of an urban district council should also be employed as collector to receive money on behalf of the council.

Collector and clerk.

The Board also expressed their opinion (1) that it is expedient for the books, which the collector of an urban district council is required to keep, to be examined periodically on behalf of the council; (2) that the duty of checking the accounts is one which the council may assign to the clerk by regulation under the present section; and (3) that such examination should be made from time to time before the several meetings of the council at which the pecuniary transactions of the collector are to be reported.

Examination of collector’s accounts.

Servants and Workmen.

By sect. 4 of the Conspiracy and Protection of Property Act, 1875,¹² “ Where a person employed by a municipal authority ¹³ or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part

Malicious breach of contract.

(5) 18 & 19 Vict. c. 120, s. 105. *Kendal v. Lewisham B.C.* (1904), 67 J. P. 236; 1 L. G. R. 416; settled on terms on appeal to C. A., 2 L. G. R. 31.

(6) *United Land Co. v. Tottenham Loc. Bd.*, ante, p. 276.

(7) *Hinckley R.D.C. v. Bannister*, post, p. 537.

(8) *Sykes v. Huddersfield Cpn.* (1871), 35 J. P. 614.

(9) Rev. S. R. O., Vol. IV., Dist. C. (E.) 111-140.

(10) *Leicester Guardians v. Trollope*, ante, p. 448 (42).

(10a) See M. T. Circulars, May 22, Aug. 15, 1922, and form of agreement with Minister in “ Loc. Gov. 1922,” p. 396.

(11) See s. 33, post, Vol. II., p. 2050.

(12) 38 & 39 Vict. c. 86, s. 4.

(13) This expression includes municipal corporations and urban district councils, and also companies and contractors with statutory power to supply either gas for street lighting, or water to inhabitants, *ibid.*, s. 14.

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thereof, with gas or water,¹⁴ wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour." This section also requires a printed copy of its provisions to be exhibited at the water or gas works. The word " maliciously " is to be construed as in the Malicious Injuries to Property Act, 1861.¹⁵ There is a right to trial by jury under the Act of 1875.¹⁶

Threats to strike.

As to the effect of a threatened strike on the duty to supply electrical energy, see the case cited below.¹⁷

Compensation for accidents.

Local authorities are " employers " for the purposes of the Employers' Liability Act, 1880,¹⁸ and the Workmen's Compensation Act, 1906,¹⁹ and numerous cases have been decided as to the liability of such authorities under these Acts, but a full treatment of these cases would be outside the scope of this work, though the following appear to be sufficiently relevant for inclusion.

Where a steam-roller and a watering-cart were being used in the repair of a road, and a workman was injured while harnessing the horse to the water-cart, the local authority were held liable to compensate him, although the steam-roller was at the time about a quarter of a mile away from the cart.²⁰ So also where a workman was injured while engaged in laying pipes to a new reservoir about 500 yards away, he was held entitled to recover compensation because there was machinery driven by steam at the reservoir, and the whole of the operations constituted one work.²¹

A workman employed by a local authority in repairing the overhead wires of their tramway was injured while going from the place where he had effected a repair to another place which needed repair. He recovered compensation, as the area of the engineer's work on which he was engaged was held to be co-extensive with the whole tramway system.²² But where a workman was injured while unloading rails for contractors, who were converting a horse tramway into an electric tramway, at a distance of 700 yards from the site of the actual operations and fifty yards from the part of the tramway so to be converted, compensation was refused.²³

A night watchman employed by a local authority to look after the tools, etc., used during the day for sewerage works in a street was injured by the fall of a shanty into which he had no right to go at night. He recovered compensation, as there was no express prohibition against such an act.²⁴

The Court of Appeal held that a workman's death from sewer-gas poisoning contracted while working in cesspools was not an " accident " within the Act of 1906.²⁵

A local authority contracted with A to erect labourers' cottages. A engaged B to do the building and slating. B was not precluded from working for others, but was bound to complete the work within six months, the period specified in A's contract with the local authority. He was also bound to carry it out to the satisfaction of the local authority's engineer. He was paid at a certain rate per

(14) Or electricity, see s. 31 of Act of 1919, *post*, Vol. II., p. 1345.

(15) 38 & 39 Vict. c. 86, s. 15. See s. 58 of the Act of 1861 and cases noted *ante*, pp. 429, 430.

(16) 38 & 39 Vict. c. 86, s. 9. See *Rex (Livesey) v. Mitchell*, L. R. 1913, 1 K. B. 561; 82 L. J. K. B. 153; 108 L. T. 76; 77 J. P. 148.

(17) *Hackney B.C. v. Dore*, *post*, Vol. II., p. 1310. Also reported in L. R. 1922, 1 K. B. 431; 126 L. T. 375.

(18) 43 & 44 Vict. c. 42, s. 8.

(19) 6 Edw. VII. c. 58, s. 13.

(20) *Middlemiss v. Berwickshire C.C. Dist. Committee* (1900, Ct. of Sess.), 2 F. 392, cited in *Atkinson v. Lumb*, *infra*.

(21) *Atkinson v. Lumb* (1903, C. A.), L. R. 1903, 1 K. B. 861; 72 L. J. K. B. 460; 88 L. T. 789; 67 J. P. 414.

(22) *Rogers v. Cardiff Cpn.* (C. A.), L. R. 1905, 2 K. B. 832; 75 L. J. K. B. 22; 93 L. T. 683; 70 J. P. 9; 4 L. G. R. 1. See also *Coles v. Anderson*, *ante*, p. 40; and *Adams v. Shaddock* (C. A.), L. R. 1905, 2 K. B. 859; 75 L. J. K. B. 7; 93 L. T. 725.

(23) *Back v. Dick Kerr & Co.*, L. R. 1906 A. C. 325; 75 L. J. K. B. 569; 94 L. T. 802. See also *Spacey v. Dowlais Gas Co.* (C. A.), L. R. 1905, 2 K. B. 879; 75 L. J. K. B. 5; 93 L. T. 685.

(24) *Morris v. Lambeth B.C.* (1905, C. A.), 22 T. L. R. 22.

(25) *Eke v. Hart-Dyke*, L. R. 1910, 2 K. B. 677; 80 L. J. K. B. 90; 103 L. T. 174. See also *Martin's Case*, *ante*, p. 264; and *Finlay v. Tullamore Guardians*, 1914 Ir. K. B. 233; 48 Ir. L. T. 110; 5 Glen's Loc. Gov. Case Law 127 (typhoid fever after removing obstructions from sewage ejector pump).

day. He finished his work, and at A's request came back to remedy some defects. While thus engaged he met with a fatal accident. It was held that the relationship between A and B was not that of master and servant, but contractor and sub-contractor, and that therefore B was not a "workman" within the Act of 1906.²⁶ A casual stone carter for a local authority was also held to be a sub-contractor.²⁷

A workman obtained an award against a contractor, but the award was not satisfied, owing to the contractor's bankruptcy and the insurance company's liquidation. The workman then applied for the balance from the local authority that had engaged the contractor. It was held that, having elected to proceed against the contractor, he could not subsequently proceed against the principal. It was also held that his claim was bad as he had not served notice of the accident on the local authority within the specified time.²⁸ A hospital cook failed because her letter did not amount to a claim for compensation.²⁹

A house surgeon who was burnt while voluntarily testing X-ray apparatus did not obtain compensation.³⁰

An education authority's porter suffered sunstroke while in the street conveying a message on school business: It was held that the accident did not "arise out of" his employment, as the injury was not caused by a risk to which he was specially exposed by reason of the nature of his employment, but by a risk which (*per* Lord Kinneir) "attends anyone whose business or pleasure takes him into the street."³¹ Nor did an accident to a plumber, who, while in a state of impaired vitality, was engaged on an excessively hot day in laying and jointing pipes in a highway trench about 2 feet 6 inches deep. This work obliged him to stoop to a considerable extent; and while so stooping he was struck down by heat apoplexy, and subsequently died from the effects of the stroke.³²

A collector for a company who fell on a stair while collecting recovered compensation,³³ and another who was injured while on his round on a bicycle was equally successful,³⁴ but another who, in order to finish his work promptly, over-exerted himself climbing stairs, perspired freely, and contracted a chill which developed into pleurisy, failed in his claim.³⁵

A workman was employed on a traction-engine waggon hauling stone from a quarry. While sitting on the waggon in motion he dropped his pipe, and, in trying to recover it, overbalanced and was run over. It was held that the accident "arose out of" his employment.³⁶

A decision that an injury due to an attack by strikers was not such an "accident"³⁷ was overruled by the House of Lords in a case in which a schoolmaster was injured during a pre-arranged assault by his pupils.³⁸

A coal merchant's servant was injured by falling down some steps while delivering coal at a workhouse, and recovered compensation from his employers, who then claimed to be indemnified by the guardians. The claim was dismissed on the ground that the steps were reasonably safe.³⁹

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Compensation
for accidents
—continued.

(26) *Byrne v. Baltinglass R.D.C. and Kelly* (1911, C. A., I.), 45 Ir. L. T. 206; 2 Glen's Loc. Gov. Case Law 157.

(27) *Ryan v. Tipperary (S.R.) C.C.* (1912, C. A. I.), 46 Ir. L. T. 69; 4 Glen's Loc. Gov. Case Law 103.

(28) *Meier v. Dublin Cpn.* (C. A., I.), 1912 Ir. K. B. 129; 46 Ir. L. T. 236.

(29) *Abbott v. Biggleswade Hospital Bd.*, 1915 W. C. & Ins. 533; 9 B. W. C. C. 107. See also *Nichols v. Briton Ferry U.D.C.*, 1915 W. C. & Ins. 14; 8 B. W. C. C. 42 (notice of accident out of time). But see *Walters v. Wall & Sons*, 1918 W. C. & Ins. 17; 10 B. W. C. C. 667; and *Fry's Case*, *post*, p. 534 (50).

(30) *Curtis v. Talbot Infirmary Committee* (1911, C. A.), 5 B. W. C. C. 41.

(31) *Rodger v. Paisley School Bd.*, 1912 S. C. (S.) 584; 49 Sc. L. R. 413; 3 Glen's Loc. Gov. Case Law 121.

(32) *Robson Eckford & Co. v. Blakey* (1911, Sc. S.), 49 Sc. L. R. 254; 3 Glen's Loc. Gov. Case Law 122.

(33) *Millar v. Refuge Assurance Co.*, 1912 S. C. (S.) 37; 49 Sc. L. R. 67; 3 Glen's Loc. Gov. Case Law 121.

(34) *Pearce or Pierce v. Provident Clothing Co.*, L. R. 1911, 1 K. B. 997; 80 L. J. K. B.

831; 104 L. T. 473. See also *McNeice v. Singer Sewing Machine Co.*, 1911 S. C. (S.) 12; 2 Glen's Loc. Gov. Case Law 159; *Dennis v. White*, L. R. 1919 A. C. 479; 86 L. J. K. B. 1074; 116 L. T. 774; and, to the contrary, *Greene v. Shaw* (1911, C. A., I.), 45 Ir. L. T. Jo. 310; 2 Glen's Loc. Gov. Case Law 160; *Ince v. Reigate Education Committee* (C. A.), L. R. 1916, 2 K. B. 671; 85 L. J. K. B. 1283; 115 L. T. 402.

(35) *McMillan v. Singer Sewing Machine Co.*, 1913 S. C. (S.) 346; 50 Sc. L. R. 220; 4 Glen's Loc. Gov. Case Law 104.

(36) *McLaughlan or Wilson v. Anderson*, 1911 S. C. (S.) 529; 48 Sc. L. R. 349; 2 Glen's Loc. Gov. Case Law 160; but see *McKeown v. McMurray* (1911, C. A., I.), 45 Ir. L. T. 190; 131 L. T. Jo. 167; 2 Glen's Loc. Gov. Case Law 160.

(37) *Murray v. Denholm & Co.*, 1911 S. C. (S.) 1087; 2 Glen's Loc. Gov. Case Law 158. See also *Poulton v. Kelsall*, L. R. 1912, 2 K. B. 131; 81 L. J. K. B. 774; 106 L. T. 522.

(38) *Trim School Bd. v. Kelly*, L. R. 1914 A. C. 667; 83 L. J. P. C. 220; 111 L. T. 305.

(39) *Rickett & Co. v. St. George's-in-the-East Guardians* (1910, K. B. D.), *Times*, Nov. 26, p. 4; 1 Glen's Loc. Gov. Case Law 70.

Sect. 189, n.
Compensation
for accidents
—continued.

A workwoman's work ended on a Wednesday. On Friday she went to receive her wages, and was injured while leaving her employer's premises. It was held, Buckley, J., dissenting, that compensation was recoverable.⁴⁰

A girl, injured while returning from lunch in her employer's canteen, obtained compensation.⁴¹ Compensation was not obtained for injury sustained while boarding a moving train,⁴² but dangerous acts, even after warnings, do not necessarily preclude an employer's liability.⁴³

Drunkenness has been held in some cases to prevent,⁴⁴ and in others not to prevent,⁴⁵ an accident arising out of the injured workman's employment.

Exceptional personal qualifications of a local authority's casual labourer were held to entitle him to an award beyond his weekly earnings from them.⁴⁶

An appeal by a local authority's driver against a reduction of his compensation was dismissed, because, though the injury to his left wrist prevented him from driving with his left hand, he was able to do any light work, including driving with his right hand, if he chose to learn that method.⁴⁷

A workman can contract out of the Act by accepting an authorised scheme,⁴⁸ but has no right to an oral hearing before the committee deputed to administer the scheme.⁴⁹ See also cases cited in "Addenda et Corrigenda," ante.

The Public Authorities Protection Act, 1893, does not apply to a claim under the Act of 1906.⁵⁰

War injuries.

As to compensation for injuries sustained by workmen in warlike operations during the recent war, see the Injuries in War (Compensation) Acts of 1914 and 1915.⁵¹

Appointment of
officers of rural
authority.
P.H. 1872, s. 10.

Sect. 190. Every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health, and [sanitary inspector or inspectors]; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act.

There may be awarded to the clerk and treasurer of the guardians of any union, in respect of the additional duties of such officers under this Act, such remuneration as the rural authority may, with the approval of the [Minister of Health], determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as aforesaid.

P.H. 1874, s. 6.

Note.

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Appointment of Officers.

Appointment,
salary, &c.

With regard to the appointment, salary, etc., of officers generally, see the Note to sect. 189. The Act of 1921 therein set out applies to rural and urban districts.

Clerk of Rural District Council.

Appointment
of clerk.

The Public Health Act, 1872,¹ made it compulsory on the clerk of the union to take upon himself the office and duties of clerk to the rural sanitary authority.

(40) *Riley v. Holland & Sons*, L. R. 1911, 1 K. B. 1029; 80 L. J. K. B. 814; 104 L. T. 371.

(41) *Armstrong Whitworth & Co. v. Redford*, L. R. 1920 A. C. 757; 89 L. J. K. B. 495; 123 L. T. 114.

(42) *Byrne v. Larrinaga Steamship Co.* (1918, C. A.), 88 L. J. K. B. 1255; 120 L. T. 163; W. C. & Ins. 319; 11 B. W. C. C. 260.

(43) *McWilliam v. Great North of Scotland Ry. Co.*, 1914 S. C. (S.) 453; 51 Sc. L. R. 414; 5 Glen's Loc. Gov. Case Law 129.

(44) *Renfrew v. McCrae*, 1914 S. C. (S.) 539; W. C. & Ins. 195; 7 B. W. C. C. 898; *Murphy v. Cooney*, 1914 Ir. K. B. 76; W. C. & Ins. 44; 7 B. W. C. C. 962; *Nash v. Rangatira Owners* (C. A.), L. R. 1914, 3 K. B. 978; 83 L. J. K. B. 1496; 111 L. T. 704; W. C. & Ins. 490; 7 B. W. C. C. 590.

(45) *Turner v. Riddell & Co.*, 1914 S. C. (S.) 125; 51 S. C. L. R. 110; W. C. & Ins. 125; 7 B. W. C. C. 841; 5 Glen's Loc. Gov. Case Law 129; *Williams v. Llandudno Coach-*

ing Co. (C. A.), L. R. 1915, 2 K. B. 101; 84 L. J. K. B. 655; 112 L. T. 848; W. C. & Ins. 91; 8 B. W. C. C. 143.

(46) *Snell v. Bristol Cpn.*, L. R. 1914, 2 K. B. 291; 83 L. J. K. B. 353; 110 L. T. 563; 7 B. W. C. C. 236; W. C. & Ins. 101.

(47) *Cardiff Cpn. v. Hall*, L. R. 1911, 1 K. B. 1009; 80 L. J. K. B. 644; 104 L. T. 467.

(48) *Howarth v. Knowles & Sons* (C. A.), L. R. 1913, 3 K. B. 675; 82 L. J. K. B. 1325; 109 L. T. 278; W. C. & Ins. 746; 6 B. W. C. C. 596; *Barter v. Admiralty Comrs.* (1918, C. A.), W. C. & Ins. 37; 10 B. W. C. C. 314.

(49) *Dowling v. Great Eastern Ry. Co.* (1919, C. A.), 88 L. J. K. B. 380; 120 L. T. 460; W. C. & Ins. 75; 12 B. W. C. C. 12.

(50) *Fry v. Cheltenham Cpn.*, post, Vol. II., p. 1981 (3).

(51) 4 & 5 Geo. V. c. 30; 5 Geo. V. c. 18; 5 Geo. V. c. 24.

(1) 35 & 36 Vict. c. 79, s. 12.

The Sanitary Law Amendment Act, 1874,² permitted the appointment of the assistant clerk of a union or parish, where the clerk was unwilling or incompetent to act for the guardians in discharge of their sanitary duties. The present section required the assistant clerk to be appointed where the clerk of a union was unable or unwilling to undertake the duties of clerk to the sanitary authority. The Local Government Act, 1894, which makes the rural district council a distinct body corporate from the board of guardians, does not contain any provision for the appointment of a clerk to the district council after the termination of the office of the existing clerk to the rural sanitary authority, and the latter part of the present section is not repealed. The Local Government Board, however, stated that, subject to the tenure of any existing clerk, who was, when the Act of 1894 came into operation, and still is clerk to the guardians, a rural district council can appoint whom they think fit as their clerk, and are under no obligation to appoint the clerk to the guardians.

Among other grounds for challenging the election of the clerk to a board of guardians and rural district council³ was one based on the allegation that the same person had been elected as clerk to both authorities because the chairman had ruled that this must be done, and that such ruling was wrong, but it was held that the affidavits disproved the giving of any such ruling.

A clerk to a rural district council, who was clerk to the guardians and *ex-officio* clerk to the rural sanitary authority before the Local Government Act, 1894, came into operation, and was continued in office as clerk to the rural district council by virtue of that Act,⁴ is subject to the provisions of the General Consolidated Order (Amendment) Order of the 26th February, 1866,⁵ relating to the duties of clerks to the guardians; and if he is a solicitor, it is his duty to perform, without charge for anything beyond disbursements, all legal business connected with the district or in which the council are engaged, subject to certain specified exceptions. But the Local Government Board suggested that in such a case, if extraordinary services have been rendered by the clerk, for which extra remuneration may equitably be allowed, the council should pass a resolution increasing his salary for the next quarter by the amount of the proposed extra remuneration.

Some of the duties of a clerk to the guardians, who as such had acted first as clerk to the rural sanitary authority and then as clerk to the rural district council, were transferred by the council to a person who, having been clerk to the highway board (superseded by the council under the Local Government Act, 1894), acted as clerk to the council in their capacity of highway authority; but no alteration was made in the salary of either officer. The court refused an injunction to restrain the council from preventing the first-mentioned officer from carrying out the duties so transferred.⁶

Where a rural district council, in pursuance of the Local Government Act, 1894, succeeded surveyors of highways, they themselves became such surveyors within the meaning of sect. 144 of the present Act as applied by sect. 25 of the Act of 1894, and in that capacity they are empowered to appoint such officers as they may consider necessary to assist them in the discharge of their duties. The Local Government Board considered that any officers appointed by the council for this purpose might have appropriate duties assigned to them, but they did not regard it as being within the competency of the council to invest such persons with all the powers and duties attaching to the office of surveyor of highways within the meaning of the enactment referred to, the office being one which the district council are themselves to execute.

By sect. 81 of the Local Government Act, 1894,⁷ it was provided, *inter alia*, that, where the powers of a highway board were transferred by the Act to a rural district council, the officers of such board should become the officers of the council, and should hold office by the same tenure and upon the same terms and conditions as theretofore. In some instances it happened that in consequence of these enactments a rural district council had two clerks—one the clerk to the late sanitary authority, and the other the clerk to the late highway board. The Local Government Board did not hold the view that in the case of the death or resignation of the clerk for highway matters the remaining clerk became entitled to discharge the whole of the duties appertaining to the office of clerk to the rural district council. They

Sect. 190, n.
Appointment
of clerk—
continued.

Duties of
clerk.

Officers for
highway
purposes.

(2) 37 & 38 Vict. c. 89, s. 6.

(3) See *Rex v. Hunton*, *post*, Vol. II., p. 2080 (7).

(4) See s. 81 (4), *post*, Vol. II., p. 2110.

(5) See Glen's Poor Law Orders.

(6) *Genn v. East Kerrier R.D.C.* (1898), 62 J. P. 215.

(7) *Post*, Vol. II., p. 2110.

Sect. 190, n.

pointed out that it rested with the district council to decide whether they would appoint him as their clerk for all purposes or appoint a second clerk to the council as a successor to the late clerk for highway matters. The Board, however, stated that the latter arrangement did not seem to them to be a desirable one, and that the appointment of a clerk and an assistant clerk would be preferable to that of two clerks to the council, assuming that more than one clerk was needed.

Clerk to parish council.

Where a rural district council delegate powers to a parish council under sect. 202 of the present Act and sect. 15 of the Local Government Act, 1894, the parish council are, unless the district council otherwise direct, to have the services of the clerk of the district council.⁸

*Treasurer.***Appointment of treasurer.**

The Local Government Board stated that a rural district council may appoint a treasurer independently of any appointment made by the guardians of a union in which their district is situate, and that no sanction on the part of the Board to his appointment or remuneration was requisite.

Resignation of treasurer.

The office of treasurer of a rural district council is not one in respect of which proceedings by *quo warranto* can be taken.⁹

The Local Government Board considered that it is competent to the treasurer of a rural district council, who is also treasurer of the guardians of the union in which the rural district is situate, to resign his office under the council without also resigning the union treasurership.

*Medical Officer of Health.***County medical officer.**

Instead of appointing a separate medical officer, the rural district council may, if the county council have appointed a medical officer of health, arrange with the council to utilise the services of that officer.¹⁰

Medical officer of union.

A district medical officer of a poor law union may, under sect. 191, be appointed medical officer of health with the sanction of the Minister of Health.

Medical officer for several districts.

Under the same section, and with the like sanction, the same person may be appointed medical officer of health for more than one district.

Powers and duties of medical officer.

With regard to the tenure of office of medical officers of health, see the Note to sect. 189; and with regard to their qualification, appointment, and duties, see sect. 191 and the Note to that section.

Medical officers of health have all the powers conferred by the Public Health Acts upon sanitary inspectors—see end of third paragraph of sect. 191, *post*.

Medical and other officers may also be specially appointed under sect. 136 when the Minister of Health has issued regulations on the outbreak of a formidable epidemic, etc., and districts may be united under sect. 286 for the purpose of appointing a medical officer of health.

*Sanitary Inspectors.***Inspector and surveyor.**

With regard to the tenure of office of sanitary inspectors, see the Note to sect. 189; and with regard to the qualification, appointment, salary, duties, etc., of a sanitary inspector, whose salary is partly paid from the county grant, see sect. 191 and the Note to that section.

A rural district council submitted to the Local Government Board a proposal that the inspector of nuisances should also act as surveyor of highways for the rural district. In reply, the Board stated that they had had under consideration generally the question of the combination of the two offices in districts of large area and population; that in their opinion the arrangement was a very undesirable one, inasmuch as it too often led to the officer devoting the main portion of his time to the office of surveyor, and neglecting the duties which he ought to perform as inspector of nuisances; and that it was therefore their practice to decline to assent to such an arrangement. In deference, however, to the wishes of the district council in the particular case the Board decided, although with hesitation, to assent to the proposed combination of offices, subject to the understanding that, if the arrangement were found in practice to lead to the work of nuisance inspection being in any way neglected, the Board would require its abandonment.¹¹

(8) See L. G. Act, 1894, s. 17 (5), *post*, Vol. II., p. 2021.

(9) *Reg. v. Wells* (1895), 43 W. R. 576.

(10) See L. G. Act, 1888, s. 17, *post*, Vol. II., p. 1907.

(11) See also *post*, p. 543.

Where a rural district council had appointed no surveyor, and the inspector of nuisances had made the report on which certain summary proceedings were based, and it was proved that the inspector performed some of the duties which in an urban district were performed by the surveyor, it was held by justices that, as sect. 4 of the present Act defines "surveyor" as including "any person appointed by a rural authority to perform any of the duties of surveyor under this Act," the proceedings were properly founded.¹¹

The Local Government Board considered that a rural district council might so fix the terms of appointment of an inspector of nuisances as to entitle him to his actual travelling expenses incurred in the discharge of his duty.

Sect. 190, n.
Surveyor's report.

Travelling expenses.

Service under Public Health Acts.

Superannuation of Poor Law Officers.

By the Divided Parishes and Poor Law Amendment Act, 1876,¹² "if any officer seek a superannuation allowance from the guardians of any union or parish, or from the overseers of any such parish under any statute applicable to such allowance, his service as a registrar of marriages, or under any of the provisions of the Sanitary Acts as defined by the Public Health Act, 1875, or of that Act, shall not operate to prevent him from obtaining the same."

Further with regard to the superannuation of poor law officers, see the Poor Law and Asylum Officers Superannuation Acts of 1896, 1897, and 1909.¹³

As to the superannuation of local government officers, see the Act of 1922 set out in the Note to sect. 189.¹⁴

Sect. 191. A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner; and the [Minister of Health] shall have the same powers as [he] has in the case of a district medical officer of a union with regard to the qualification appointment duties salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of [*moneys voted by Parliament*], and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

The same person may, with the sanction of the [Minister of Health], be appointed medical officer of health or [sanitary inspector] for two or more districts, by the local authorities of such districts; and the [Minister of Health] shall by order prescribe the mode of such appointment, and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities.

Any district medical officer of a union may, with the sanction of the [Minister of Health] and subject to such conditions as the said [Minister] may prescribe, be appointed a medical officer of health; and a medical officer of health may exercise any of the powers with which [a sanitary inspector] is invested by this Act.

In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the [Minister of Health].

As to medical officer of health, &c.
P.H., s. 40.
P.H. 1872, s. 10
P.H. 1874, s. 5.

Note.

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Departmental Orders.

All the orders of the Local Government Board as to medical officers of health and inspectors of nuisances (now called "sanitary inspectors" ¹) not already revoked were revoked by Art. III. of the Sanitary Officers Order, 1922,² "but without prejudice to any right, privilege, obligation or liability acquired, accrued or incurred under any of those Orders."

Sanitary officers.

The reference in the present section to officers any portion of whose salary is paid out of "moneys provided by Parliament" is now to be construed to refer to those

(11) *Hinckley R.D.C. v. Bannister* (Market Bosworth P.S.), 1915 Loc. Gov. Chron. 578; 79 J. P. Jo. 329; 1915 San. Rec. 50. Further, as to this case, see the Note to P. H. Am. Act, 1890, s. 22. *post*, Part I., Div. II.

(12) 39 & 40 Vict. c. 61, s. 17.

(13) 59 & 60 Vict. c. 50; 60 & 61 Vict. c. 28; 9 Edw. VII. c. 48.

(14) *Ante*, p. 518.

(1) See s. 3 (1) of Act of 1921 set out in Note to s. 189, *ante*, p. 530.

(2) Set out *post*, Vol. II., Part V.

Sect. 191, n. officers in respect of whose salaries payment is made by a county council in pursuance of the Local Government Act, 1888.³

Medical Officers of Health.

Qualification. No person can hold any appointment as a medical officer of health unless he is registered under the Medical Acts.⁴ And the words "legally qualified medical practitioner" are to be construed as meaning a person so registered.⁵

Diploma in public health. By the Medical Act, 1886, "Every registered practitioner to whom a diploma for proficiency in sanitary science, public health, or state medicine, has after special examination been granted by any college or faculty of physicians or surgeons or university in the United Kingdom, or by any such bodies acting in combination, shall, if such diploma appears to the Privy Council or to the General Council to deserve recognition in the medical register, be entitled, on payment of such fee as the General Council may appoint, to have such diploma entered in the said register, in addition to any other diploma or diplomas in respect of which he is registered."⁶

The Local Government Act, 1888,⁷ requires medical officers of health to be legally qualified for the practice of midwifery as well as of medicine and surgery, except so far as the Minister of Health may in special cases dispense with such qualifications.⁸ In the case of medical officers of health appointed after the 1st January, 1892, for districts containing populations of 50,000 or more, the same Act requires them to have a diploma in sanitary science, public health, or state medicine, unless they have held appointments as medical officers or inspectors of the Minister of Health, or have for three years before the date above mentioned held appointments as medical officers of health for districts with populations of 20,000 or more⁹; and the Minister of Health has no power to dispense with this qualification. The Act also requires district medical officers of health to send copies of their periodical reports to the county council.¹⁰

Permanent appointment. Where a medical officer of health, whose appointment was subject to the sanction of the Local Government Board, had been in office for several years, and had discharged his duties satisfactorily, the Board considered favourably an application for their sanction to his re-appointment without limit of time.

Appointment in new urban district. The Local Government Board stated that they had had under consideration the question of the appointments to the office of medical officer of health in newly-formed urban districts, and that in their opinion it was desirable that, whenever practicable, the new urban district council should appoint to the office the medical officer of health of the rural district out of which the urban district had been formed. The Board pointed out that under such an arrangement the urban district council would secure the services of an officer who was already acquainted with the sanitary circumstances of their district, and who should be in a position to advise the council better than a new officer who was without previous experience in the district.

Appointment for several districts. The following memorandum, dated February, 1876, relative to the joint appointment of medical officers of health or of inspectors of nuisances for two or more sanitary districts, was issued by the Local Government Board:—

"In those cases in which sanitary authorities, whether urban or rural, propose to make appointments in pursuance of sect. 191 (2), the following course of proceeding should be adopted.

"Each of the authorities proposing to combine should pass a resolution agreeing to combine with the other authorities in the appointment of the same person as medical officer of health or inspector of nuisances, as the case may be: and, when an arrangement has been arrived at as to the period for which the appointment is to be made, the amount of the salary to be paid to the officer when appointed, and the proportions to be borne by each authority, copies of the resolutions embodying the proposals should be transmitted to the Local Government Board for their consideration. [The Minister of Health does not now require all the authorities to pass formal resolutions.^{10a}]

(3) See s. 24 (3), *post*, Vol. II., p. 1914.

(4) 21 & 22 Vict. c. 90, ss. 34, 36; 23 & 24 Vict. c. 7; 49 & 50 Vict. c. 48.

(5) 21 & 22 Vict. c. 90, s. 34; 22 Vict. c. 21, s. 1. See also 49 & 50 Vict. c. 48, s. 27; 1 & 2 Geo. V. c. 43 (as to Wales).

(6) 49 & 50 Vict. c. 48, s. 21.

(7) See s. 18 (1), *post*, Vol. II., p. 1907.

(8) The Midwives Acts have been set out *post*, Vol. II., p. 2178.

(9) See L. G. Act, 1888, s. 18 (2), *post*, Vol. II., p. 1908.

(10) *Ibid.*, s. 19.

(10a) Information supplied to Editor, Feb. 16, 1923.

“ If the proposal be sanctioned by the Board, they will then issue the order required by the statute. The order will provide :—

“ (a) For the election of a joint committee, to consist of a certain number of members of each authority, upon whom the appointment of the officer will devolve.

“ (b) For convening a meeting of the joint committee, at which the appointment is to be made in the mode prescribed by the order.

“ (c) For the appointment of the clerk of one of the authorities to act as clerk to the committee, for the purpose of conducting the requisite proceedings in regard to the appointment.

“ (d) For the proportions in which the salary and charges of the officer, as well as the expenses of the appointment, including the remuneration of the clerk of the joint committee, shall be borne by the several authorities.

“ (e) For the tenure of office and duties of the officer ; and also for his qualification in the case of a medical officer of health.

“ (f) For the reappointment, from time to time, of the person elected under the order, provided that the sanitary authorities by whom the appointment was made should be desirous of continuing his appointment for a further period.

“ When the appointment has been duly made in pursuance of the order, the clerk to the joint committee should forthwith report the appointment to the Local Government Board for their approval.”

The Minister of Health may, in certain cases, by order to be made under sect. 286, on a representation to him showing the desirability of the order, unite any two or more districts wholly or partially in the same county for the purpose of appointing a single medical officer of health for them.

Art. 9 of the General Order of the 23rd March, 1891, relative to the appointment of medical officers of health a portion of whose salaries was intended to be payable to urban district councils out of the county fund, made provision for the appointment of a temporary substitute in certain cases. The Local Government Board pointed out that the appointment of a temporary substitute or deputy for a medical officer of health could apparently under this provision only be made when the temporary disability of the medical officer of health had actually arisen ; but that under sect. 189 an urban district council were empowered to appoint an assistant medical officer of health, and to make regulations with respect to his duties, and the Board were disposed to consider that a council might, if they thought fit, appoint such an assistant with the duty of acting as substitute or deputy for the medical officer of health. The Board’s approval was not required in either case.

The Local Government Board, when sanctioning the employment in a rural district of a district medical officer as medical officer of health, intimated that such sanction was given in pursuance of the third paragraph of the present section, and that it would not entitle the council to repayment of a moiety of the salary from the county fund under sect. 24 (2, c) of the Local Government Act, 1888, and they requested to be informed, prior to the expiration of the period for which the sanction was given, of the further arrangement proposed by the district council for the discharge of the duties of the office of medical officer of health.

The present section refers to the appointment of a deputy medical officer in cases of “ illness ” or “ incapacity.” Under sect. 26 of the Housing Act of 1890,¹¹ “ unavoidable absence ” is added. See also sect. 79 (1) of the same Act as to the powers of such deputies.

Medical and other officers may be specially appointed when the Minister of Health has issued regulations on the outbreak of a formidable epidemic, etc.¹²

The Local Government Board considered that the salary of a medical officer of health, whose training has had special concern with public health work apart from ordinary professional qualifications, should, if he is to devote the whole of his time to the work, not be less than £500 per annum ; though any separate salary paid in respect of any other office held by him under the council may be taken into account. In cases where the total remuneration of the officer is less than that amount, the Board were only prepared to give their sanction on the understanding that, while giving his whole time to the council in other respects, he should be at liberty to supplement his income by acting as a consultant in cases of infectious disease if invited to do so by any other medical practitioner, by performing analyses and other laboratory work, and by receiving qualified medical men as pupils for instruction in sanitary science, and in public health

Sect. 191, n.
Appointment for several districts—
continued.

Appointment for united district.

Assistant medical officer.

Appointment of district medical officer.

Deputy medical officer.

Appointment of special medical officer.

Salary.

(11) *Post*, Part II., Div. III.

(12) See s. 136, *ante*, p. 262.

Sect. 191.
Salary of
medical
officer of
health—cont.

work of a similar character not involving the ordinary work of a general medical practitioner.

It was contrary to the practice of the Local Government Board to sanction any appointment of a medical officer of health for a separate district at a smaller salary than £20 per annum. If, however, the person appointed was medical officer of health of another district, and the joint salaries amounted to that sum, they did not raise objection to the appointment, where the arrangement was to continue only so long as he held both offices.

As regards medical officers of health a portion of whose salary is paid from the county fund, the Board pointed out that an alteration in the remuneration of such an officer constituted a fresh arrangement with respect to the terms of the appointment, and that it was necessary in such cases that particulars of the new proposal should be submitted to them in the prescribed form. Notice of the intention of the district council to proceed to the reappointment on altered terms should be given by advertisement pursuant to Art. 3 of the General Order of the 23rd March, 1891 (now Art. 8 (3) of the Order of 1922); otherwise, as the Board stated, further proceedings would be necessary after the requisite notice was given.

Retiring
allowance.

In the opinion of the Local Government Board a medical officer of health is not entitled to a retiring allowance.¹³

Notification
fees.

The Board were advised that it is not competent to a district council to make the appointment of a medical officer of health on the understanding that his salary should include the fees to which he is legally entitled under the Infectious Disease (Notification) Act, 1889.¹⁴

Reports not
privileged.

Where a resolution to take proceedings is founded on the medical officer's report, the report must be produced.¹⁵

Expenses
as witness.

The Local Government Board stated that they were not aware of any rule of law which specially provides for the expenses of a medical officer of health as a witness in a court of law in proceedings at the instance of the district council by whom he is employed. Where a medical officer of health is not required by the terms of his appointment to devote his whole time to the work of his office, the attendance at the courts and the giving of evidence in such proceedings do not devolve upon him as duties of that office prescribed by the Board's regulations. The Board thought that such a medical officer is in the same position as any medical witness would be having no official relationship with the district council. If he attend voluntarily, he can make his own agreement with the council requiring his attendance, and if he is summoned to attend a court of summary jurisdiction, he can require a reasonable sum to be paid for his costs and expenses according to the Summary Jurisdiction Act, 1848.¹⁶ In either case, the court may, if they award costs against the defendant, include such a sum as, in their discretion, they may consider just and reasonable for the medical officer.

Duties.

The Local Government Board stated that as a general rule the control of the actual working of a hospital belonging to a district council, equally with the attendance upon patients therein, properly devolved upon the medical superintendent of the hospital, who should be in direct charge and be directly responsible for the good conduct of the establishment; but that the medical officer of health, by virtue of his office, had a general advisory function as regards all questions connected with the utility of the hospital for its purposes, and particularly as regards the use to which the hospital should be put from time to time under the varying health conditions of the district, the retention of patients therein, the particular disease to cases of which admission should at any moment be given preferentially, and the like.

The Board did not consider it part of the duty of a medical officer of health, as such, to make a personal examination of a person notified to him as suffering from an infectious disease with a view to certifying that the case is a proper one for removal to an isolation hospital; nor to report to the Board a few cases of such disease of no exceptional severity, unless he considers the disease likely to spread so as to constitute "an outbreak." It was more important, in the opinion of the Board, that they should be informed immediately of an outbreak of one of the graver and more exceptional diseases (*e.g.* plague, Asiatic cholera, typhus

(13) 1912 Loc. Gov. Chron. 167.

(14) *Post*, Part II., Div. I.

(15) *Margerison v. Hind & Co.*, L. R. 1922,
1 K. B. 214; 91 L. J. K. B. 160; 126 L. T.

249; 85 J. P. 278; 19 L. G. R. 716. See also
the *Royston Case*, *post*, Vol. II., p. 2093 (8).

(16) 11 & 12 Vict. c. 43, s. 7.

or smallpox) than of an outbreak on a similar scale of a disease common in the district.

With reference to a proposal that the medical officer of health of an urban district council should periodically visit each school under the council and report on the sanitary and hygienic condition of the buildings, and examine and report upon children alleged to be unfit to attend school owing to infectious and other diseases, the Local Government Board stated that they were advised that such duties could not be assigned to the medical officer of health under the order of the 23rd March, 1891, so as to be included in those in respect of which a moiety of his salary was repayable from the county fund.

As regards nuisances, etc., at a workhouse, the Board stated that the medical officer of health should seek information through the medical officer of the workhouse, and confer with him as to sanitary improvements.

The Board considered it very undesirable that the medical officer of health in a populous borough should also act as public analyst, since his duties require the whole of his time, and those of a public analyst also required continuous work.

It was not part of the duty of a medical officer of health, under the Order of the 23rd March, 1891, to make analyses of sewage effluents and water. The Board considered that though it was his duty to inform himself as to the character of the water supply of his district, and for that purpose to use where needful such minor tests of the water as might suffice to indicate whether further and quantitative analysis was called for, it was not his duty to make such analysis: they did not object to his undertaking the work, but they would not sanction, with a view to repayment from the county fund, the payment to him of any remuneration except for the duties specifically imposed on him by statute or by the Order; and if he undertook the work, separate remuneration must be assigned to him in respect of it.

It is the duty of the medical officer of health, on the request of a person liable to pay the house duty on a house comprising separate dwellings of annual values not exceeding £40, to examine the house, and if it is constructed so as to afford suitable accommodation for each of the families or persons residing in it, and due provision is made for their sanitary requirements, to certify the fact, in order that remission of the whole or part of the duty may be obtained. He is not entitled to remuneration beyond his salary for doing this; but if the council think that his ordinary work would be interfered with, they may appoint any one with the qualifications required for a medical officer of health to perform the duty.¹⁷ Artizans' dwellings, with a common front door, entrance hall, wash-house, and staircase, and no complete structural division of the sets of rooms, were held to be "separate buildings" within these provisions.¹⁸

The county council may appoint one or more medical officers of health, and an urban or rural district council may utilise his or their services on terms agreed upon between the two councils, in which case the district council need not appoint a separate medical officer.¹⁹

The Local Government Act, 1888,²⁰ requires medical officers of health to send copies of their periodical reports to the county council.

As to the notification of births to medical officers of health within 36 hours, see the Acts of 1907 and 1915.²¹

Sanitary Inspectors.

With regard to the appointment, qualifications, tenure of office, salary, and duties of sanitary inspectors whose salaries are partly paid by a county council or a county borough council pursuant to a statute in that behalf, see the Order of the Minister of Health of the 28th March, 1922.²²

The Local Government Board did not object to the appointment of an inspector of nuisances, a portion of whose salary is to be repaid from the county fund, being made permanently or for a term of years, where the officer gives his whole time to the work of his office and holds the certificate of the Sanitary Institute; but the appointment cannot be made determinable by the council.

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Duties of
medical
officer of
health—cont.

County
medical
officer of
health.

Notification
of births.

Appointment.

(17) C. & I. R. Act, 1890, 53 & 54 Vict. c. 8, s. 26 (2); Revenue Act, 1903, 3 Edw. VII. c. 46, ss. 11, 17, Sched. See also H. T. P. Act, 1909, s. 35, *post*, Part II., Div. III.

(18) *Seaman v. Lee* (1899, Q. B. D.), 68 L. J. Q. B. 593; 63 J. P. 499.

(19) See L. G. Act, 1888, s. 17, *post*, Vol. II., p. 1907; and Housing Act of 1909, s. 68 and Note, *post*, Part II., Div. III.

(20) See s. 19, *post*, Vol. II., p. 1908.

(21) *Post*, Vol. II., p. 2206.

(22) Set out *post*, Vol. II., Part V.

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Qualification.**

The Board stated that as their sanction to the appointment carried with it the repayment of half his salary out of funds other than those of the council, they considered it to be their duty to satisfy themselves that the person appointed was fully qualified by experience and training to perform his duties, or that, at any rate, he was the best-qualified person obtainable. Ex-service men trained under the scheme of the Minister of Labour should be given first preference.²³

**Inspector
for several
districts.**

The same person may, with the sanction of the Minister of Health, be sanitary inspector for more than one district; and that Minister may prescribe the mode in which he is to be appointed, and apportion his salary and expenses between the councils of the districts; see the Memorandum of the Local Government Board already quoted.²⁴

**Additional
inspector.**

With regard to the holding of other offices by a sanitary inspector, see sect. 192, and the Note to that section.

An urban district council are empowered to appoint one sanitary inspector only for their district, although they may appoint such assistants as may be necessary and proper for the efficient execution of the Act, and the Local Government Board accordingly pointed out that they were empowered to sanction the appointment of an inspector of nuisances with a view to the repayment of a moiety of the salary by the county council in those cases only in which the officer acted as a principal and not as an assistant.

**Assistant
inspector.**

A district council may, without sanction, appoint an assistant sanitary inspector; but they cannot claim repayment of part of his salary by the county council. The Local Government Board therefore refused to sanction an arrangement by which a district council proposed to increase the salary of their inspector of nuisances on the understanding that he should appoint and pay an assistant, on the ground that, as such salary was partly paid from the county fund, it would be tantamount to throwing part of the salary of an assistant inspector on the county fund, for which there was no authority. The Board were of opinion that whenever practicable an inspector of nuisances should personally perform all the duties of the office prescribed by the General Order of the 31st March, 1891; and they would not sanction an arrangement under which some of those duties would be assigned to an assistant while the inspector held other appointments; but would require the council to undertake that the assistant should not be entrusted with any of the work of the inspector. The Board also stated that the appointment of an assistant must not in any degree impair the responsibility of the inspector of nuisances for the efficient discharge of the duties of the office.

**Temporary
inspector.**

Application was made to the Local Government Board for their sanction to the appointment by an urban district council of a temporary substitute for an inspector of nuisances. The Board referred to Art. 9 of the General Order of the 23rd March, 1891, with reference to the appointment of medical officers of health and inspectors of nuisances in whose cases a portion of the salary is to be repaid from the county fund, and stated that the Board's approval is not required to the *appointment* of a person to act as temporary substitute for an officer under the circumstances contemplated by that article. The Minister's approval is only required to the compensation paid to the temporary substitute, and then only if it be paid for a longer period than six weeks.²⁵

Salary.

It was the practice of the Local Government Board to decline to sanction a less salary than £20 per annum for the inspector of nuisances of an urban district with a view to repayment of a moiety of such salary from the county fund. The Board also pointed out that, where part of the salary of an inspector of nuisances is paid from the county fund, an alteration in the remuneration of the officer constitutes a fresh arrangement with respect to the terms of the appointment, and that it was necessary in such cases that particulars of the new proposal should be submitted to them in the prescribed form.

**Duties of
inspector.**

The Minister of Health is prepared, in special cases, to waive these requirements.²⁶

The Local Government Board stated that the following duties should not be assigned to an inspector of nuisances as part of his ordinary duties, namely, examinations which district councils are required to make under the Factory and Workshop Act, 1901, in order to ascertain whether factories and workshops are

(23) See M. H. Circular, April 23, 1920, 18 L. G. R. (Orders) 192.

(24) *Ante*, p. 538.

(25) See, now, s. 4 of Act of 1921, *ante*, p. 530, and M. H. Circular, clause 13, set

out in 20 L. G. R. (Orders) 77.

(26) See Art. 21 of new Order, *post*, Vol. II., Part V., and M. H. Circular, clause 6, set out in 20 L. G. R. (Orders) 75.

provided with sufficient means of escape in case of fire,²⁵ and the duties in connection with keeping the list of out-workers.²⁶ They also stated that the council had no power to appoint under the present section an officer whose duties would encroach upon those assigned to inspectors of nuisances by the General Order of the 23rd March, 1891,²⁷ and that such an encroachment would seem to be inevitable as the result of any exclusive assignment of duties under the Factory and Workshop Act, 1901, to a new officer.

In the case of an inspector of nuisances, a portion of whose salary was repayable by the county council, the Local Government Board, after pointing out that it was no part of his prescribed duty to test the drains of new houses with a view of seeing that they were in proper condition, stated that they would not object to his undertaking such work, provided that he were paid a separate salary for it, no part of which would be a charge upon the county fund.

Sect. 192. The same person may be both surveyor and [sanitary inspector]; but neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer.

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Offices tenable by same persons. P.H., s. 37.

Any person offending against this enactment shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt.

Note.

This and the four following sections apply to officers of rural as well as of urban district councils.

If a person holding one office is elected to an incompatible office, and accepts the latter, he thereby vacates the former office.²⁸

Incompatibility of offices.

A person who holds any paid office under a parish or non-municipal district council or board of guardians is disqualified for being elected or being a member or chairman of such council or board.²⁹ In a borough a councillor is disqualified if he has directly or indirectly, by himself or his partner, any share or interest in any employment by or on behalf of the council.³⁰

Officers are prohibited by sect. 193 from occupying the position of contractors to the council by whom they are appointed, except in certain cases mentioned in the Note to that section.

Contracting with council.

Where an inspector of nuisances was employed to act as engineer for a sewerage scheme, the Local Government Board considered that, though his salary could not be increased on that account, since the work formed no part of his duty as inspector, yet if he also acted as surveyor it was open to the council to increase his salary without the sanction of the Board.

Inspector and surveyor.

The Local Government Board did not generally assent to the combination of the offices of inspector of nuisances and surveyor of highways in a rural district of large area and population.³¹

When the Local Government Board gave their consent for a specified period to the employment of a relieving officer as inspector of nuisances, they pointed out that it must be understood that that consent would not entitle the council to repayment of a moiety of the salary from the county fund under sect. 24 (2, c) of the Local Government Act, 1888. It was merely given by the Board under Art. 166 of the General Consolidated Order of the 24th July, 1847, to enable the guardians to dispense with the provisions of Art. 164 of the Order, under which a relieving officer is required to devote his whole time to his duties.

Inspector and relieving officer.

The Local Government Board did not offer objection to an inspector of nuisances

Inspector of nuisances and inspector under Diseases of Animals Act.

(25) See F. & W. Act, 1901, ss. 14, 125, *post*, Vol. II., pp. 2145, 2157.

(26) *Ibid.*, s. 107, *post*, Vol. II., p. 2152.

(27) See now Sanitary Officers Order, 1922, Art. XIX., *post*, Vol. II., Part V.

(28) *Reg. v. Bangor Cpn.* (1886, C. A.), L. R. 18 Q. B. D. 349; 56 L. J. Q. B. 326; 51 J. P. 51, affirmed in *H. L.* on another ground *sub nom. Pritchard v. Bangor Cpn.*

(1888) L. R. 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 52 J. P. 564. See also *Reg. v. Douglas*, L. R. 1898, 1 Q. B. 560; 67 L. J. Q. B. 406; 78 L. T. 198; 62 J. P. 277.

(29) See L. G. Act, 1894, s. 46, *post*, Vol. II., p. 2068.

(30) See M. C. Act, 1882, s. 12, *post*, Vol. II., p. 2072.

(31) See *ante*, p. 536.

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Inspector and house agent.

Collector.

undertaking the duties of inspector under the Diseases of Animals Act, 1894, but they stated that they were advised that such duties were not within those which could be required of an inspector of nuisances under the General Order of the 23rd March, 1891. The Board had no power to sanction with a view to repayment from the county fund any remuneration of an inspector of nuisances, except that paid to him in respect of the performance of the duties specifically laid down in that Order. If, therefore, the officer undertook the duties in question, a separate salary would have to be assigned to him in respect of them, and no portion of such separate salary would be repayable by the county council.

On an application to the Local Government Board for their sanction to the appointment as inspector of nuisances of a person whom the council proposed to allow to continue in business as a house agent, the Board stated that they considered it inexpedient that any one holding the office of inspector of nuisances should engage in such an occupation, as his public duty and his private interests would be likely to be brought into direct conflict.

With regard to the holding of other offices by a rate collector, see the Note to sect. 189.⁵

Officers not to contract with local authority. P.H., s. 38.

Sect. 193. Officers or servants appointed or employed under this Act by the local authority shall not in any wise be concerned or interested in any bargain or contract made with such authority for any of the purposes of this Act.

If any such officer or servant is so concerned or interested, or, under colour of his office or employment, exacts or accepts any fee or reward whatsoever other than his proper salary wages and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt.

Note.

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Corruption.

Corrupt practices.

The preamble ¹ to the Public Bodies Corrupt Practices Act, 1889, recited that it was "expedient more effectually to provide for the prevention and punishment of bribery and corruption of and by members, officers, or servants of corporations, councils, boards, commissions, and other public bodies"; and sect. 1 ² provided that: "(1.) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor. (2.) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor."

Unless the acts specified in this section are done "corruptly," no offence under the section will have been committed.

A contractor for provisions was fined £500 under the Act at the Central Criminal Court for offering the head messenger of a public board £5 to give him a list of the persons who had tendered for the supply of provisions to the board.³

By sect. 2 of the same Act,⁴ "Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted,—(a.) Be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such

(1) Repealed, S. L. R. Act, 1908.

(2) 52 & 53 Vict. c. 69, s. 1.

(3) *Rex v. Walker*, 1901 Loc. Gov. Chron.

439.

(4) 52 & 53 Vict. c. 69, s. 2.

(5) *Ante*, p. 531.

imprisonment and such fine; and (b.) In addition be liable to be ordered to pay to such body, and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and (c.) Be liable to be adjudged incapable of being elected or appointed to any public office for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and (d.) In the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office, and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting; and (e.) If such person is an officer or servant in the employ of any public body upon such conviction he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled."

Sect. 193, n.

By sect. 3,⁵ "(1.) . . .⁶ (2.) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office."

Savings.

By sect. 4,⁷ "(1.) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney General. (2.) In this section the expression 'Attorney General' means the Attorney or Solicitor General for England . . . [*Scotland and Ireland*]."

Restriction on prosecution.

As to the costs of prosecutions under this Act, see the Costs in Criminal Cases Act, 1908.⁸

Costs.

By sect. 6,⁹ "A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act."

Jurisdiction of quarter sessions.

By sect. 7,¹⁰ "In this Act—The expression 'public body' means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act,¹¹ but does not include any public body as above defined existing elsewhere than in the United Kingdom: The expression 'public office' means any office or employment of a person as a member, officer, or servant of such public body: The expression 'person' includes a body of persons, corporate or unincorporate: The expression 'advantage' includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined."

Interpretation.

The Prevention of Corruption Act, 1906,¹² provides as follows: "1.—(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or if any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or if any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which

Secret commissions.

(5) 52 & 53 Vict. c. 69, s. 3.
(6) Repealed, S. L. R. Act, 1908. See Interpretation Act, 1889, s. 33, *post*, Vol. II., p. 1969 (*re* offences punishable under other Acts).
(7) 52 & 53 Vict. c. 69, s. 4.
(8) *Post*, Vol. II., p. 2208. This Act repealed s. 5 of the Act of 1889 and ss. 22, 23 of the Criminal Law Act, 1826, 7 Geo. IV. c. 64, and s. 2 of the Criminal Justice

Administration Act, 1851, 14 & 15 Vict. c. 55, and certain words in ss. 35 (5), 67, and 100 of the L. G. Act, 1888, *post*, Vol. II., pp. 1921, 1944, 1953.
(9) 52 & 53 Vict. c. 69, s. 6.
(10) *Ibid.*, s. 7.
(11) "Local and public authorities of all descriptions" added by Act of 1916, s. 4 (2), *post*, p. 546.
(12) 6 Edw. VII. c. 34, ss. 1, 2.

Sect. 193, n.
Secret com-
missions—
continued.

the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal; he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding £500, or to both such imprisonment and such fine, or on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding £50, or to both such imprisonment and such fine.¹³ (2) For the purposes of this Act, the expression 'consideration' includes valuable consideration of any kind; the expression 'agent' includes any person employed by or acting for another; and the expression 'principal' includes an employer. (3) A person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act."¹⁴

"2.—(1) A prosecution for an offence under this Act shall not be instituted without the consent, in England of the Attorney General or Solicitor General, and . . . [Ireland]. (2) The Vexatious Indictments Act, 1859, as amended by any subsequent enactment, shall apply to offences under this Act as if they were included among the offences mentioned in section one of that Act. (3) Every information for any offence under this Act shall be upon oath. (4) The expenses of any prosecution on indictment under this Act shall be defrayed as in cases of indictment for felony. (5) A court of quarter sessions shall not have jurisdiction to inquire of, hear, or determine prosecutions on indictments for offences under this Act. (6) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions."

False claim
for empties.

A false claim for empties handed to an agent of a water board in order to obtain a reduced rate is an offence against this Act, though the agent is not "corrupted."¹⁵

Extension of
Acts of 1889
and 1906.

The above quoted Acts of 1889 and 1906 are amended by the Prevention of Corruption Act, 1916,¹⁶ which provides as follows:—"1. A person convicted on indictment of a misdemeanour under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any Government Department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding seven nor less than three years: Provided that nothing in this section shall prevent the infliction in addition to penal servitude of such punishment as under the above-mentioned Acts may be inflicted in addition to imprisonment, or prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the said Acts."

"2. Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from His Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved."

"3. Notwithstanding anything in the Summary Jurisdiction Acts proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining a summary conviction for an offence thereunder may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor."

"4.—(1) This Act may be cited as the Prevention of Corruption Act, 1916, and the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Act, 1906, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 1916. (2) In this Act, and in the Public Bodies Corrupt Practices Act, 1889, the expression 'public body' includes, in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions. (3) A person serving under any such public body is an agent within the

(13) See also s. 1 of Act of 1916, *infra*.

(14) See also s. 4 (3) of Act of 1916, *infra*.

(15) *Sage v. Eichholz*, L. R. 1919, 2 K. B.

171; 88 L. J. K. B. 816; 121 L. T. 151; 83 J. P. 170; 17 L. G. R. 354.

(16) 6 & 7 Geo. V. c. 64, ss. 1-4.

meaning of the Prevention of Corruption Act, 1906, and the expressions 'agent' and 'consideration' in this Act have the same meaning as in the Prevention of Corruption Act, 1906, as amended by this Act."

It is a misdemeanour at common law for a public officer, whether judicial or ministerial, to accept a bribe as an inducement to him to show favour, or to forbear to show disfavour, to any person towards whom an impartial discharge of the officer's duty demands that he should show no favour or that he should show disfavour.¹⁷

The Court of Appeal decided that a local authority were entitled to recover from one of their officers certain bribes, which had been paid to him by a tradesman in consideration of his inducing the authority to accept the tradesman's tender, although an agreement had been made between the authority and the officer, which provided that the former should sue the tradesman at the expense of the latter, who was to guarantee the recovery of a certain amount as damages from the tradesman and deposit security for the amount, and that in the event of the guaranteed amount being recovered the deposit should be returned, and a full discharge should be given to the officer. For where an agent, who has been bribed to do so, induces his principal to enter into a contract with the briber, and the contract is disadvantageous to the principal, the principal has two distinct and cumulative remedies, either of which may be adopted before the other, that is, he may recover from the agent the amount of the bribe, and he may also recover damages from him and the briber, jointly and severally, for any loss which he may have sustained by reason of his having entered into the contract, without deduction for the amount of the bribe recovered from the agent.¹⁸

Interest in Contract.

The Public Health (Members and Officers) Act, 1885,¹⁹ provides that, "notwithstanding anything in the " present section " or any similar restrictions in any local Act, to the contrary, it shall not be lawful for any officer or servant appointed or employed under the " present Act " or local Act by the local authority to be concerned or interested in any contract with the local authority made with such consent or approval as is hereinafter mentioned for the sale, purchase, leasing, or hiring of any lands, rooms, or offices, or to be concerned or interested in any contract with the local authority as a shareholder in any joint stock company, and no officer or servant of a local authority shall be incapable of holding any office or of being employed under the " present Act " or local Act, or be liable to any penalty by reason only of his having been concerned or interested either before or after [August 6th, 1885] in any such contract as aforesaid. No such contract as aforesaid shall be made after [August 6th, 1885], or approved if made before [August 6th, 1885], for the sale, purchase, leasing, or hiring of any lands, rooms, or offices except with the consent of two-thirds of the number of the members of the local authority present at a meeting held after seven clear days' notice shall have been published in some newspaper circulating in the neighbourhood, and after notice shall have been sent in writing to every member stating the nature of the contract, and the time and place of the meeting at which the question is to be considered."

Before that Act, in a case where the clerk to a local board had let rooms as an office to the board at a rent payable to himself, it was held that this was a bargain or contract within the present section, and made him liable to a penalty.²⁰ And in another case where the clerk was a shareholder in a gas company, which supplied gas in the district, and was paid for such gas by the local board, he was held to be an officer interested in a contract made with the board and liable to penalties under the present section.²¹

An officer, who was the patentee of a particular kind of brick used by his board, was held not to be within the prohibition.²²

Sect. 193, n.

Bribery by public officer.

Recovery of amount of bribe.

Exceptions.

Patentee.

(17) *Rex v. Whitaker* (C. C. A.), L. R. 1914, 3 K. B. 1283; 84 L. J. K. B. 225; 112 L. T. 41; 79 J. P. 28. In this case colonel of regiment accepted from caterers money to make them tenants of canteen.

(18) *Salford Cpn. v. Lever*, L. R. 1891, 1 Q. B. 168; 60 L. J. Q. B. 39; 63 L. T. 658; 55 J. P. 244. But see the *Pontefract Case*, *post*, Vol. II., p. 2074 (8).

(19) 48 & 49 Vict. c. 53, s. 2. The L. G.

Act, 1894, repealed ss. 3 and 4.

(20) *Burgess v. Clark* (1884, C. A.), L. R. 14 Q. B. D. 735; 33 W. R. 269; 49 J. P. 388.

(21) *Todd v. Robinson* (1884, C. A.), L. R. 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. 120; 49 J. P. 278. But see *Norton v. Taylor*, *post*, Vol. II., p. 2075.

(22) *Wednesbury Loc. Bd. v. Stevenson*, *ante*, p. 327.

Sect. 193, n.
Officer
paid by
commission.

The surveyor of a local authority, at their request and outside the scope of his ordinary duties, took out the quantities for the paving, etc., of certain private streets; and the contractors for the works by their contract undertook to pay him a percentage on the amount which should be certified by him as payable to them under such contract. He was also appointed engineer to the local authority for the purposes of a drainage scheme, on the terms that he was to receive a percentage on the cost of the works, the contractors in like manner undertaking to pay him the percentage on the cost as certified by him. In both cases the surveyor was held to be "interested in a contract made with the local authority," and liable to penalties under the present section. It was held not to be material whether the percentages were payable by the local authority themselves or by the contractors, for in either case he would obtain the amounts of the percentages only by reason of the contracts.²³ The local authority, who were the town council of a borough, then issued orders on their treasurer to pay the surveyor's commission, and also to pay the costs of defending the action brought against him for the penalties. These orders were subsequently removed into the Queen's Bench Division by *certiorari* and quashed.²⁴ And a rule was made absolute calling on the individual members of the council, who had voted in favour of the resolutions for defending the *certiorari*, to show cause why they should not pay the costs of the applicant for the writ.²⁵

Payment for
additional
work.

The prohibition in the present section does not prevent an officer from being employed to perform further duties in addition to those which he was originally engaged to perform, nor from being remunerated for such employment.²⁶

The clerk to an urban sanitary authority was therefore held by the Court of Appeal not to be liable to a penalty for having received a certain sum granted to him by resolution of the authority for his services as solicitor in respect of a sewage scheme, which had not been contemplated when his regular salary was fixed.²⁷ In this case Lord Halsbury, L.C., differed from the opinion of Cotton, L.J., that the word "allowance" must be limited to such matters as lodging, coals, or gas.

Invalidity of
the contract.

In a case where a paving commissioner had sent in a tender, which was accepted by his co-commissioners, and a penalty was imposed upon any commissioner engaging in a contract, the court refused to issue a *mandamus* to the commissioners commanding them to advertise for fresh tenders, since it did not appear that the contract itself was void.²⁸ But in a case which had reference to the personal interest of a surveyor of highways in a contract to perform work and supply materials for a highway under his care, for which a penalty is imposed by the Highway Act, 1835,²⁹ Blackburn, J., considered that the intention of the Legislature was to prevent such a contract being made at all, and that these contracts, being forbidden, were altogether illegal.³⁰

A firm of engineers, one of the partners in which was the surveyor of a local board, sued the board for their charges for services in drawing out plans for a scheme of drainage. The defendants contended, amongst other things, that the surveyor, being an officer of the board, could not contract with the board by reason of the present section, and that the contract was therefore illegal as to the surveyor, and being a joint contract was illegal as to the engineers also. At the trial it had been argued on the part of the plaintiffs that there was only an additional employment of the surveyor to do work not within the duties for which he received his salary; but without deciding this question, the judge ruled that, even if the present section were applicable, it did not render the contract itself void, but only rendered the officer liable to the penalty imposed by that section.³¹ The Court of Appeal, however, reversed the judgment, on the ground that that section

(23) *Whiteley v. Barley* (1888, C. A.), L. R. 21 Q. B. D. 154; 57 L. J. Q. B. 643; 60 L. T. 86; 52 J. P. 595.

(24) *Reg. v. Ramsgate Cpn.* (1889, Q. B. D.), L. R. 23 Q. B. D. 66; 58 L. J. Q. B. 352; 61 L. T. 333; 53 J. P. 740.

(25) *Reg. v. Vaile* (1889, Q. B. D.), L. R. 23 Q. B. D. 483; 54 J. P. 134; s. c. *nom. Reg. v. Whiteley*, 58 L. J. M. C. 164; 61 L. T. 253.

(26) See *Reg. v. Prest* (1850), 16 Q. B. 32; 20 L. J. Q. B. 17; 15 Jur. 554; *Reg. v. Gloucester Cpn.*, ante, p. 515.

(27) *Edwards v. Salmon* (1889), L. R. 23 Q. B. D. 531; 58 L. J. Q. B. 571; 59 L. T.

416; 54 J. P. 180; and see Art. 13 of the Sanitary Officers Order, 1922, *post*, Vol. II., Part V.

(28) *Rex v. Westminster Paving Comrs.* (1837), 1 Jur. 104. See also *Londonderry Harbour Comrs. v. Londonderry Bridge Comrs.*, 1894 Ir. K. B. 384.

(29) 5 & 6 Wm. IV. c. 50, s. 46.

(30) *Barton v. Piggott* (1874), L. R. 10 Q. B. 86; 44 L. J. M. C. 5; 31 L. T. 404; 23 W. R. 233.

(31) *Melliss v. Shirley and Freemantle Loc. Bd.* (1885, Q. B. D.), L. R. 14 Q. B. D. 911; 54 L. J. Q. B. 408; 52 L. T. 544. Further as to this case, see ante, p. 457.

rendered the contract void. Cotton, L.J., however, suggested that, if the officer only became interested in the contract after it had been made, the contract might not be void, but the officer would merely forfeit any benefit under it; and Bowen, L.J., expressed an opinion to the same effect.³²

The council may undertake the payment of the premiums on guarantee policies given by their officers, but the payments must be treated as part of the remuneration of the officers.

As to the disqualification of members of local authorities by reason of interest in contracts, see sect. 46 of the Local Government Act, 1894, and the Note thereto.³³

Common Informer.

Generally as to proceedings by common informers, and the meaning of "person aggrieved," see the Note to sect. 253, *post*. By the Public Health (Officers) Act, 1884,³⁴ "proceedings for the recovery of any penalty under" the present section "shall not be taken except with the consent in writing of the Attorney-General."

The Treasury cannot remit the penalty if an officer be convicted in a penalty under the present section.³⁵

As to the application of penalties, see sect. 254 and Note.³⁶

Protection of Officers.

Generally an action brought by a common informer must be commenced within one year after the offence.³⁷ But the Public Authorities Protection Act, 1893, limits any action against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, to six months; and this shorter limitation might in some cases apply to an action for a penalty under the present section.³⁸

Officers are protected from personal liability for acts done by them *bonâ fide* for the purposes of the Act: see sect. 265, *post*.

Sect. 194. Before any officer or servant of a local authority enters on any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local authority by whom he is appointed shall take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof.

Note.

The present section applies to officers of rural as well as of urban authorities.

The Local Government Board stated that they saw no objection to the acceptance of the guarantee of a banking company as security for the treasurer of an urban district council. In the case of poor law officers, however, the Board supported an objection raised by a district auditor to a collective policy, taken by a board of guardians from a guarantee company, to cover the fidelity of all the officers of the guardians at an agreed scale of premiums and containing a provision for the substitution with the consent of the company of one name for another when there was a change in the staff.

The conditional execution of a bond by one of the sureties, after its execution by the other parties, was held to have rendered the bond unenforceable. It was held in the same case that when several sureties limit their respective liabilities to different amounts, their liabilities for default of the principal are proportionate to those amounts.¹

Where an officer failed to account, after the date of the bond, for defalcations which had occurred before that date, the sureties were held liable for all defalcations

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Guarantee policies.

Disqualification of members.

Consent of Attorney-General.

Remission and application of penalties.

Limitation of time.

Personal liability of officers.

Officers intrusted with money to give security. P.H., s. 39.

Guarantee by company.

Validity of bond.

Scope of bond.

(32) *Melliss v. Shirley and Freemantle Loc. Bd.* (1885, C. A.), L. R. 16 Q. B. D. 446; 55 L. J. Q. B. 143; 53 L. T. 810; 50 J. P. 214.
(33) *Post*, Vol. II., p. 2068.
(34) 47 & 48 Vict. c. 74, s. 2.
(35) See *Todd v. Robinson*, cited in Note to s. 254, *post*, p. 664 (33).
(36) Particularly *Hawke's Case*, *post*, p. 664 (35).

(37) *Dyer v. Best* (1866), 4 H. & C. 189; L. R. 1 Ex. 152; 35 L. J. Ex. 105; 12 Jur. (N.S.) 142; 13 L. T. 753. But see *Robinson v. Currey*, cited in Note to s. 253, *post*, p. 661 (5).
(38) See cases cited *post*, Vol. II., p. 1981.
(1) *Ellesmere Brewery Co. v. Cooper*, L. R. 1896, 1 Q. B. 75; 65 L. J. Q. B. 173; 73 L. T. 567.

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which occurred after the officer's appointment, though the sureties knew nothing of such defalcations, and the wording of the bond pointed to future liability only; the ground of the decision apparently being that the officer's duty was to pay over sums certified by the auditor as due from him, that his failure to do this took place after the execution of the bond, and that therefore the sureties were liable for such failure.²

A policy guaranteeing the faithful services of an assistant overseer was held not to cover defalcations committed by him in respect of moneys received by him as clerk to the parish council, though he held the latter office by virtue of his appointment as assistant overseer.³

The term "embezzlement" when used in a guarantee bond has the same meaning as when used in an indictment.⁴

Failure to perform duty.

The clerk to a board of guardians, whose salary had been increased by a resolution, subject to a provision that the increased salary was to include his remuneration for conducting the elections, intentionally and without the knowledge of the guardians suppressed this provision in forwarding the resolution to the Local Government Board for their approval. The approval of the Board to the increase in the salary was given, and the clerk received payments in respect of the elections in addition to his salary for some years. In an action on a policy of guarantee by which the defendants had to the extent of £300 guaranteed that the clerk would duly and faithfully discharge the duties of his office, it was held by the Court of Appeal that the clerk, by suppressing part of the resolution as above mentioned, had failed so to perform his duty, and the payments made to him in respect of the increase of salary being *ultra vires*, the guardians were entitled to recover the amount of such payments up to the amount guaranteed.⁵

Evidence of receipt of money.

In an Irish case, the entries of sums collected, which had been made by a rate collector in his accounts and afforded the only evidence of the receipt of such sums, were held to be admissible in evidence in an action against the sureties.⁶

Alteration of contract.

Generally, if there be an alteration of the contract, the sureties will be discharged.⁷ Thus, a change in the mode of remuneration of a coal-agent from a fixed salary to a commission on the amount of coal for which he should get orders, was held to relieve the sureties from responsibility.⁸ In another case, a vestry nominated and elected an assistant overseer by a resolution not specifying his salary, which was understood to be £27. A bond for the faithful performance of his duties having been executed, the vestry subsequently resolved that his salary should be raised from £27 to £35, and the warrant of appointment by two justices recited that he had been appointed at the date of the latter resolution. Held, that the sureties were not liable on breach of the conditions of the bond.⁹

An association guaranteed the faithful discharge of the duties of both the clerk and the surveyor of an urban district council. The council without notice to the association transferred the duties of the surveyor to the clerk, who subsequently made defalcations in his capacity of surveyor. It was held that the council could not recover on the guarantee.¹⁰

Conduct of employers.

In an action on a bond by which the appellant guaranteed the honest discharge of certain duties by one P., the appellant pleaded that the respondents were guilty of negligence and want of due care in checking and properly examining the accounts of P., and that he was thereby released from the penalty. It was held that this plea was no defence, and that the mere passive inactivity of the person to whom a guarantee is given, his neglect to call the principal debtor to account in reasonable time and to enforce payment against him, does not discharge the surety; but that there must be some positive act done by him to the prejudice of the surety or such degree of negligence as to imply connivance amounting to fraud, and the surety

(2) *Tullamore U.D.C. v. Robins* (1914, K. B. D., 1.), 48 Ir. L. T. 180; 5 Glen's Loc. Gov. Case Law 12. Cf. *Black's Case*, post, p. 551.

(3) *Cosford Guardians v. Poor Law Officers Guarantee Association* (1910, K. B. D.), 103 L. T. 463; 75 J. P. 30; 8 L. G. R. 995.

(4) *Debenhams, Ltd. v. Excess Insurance Co.* (1912, Hamilton, J.), 28 T. L. R. 505. See also *Foulkes' Case*, post, p. 552.

(5) *Bramley Guardians v. Guarantee Soc.* (1900), 64 J. P. 308. See also the *Hoole Case*, ante, p. 463, and article in 78 J. P. Jo. 122.

(6) *Abbeyleix Guardians v. Sutcliffe* (1890), 26 L. R. Ir. 332.

(7) *Bonar v. Macdonald* (1850), 3 H. L. C. 226; 14 Jur. 1077.

(8) *North Western Ry. Co. v. Whinray* (1854), 10 Ex. 77; 23 L. J. Ex. 261.

(9) *Holland v. Lea* (1854), 9 Ex. 430; 23 L. J. Ex. 122. But see *Egbert v. National Crown Bank* (no discharge because of increase of rate of interest), L. R. 1918 A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659.

(10) *Wembley U.D.C. v. Poor Law Guarantee Assoc.* (1901), 65 J. P. 330.

is not entitled to be relieved because the employer fails to use all the means in his power to guard against the consequences of dishonesty.¹¹ It was also held in the same case, that securities placed in the hands of P. by the respondents before the date of the bond were just as much intrusted to him after that date as if they had been delivered after that date.

In order that the conduct of the employers may release the surety, it must be shown that they "either by their conduct prevented the things from being done, or connived at their omission, or enabled the person to do what he ought not to have done, or leave undone what he ought to have done, and that but for such conduct the omission or commission would not have happened." And therefore where a local authority had permitted a rate collector not to pay over the proceeds of the rates to their treasurer as soon as he received them, in accordance with the terms of his bond, and had permitted him to mix the proceeds of different rates, but it appeared that this was mere passive acquiescence on their part, it was held by the Court of Appeal that the sureties were liable; although if the local authority had insisted upon the weekly payments stipulated for by the bond the collector could not have kept in his hands the sums which he embezzled.¹²

Non-disclosure of suspicions to a guarantor does not discharge him,¹³ nor does the giving of time if it is given after recovery of judgment against both debtor and surety.¹⁴

The prosecution of the officer under sect. 196 does not operate as a discharge of his sureties: see the last clause of that section.

Where a guarantee is to pay "on demand," the Statute of Limitations does not commence to run until demand.¹⁵

Sect. 194, n.
Conduct of employers—
continued.

Limitation of time.

Sect. 195. Every officer and servant appointed or employed under this Act by a local authority shall, when and in such manner as may be required by such authority, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, stating how, and to whom, and for what purpose such moneys have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts.

Officers to account.
P.H., s. 39.

And every such officer or servant employed in the collection of any rate made under this Act shall, within seven days after he has received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct, deliver a list signed by him and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them.

Note.

Under sect. 250, the accounts of officers and assistants, who are required to receive moneys or goods on behalf of the district council, are subject to audit in like manner and with the same incidents, such as the power of the auditor to disallow and surcharge items, as the accounts of the council. See also the Note to sect. 196.

Audit of accounts.

Sect. 196. If any officer or servant appointed or employed under this Act by a local authority—

Fails to render accounts, or to produce and deliver up vouchers and receipts, or to pay over any moneys, as and when required by this Act, or

Fails within five days after written notice in that behalf from the local authority to deliver up to the local authority all books papers writings property and

Summary proceedings against defaulting officers.
P.H., s. 39.

(11) *Black v. Ottoman Bank* (1862, P. C.), 8 Jur. (N.S.) 801; 6 L. T. 763; 10 W. R. 871.

(12) *Durham Cpn. v. Fowler* (1889), L. R. 22 Q. B. D. 394; 58 L. J. Q. B. 246; 60 L. T. 456; 53 J. P. 374. See also *Caxton and Arrington Union v. Dew* (1899), 68 L. J. Q. B. 380; 80 L. T. 325.

(13) *National Provincial Bank v. Glanusk*, L. R. 1913, 3 K. B. 335; 82 L. J. K. B. 1033; 109 L. T. 103.

(14) *In re Batten (or A Debtor)*, L. R. 1913, 3 K. B. 11; 82 L. J. K. B. 907; 109 L. T. 323. But see *Allis Chalmers Co. v. Fidelity Co. of Maryland* (1914, C. A.), 111 L. T. 327; 30 T. L. R. 445. See also (as to giving time) *Hamilton's Executor v. Bank of Scotland*, 1913 S. C. (S.) 743.

(15) *Bradford Old Bank v. Sutcliffe* (C. A.), L. R. 1918, 2 K. B. 833; 88 L. J. K. B. 85; 119 L. T. 727.

Sect. 196.

things in his possession or power, relating to the execution of this Act, or belonging to such authority,

the local authority may complain to any justice, and such justice shall thereupon summon the party charged to appear before a court of summary jurisdiction.

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his last known place of abode or business, if it appears to the court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipts books papers writings property or things as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers receipts books papers writings property and things in respect of which the charge was made: Provided that a person shall not be imprisoned under this section for a period exceeding six months.

No proceeding under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever.

Note.

Audit of accounts.

The duty to account is imposed by sect. 195.¹

A retired collector of poor rates was held entitled to free access to the rate-books for the purpose of account, although he could not retain them.²

Limitation of time.

The commitment by two justices under the Public Health Act, 1848,³ of a member of the town council and local board of a borough for non-delivery of a rate-book, which was in his possession by virtue of his office as overseer and collector of the borough rates, was held to be a civil and not a criminal proceeding, being in the nature of a distraint. The offence of non-delivery consisted in continuing to retain the subject of distraint, and therefore the limitation of six months under the Summary Jurisdiction Act, 1848,⁴ did not apply. *Semble, per Lush, J.*, such limitation will only apply where the object of the proceeding is punishment, and not merely coercion.⁵

Embezzlement.

A. was clerk to a local board, and the business of the board was transacted at his office. His son lived with him and assisted him in conducting such business, but there was no evidence that he was paid any salary for doing so. The son in managing a loan on mortgage of the rates, embezzled money received from the mortgagees. It was held that, though he was not employed as clerk or servant to the local board, he was employed as clerk or servant to his father, and was properly convicted on an indictment for embezzling the moneys of A., his master.⁶

On agreement not to prosecute for embezzlement if the money is returned is not necessarily bad.⁷

Officers and others falsifying accounts or wilfully destroying books, etc., may be punished.⁸

With regard to the discharge of sureties, see the Note to sect. 194.

(1) *Ante*, p. 551.

(2) *Sellar v. Griffin* (1863), 32 Beav. 542; 33 L. J. Ch. 6; 8 L. T. 230; 9 Jur. (N.S.) 612; 27 J. P. 340.

(3) 11 & 12 Vict. c. 63, s. 39.

(4) 11 & 12 Vict. c. 43, s. 11.

(5) *Mayer or Meyer v. Harding* (1867), 17 L. T. 140; 32 J. P. 421.

(6) *Reg. v. Foulkes* (1875), L. R. 1 C. C. R.

150; 44 L. J. M. C. 65; 32 L. T. 407; 13 Cox C. C. 63. See also *Debenham's Case*, *ante*, p. 550.

(7) See *Macphail v. Lamson Paragon Co.*, *ante*, p. 444 (12).

(8) See Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 82-84; Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1; S. L. R. (No. 2) Act, 1893.

Sect. 197.

MODE OF CONDUCTING BUSINESS.

Sect. 197. Every urban authority shall from time to time provide and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act.

Urban authority to provide offices.
P.H., s. 35.

Note.

Land may be purchased by the urban district council for building offices, either by agreement or (if a provisional order is obtained) compulsorily, under sects. 175 and 176. The council must redeem the tithe rent-charge, if any, upon the land before building the offices.¹

Purchase of land for offices.

A municipal corporation were not allowed to erect offices upon land which had been purchased for the purpose of being used as a public recreation ground; ² and another such corporation were refused permission to expend on the erection of offices money which had been paid into court under the Lands Clauses Act for the purchase of corporation lands.³

A councillor or officer may be interested in the sale or lease of land to the council without becoming disqualified thereby.⁴

Where urban district councils have proposed to provide buildings for public meetings, the Local Government Board expressed their willingness to entertain applications from such councils to be invested with such of the powers of parish councils under sect. 8 of the Local Government Act, 1894,⁵ as may be needed to supplement the present section.

Buildings for public meetings.

Municipal corporations may build town halls under the Act of 1882.⁶

Borough councils.

A rural district council may at all reasonable hours use for the purpose of their meetings and proceedings the board room and offices of the board of guardians for the union comprising their district,⁷ but in some cases the Local Government Board conferred upon rural district councils who desired separate offices the powers of the present section.

Rural district councils.

With reference to the valuation for rating purposes of council offices in Scotland, Lord Salvesen said : " It may, of course, be possible for the assessor here to show that the building is of so peculiar a construction that the only hypothetical tenant is the existing occupier and owner. In that event we might be driven to apply the contractor's principle; but, so far as the evidence goes at present, I should draw the opposite conclusion, namely, that there is nothing unique about this building, that there would be no difficulty in finding other tenants for it, and that, accordingly, the contractor's principle should not be applied to this any more than to a hundred other cases in which the building is one erected by a person for his own accommodation and with special regard to his own requirements." ⁸

Rating of council offices.

Premises occupied partly for the purposes of a local authority and partly for the purposes of the Crown are rateable to the extent to which they are occupied by the local authority, and the occupation must be apportioned accordingly. Thus, in the case of premises jointly occupied by the county council and the quarter sessions, the parts which are used exclusively by the justices for judicial purposes are not rateable, but those parts which are used either exclusively for the purposes of the county council,⁹ or both for the purposes of the county council and for the judicial purposes of the justices, are rateable.¹⁰

(1) See Tithe Act, 1878, s. 1, ante, p. 96.
(2) *A.G. v. Sunderland Cpn.*, ante, p. 425 (32).
(3) *Ex parte Liverpool Cpn.* (1866), L. R. 1 Ch. App. 596; 35 L. J. Ch. 655; 12 Jur. (N.s.) 720; 14 L. T. 785.
(4) M. C. Act, 1882, s. 12 (2), post, Vol. II., p. 2072; P. H. (Members and Officers) Act, 1885, s. 2, ante, p. 547; L. G. Act, 1894, s. 46 (2), post, Vol. II., p. 2068.
(5) *Post*, Vol. II., p. 2004.
(6) 45 & 46 Vict. c. 50, s. 105.
(7) See L. G. Act, 1894, s. 59 (3), post,

Vol. II., p. 2094.
(8) *Glasgow P.C. v. Glasgow Assessor*, 1914 S. C. (S.) 651, at p. 654; 51 Sc. L. R. 148; 5 Glen's Loc. Gov. Case Law 188.
(9) *Middlesex C.C. v. St. George's U.A.C.*, L. R. 1897, 1 Q. B. 64; 66 L. J. Q. B. 101; 75 L. T. 464; 61 J. P. 38.
(10) *Worcestershire C.C. v. Worcester U.A.C.*, L. R. 1897, 1 Q. B. 480; 66 L. J. Q. B. 323; 76 L. T. 138; 61 J. P. 244. But see *Glasgow Court Houses Comrs. v. Glasgow P.C.*, post, p. 587 (83).

Sect. 197, n.

A local board, occupying a yard as a place of deposit for materials for the repair of the highways, were held to be rateable for such yard to the poor rate, because they occupied it as trustees for the inhabitants of the district, who were charged with the obligation of repairing the highways.¹¹

The fact that the chief constable of a county resided with his family in a building, the remainder of which was used for ordinary police purposes, did not deprive the premises of their exemption from rateability.¹²

Use of offices for public purposes.

As to allowing the use of council offices by trade unions, friendly societies, and similar bodies, see the Local Government Board Circular of 1908; ¹³ and as to their use for national insurance purposes, see sects. 27 (2) and 59 (4) of the Act of 1911.¹⁴

The Army (Annual) Act, 1909,¹⁵ provides for the billeting in among other places "all public buildings," which expression is to include "any building wholly or partially provided or maintained out of the rates, and any building to which the public habitually have access, whether on payment or otherwise."

Felonious entry, &c.

Breaking into buildings "belonging to . . . any municipal or other public authority" is dealt with by sect. 27 of the Larceny Act, 1916.¹⁶

Proceedings, &c., of urban authority not being the council of a borough.

Sect. 198. Where an urban authority are the council of a borough they shall, subject to the provisions of this Act, exercise and execute their powers authorities and duties under this Act according to the laws for the time being in force with respect to municipal corporations in England.

See P.H., s. 12.

Note.**Municipal Corporations Acts.**

The Acts relating to municipal corporations were repealed and consolidated by the Municipal Corporations Act, 1882, which now regulates the mode in which borough councils are to conduct their proceedings.¹⁷

The urban authority is the same body corporate as the municipal corporation.¹⁸

Meetings, &c., of urban authority not being the council of a borough.

Sect. 199. Every urban authority (not being the council of a borough) shall hold an annual meeting, and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act.

P.H., s. 34.

Meetings of local boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and any improvement commissioners may, if they think fit, adopt all or any of such rules.

Note.**Application of section.**

Local boards and improvement commissioners are now all urban district councils.¹⁹ The present section is applied to rural district councils, and also (subject to the powers of the Minister of Health) to boards of guardians as well as to non-municipal urban district councils, by sect. 59 of the Local Government Act, 1894.²⁰

Chairman and vice-chairman.

The same section allows the chairman to be elected from outside the members, and also provides for the appointment of a vice-chairman.

Annual meeting.

The annual meeting of the council is to be held as soon as convenient after the 15th of April.²¹

Official correspondence.

The Local Government Board stated that the correspondence between local authorities and their office will be conducted with greater facility and despatch if the following directions be carefully attended to: 1. That no document, except returns signed by the clerk, be transmitted to the office, without a covering letter from him authenticating it. 2. That every distinct subject of communication form a *distinct* letter on a *separate* sheet of foolscap paper. 3. That where previous

(11) *Reg. v. Hull JJ.* (1854), 4 E. & B. 29; S.C. *nom. Reg. v. Cooper*, 23 L. J. M. C. 183.

(12) *Leicestershire C.C. v. Leicester U.A.C.* (1898), 78 L. T. 463; 46 W. R. 585. See also *Wixon v. Thomas* (No. 2) (C. A.), *post*, p. 587 (82).

(13) *Post*, Vol. II., p. 2005. Set out in full in 6 L. G. R. (Orders) 40.

(14) *Post*, Vol. II., p. 2233.

(15) 9 Edw. VII. c. 3, s. 7. This Act adds to the Army Act, 1881, 44 & 45 Vict. c. 58, a new section, to be cited as section 108A.

These provisions are extended to naval forces by 4 & 5 Geo. V. c. 70. See also 3 Geo. V. c. 2, s. 4.

(16) 6 & 7 Geo. V. c. 50, s. 27.

(17) 45 & 46 Vict. c. 50, s. 22, and Sched. II.

(18) See *Andrews v. Ryde Cpn.*, *ante*, p. 44; and L. G. Act, 1894, s. 85 (5), *post*, Vol. II., p. 2112.

(19) See Note to s. 6, *ante*, p. 45.

(20) *Post*, Vol. II., p. 2094.

(21) Sched. I., Part I., rule 11, *post*.

communications have taken place on the same subject, the official number and the date of the last communication be quoted. 4. That the *name* of the authority, and the *date* of the meeting next following the communication, and the *address* of the clerk, be placed at the head of all communications from the authority to the Board. 5. That all communications and packages from the country, which are directed to the office, be, as far as the arrangements of the post-office will permit, transmitted through the post, and be directed under cover "To the Local Government Board [now Ministry of Health], Whitehall, London." ¹

Sect. 199, n.

Sect. 200. Every urban authority may from time to time appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

Power of urban authority to appoint committees. P.H., s. 36, and see N.R. 1855, s. 5.

Note.

The present section is repealed by sect. 89 and Sched. II. of the Local Government Act, 1894, except so far as it applies to boroughs; and that Act enables any district councils to appoint committees consisting either wholly or partly of members of the council, and to authorise them to institute proceedings and do other acts which the council themselves could do, except raise loans and make rates and contracts.²

Repeal.

Per Pollock, C.B., "every public officer can appoint a deputy for a mere ministerial act."³ But a power of entry which is given to specified officials only, cannot be delegated, and where an inspector of weights and measures sent a messenger to effect a purchase the conviction of the vendor (for selling tea under weight) was quashed.⁴

Delegation of powers.

The authority delegated to a committee must be exercised by such committee, and cannot be again delegated by them.⁵ But it may apparently be resumed by the body which appointed the committee.⁶ And where a local authority first acted through a committee upon an informal certificate of their surveyor as to extraordinary traffic expenses and subsequently acted themselves upon a formal certificate, it was held that the defect had been cured.⁷

On the 3rd July, 1884, a general purposes committee resolved that certain gentlemen "constitute the sanitary sub-committee to consider any question that may be referred to them by the general committee." On the 8th August, 1884, the sanitary inspector, on his own initiative, served an owner with notice to reconstruct his drains. On the 26th August the inspector reported to the sanitary sub-committee that the work was not being done and they directed him to serve a statutory notice, which he did on the same day, the notice stating that the work was to be "in satisfactory progress" the following morning otherwise the work would be executed by the vestry. Nothing having been done, vestry workmen commenced the work on the 27th at 9 a.m. At 12 noon on the same day the general purposes committee directed another notice in the same terms to be served, and this was done. On the 2nd September the vestry resolved "that the action of the sub-committee and the inspector be approved, and the inspector have authority to execute the necessary works . . . and do recover the costs of the same from the owner." It was held that the cost could not be recovered. *Per* Day, J., "It is not enough that the inspector does what he pleases and then relies upon his action being afterwards approved by the vestry."⁸

(1) See L. G. Bd. Circular, Jan. 20, 1873.

(2) See s. 56, *post*, Vol. II., p. 2090.

(3) In *Walsh v. Southwell or Southworth* (1851), 20 L. J. M. C. 165; 6 Ex. 150.

(4) *Masterton v. Soutar*, 1912 S. C. (J.) 74; 49 Sc. L. R. 797; 3 Glen's Loc. Gov. Case Law 63.

(5) *Cook v. Ward* (1877, C. A.), L. R. 2 C. P. D. 255; 46 L. J. C. P. 554; 36 L. T. 893; 41 J. P. 439. See also *Young v. Cuthbert*, L. R. 1906, 1 Ch. 451; 75 L. J. Ch. 217; 94 L. T. 191; 70 J. P. 130; 4 L. G. R. 356; *Agnew's Case*, *ante*, p. 110 (18); and

Hussey's Case, *post*, p. 556 (15).

(6) *Huth v. Clarke* (1890), L. R. 25 Q. B. D. 391; 59 L. J. M. C. 120; 63 L. T. 348.

(7) See the *Worsborough Case*, *post*, Vol. II., p. 1776 (4). But *cf.* the *Shoreditch Case*, *infra*.

(8) *Shoreditch Vestry v. Holmes* (1885), 50 J. P. 132. Distinguished in *Chapman's Case*, *ante*, p. 193 (8), and followed in *Mather's Case*, *ante*, p. 231 (46). *Cf.* the *Barnsley Case*, *ante*, p. 319 (7), and *Firth's Case*, *post*, p. 556 (14).

Sect. 200, n.
Delegation of powers—cont.

The report of the finance committee of a local authority contained a list of "liabilities" including an amount which had been outstanding for more than six years. The acceptance of this report by the local authority and an entry of such acceptance in their minute-book was held not to be a sufficient acknowledgment of the debt to take it out of the Statute of Limitations.⁹

Stephen, J., held that a joint hospital committee had acted as agents for the several authorities that had appointed it.¹⁰ His decision was overruled by the Court of Appeal on another ground,¹¹ and this point was not mentioned. The restriction contained in the present section against entering into contracts was mentioned by Stephen, J., in his judgment, but the case does not appear to have been argued with reference to this point.

A metropolitan borough council, in consideration of the reconstruction of a horse tramway in a street by the London County Council under a special Act in order to convert the tramway into an electric tramway, consented to the narrowing of the footway of the street, and agreed to pay a contribution towards the cost. It was held by the Court of Appeal that, whether or not the county council could have narrowed the footway under their own special powers, the borough council, having power to do so under the Metropolitan Paving Act of 1819, had lawfully authorised the county council to do the work on their behalf and that this was not a "delegation" of their statutory powers.¹²

Ratification.

With reference to a provision in the Metropolis Management Act, 1855, in similar terms to the first paragraph of sect. 56 (1) of the Local Government Act, 1894,¹³ the Divisional Court decided that the approval of a vestry to the service of a notice and the issue of a summons for the abatement of a nuisance by direction of their committee, need not necessarily be given until after the issue of the summons. *Per* Wright, J., "To constitute a valid ratification three conditions must be satisfied: first, the agent whose act is sought to be ratified must have purported to act for the principal; secondly, at the time the act was done the agent must have had a competent principal; and thirdly, at the time of the ratification the principal must be legally capable of doing the act himself. I think that all those conditions were satisfied here."¹⁴

A sub-committee of the estates committee of a local authority reported in favour of taking a field for allotments, the estates committee adopted the report, and the field was so taken. The owner then commenced an action for an injunction. Three days afterwards the local authority adopted the resolution of the estates committee. *Per* Eve, J., "There is no substance in the objection that the corporation delegated the investigation of these matters to a committee, who, in turn, delegated it to a sub-committee. By ratifying the resolutions of those committees and adopting their acts the corporation have treated the advice tendered to the committee as advice given to the corporation, and have accepted responsibility for all that has been done."¹⁵

It is to be observed, however, that in the case of the institution of legal proceedings under the Public Health or Highway Acts, or other matters coming within the proviso to sect. 56 (1) of the Local Government Act, 1894, above mentioned, the committee may be empowered to act without any approval or ratification at all by the district council being required.

Election of committee.

For the election of a committee to be valid, it must be included on the agenda of the meeting at which the election takes place.¹⁶

Right to resign.

Membership of a committee is not an independent public office within the common law rule that a qualified person cannot refuse to serve.¹⁷

Joint committees.

As to the appointment of joint committees by district and parish councils, see sects. 53 (2) and 57 of the Local Government Act, 1894,¹⁸ and as to other joint committees see the enactments cited below.¹⁹

(9) *Bush v. Martin* (1863), 2 H. & C. 311; 9 Jur. (N.S.) 851; 33 L. J. Ex. 17; 8 L. T. 509.

(10) L. R. 6 Q. B. D. 203; 50 L. J. Ex. 194; 45 J. P. 191.

(11) *Eaton v. Basker and Grantham Cpn.*, ante, p. 459 (1), and post, p. 708 (16).

(12) *Corsellis v. London C.C.*, L. R. 1908, 1 Ch. 13; 77 L. J. Ch. 120; 98 L. T. 475; 71 J. P. 561; 6 L. G. R. 78, at p. 88. See also the *Ticehurst Water Co. Case*, ante, p. 444 (10).

(13) Post, Vol. II., p. 2090.

(14) *Firth v. Staines*, L. R. 1897, 2 Q. B. 70; 66 L. J. Q. B. 510; 76 L. T. 496; 61 J. P.

452. Followed in *Chapman's Case*, ante, p. 193 (8), and distinguished in *Mather's Case*, ante, p. 231 (46). Cf. the *Shoreditch Case*, ante, p. 555 (8).

(15) *Hussey v. Exeter Cpn.* (1918), 87 L. J. Ch. 443; 118 L. T. 13; 82 J. P. 67.

(16) *Rex v. McDonald*, post, p. 745 (28).

(17) *Rex v. Sunderland Cpn.*, post, Vol. II., p. 2091.

(18) Post, Vol. II., pp. 2087, 2091.

(19) Public Libraries Act, 1893, s. 4 (2), post, Vol. II., p. 1415. L. G. Act, 1894, ss. 36 (11), 60 (3), 71, post, Vol. II., pp. 2061,

The Old Age Pensions Act, 1908,²⁰ provides as follows :—“(1) The local pension committee shall be a committee appointed for every borough and urban district, having a population according to the last published census for the time being of twenty thousand or over, and for every county (excluding the area of any such borough or district) by the council of the borough, district, or county. The persons appointed to be members of a local pension committee need not be members of the council by which they are appointed. (2) A local pension committee may appoint such and so many sub-committees, consisting either wholly or partly of the members of the committee as the committee think fit, and a local pension committee may delegate, either absolutely or under such conditions as they think fit, to any such sub-committee any powers and duties of the local pension committee under this Act. (3) The central pension authority shall be the [Minister of Health], and the [Minister] may act through such committee, persons, or person appointed by [him] as [he thinks] fit. (4) Pension officers shall be appointed by the Treasury, and the Treasury may appoint such number of those officers as they think fit to act for such areas as they direct.”

Sect. 200, n.
Old age pensions committees.

The functions of these committees are to consider claims or questions in respect of old age pensions, in conjunction with reports and inquiries by the pension officers, subject to an appeal from their decisions, allowing or refusing claims, to the Minister of Health.²¹ The Act of 1908 was amended by Acts of 1911 and 1919,²² and various Circulars were issued by the Local Government Board, but further reference to these committees is outside the scope of the present work.

The Regulations of the Local Government Board, as to the constitution and proceedings of local pension committees, and their appointment of officers, and other matters connected with their functions, are dated December 28th, 1921.²³

War pensions are administered under the War Pensions Acts, 1915 to 1921.²⁴ Under sect. 1 (3) of the Act of 1921,²⁵ schemes for the establishment by the Minister of Pensions of war pensions committees, which are to take the place of the local pension committees established under the earlier Acts, are to “provide for the inclusion, so far as practicable, in the committee of representatives of . . . (c) such of the local authorities whose districts are situate wholly or partly within the area for which the committee is established as are specified in the scheme.” Under sect. 1 (1) of the Act of 1917,²⁶ the administrative expenses of the local committees were to be defrayed by the local authorities, but, under the Act of 1918,²⁷ they have, since the 1st January, 1919, been defrayed by moneys provided by Parliament.

Pension committees.

Sect. 201. [*Power of rural authority to delegate their powers and duties to a committee.*] P.H. 1872, s. 13

Note.

The present section was repealed by sect. 89 and Sched. II. of the Local Government Act, 1894, and other provisions are made by that Act with respect to the appointment of committees by rural district councils.²⁸ Sect. 202, however, of the present Act, with respect to the appointment of parochial committees by rural authorities, is not repealed.

Repeal.

Sect. 202. A rural authority [*(including any committee so formed as aforesaid)*] may, at any meeting specially convened for the purpose, form for any contributory place within their district a parochial committee consisting wholly of members of such authority [*or committee*], or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place, and qualified in such other manner (if any) as the authority forming such parochial committee may determine.

Power of rural authority to form parochial committees.
P.H. 1872, s. 13.
P.H. 1874, s. 7.

2095, 2102. L. G. (Joint Committees) Act, 1897, *post*, Vol. II., p. 2088. Rivers Pollution Prevention (Border Counties) Act, 1898, *post*, Vol. II., p. 1749. See also the local Acts cited *ante*, p. 68.

(20) 8 Edw. VII. c. 40, s. 8.

(21) *Ibid.*, s. 7.

(22) 1 & 2 Geo. V. c. 16; 9 & 10 Geo. V. c. 102.

(23) S. R. O. (No. 2001), p. 1007. Regulations of 1911 and 1920 revoked. Action under Blind Persons Act, 1920 (10 & 11 Geo. V. c. 49), included. See also M. H. Circulars, etc., set out in “Loc. Gov. 1921,” pp. 269-281.

1922, pp. 112-117, 398, 399; and in 19 L. G. R. (Orders) 52, 342.

(24) 5 & 6 Geo. V. c. 83; 6 & 7 Geo. V. c. 65; 7 & 8 Geo. V. cc. 14, 37, 54; 8 & 9 Geo. V. c. 57; 9 & 10 Geo. V. c. 53; 10 & 11 Geo. V. c. 23; 11 & 12 Geo. V. c. 49. See also the Pensions (Increase) Act, 1920, 10 & 11 Geo. V. c. 36; and *post*, Vol. II., pp. 2267 (1), 2270 (1).

(25) 11 & 12 Geo. V. c. 49, s. 1 (3).

(26) 7 & 8 Geo. V. c. 14, s. 1 (1).

(27) 8 & 9 Geo. V. c. 57, s. 1 (1).

(28) See s. 56, *post*, Vol. II., p. 2090.

Sect. 202.

A rural authority [*(including any committee so formed as aforesaid)*] may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place.

A parochial committee shall be deemed to be the agents of the authority which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

Note.**Delegation of powers.**

The present section was not repealed by the Local Government Act, 1894, except as regards the words in italics, which are virtually repealed by the repeal of sect. 201, and parochial committees may still be appointed under it. As to the delegation of powers by rural district councils to parish councils, see sect. 15 of the Local Government Act, 1894,¹ and sect. 4 of the Commons Act, 1899.² See also the Note to sect. 200 with regard to the delegation of powers to committees and the ratification of the acts of committees.

Clerk of committee.

Where the parish council act as a parochial committee by delegation from the district council, they are to have the services of the clerk of the district council, unless that council otherwise direct.³

Powers of parochial committees.

With regard to the meaning of "contributory place," see sect. 229.

Regulations for the guidance of committees do not require the sanction of the Minister of Health⁴; the Local Government Board, however,⁵ stated their views as to the powers and duties of parochial committees generally as follows, leaving the rural district council of each union to apply them to any particular case of a parochial committee appointed by them:—

As regards the *powers* of parochial committees, it should be borne in mind—(1st.) That such committees are merely the agents of the authorities who appoint them. (2nd.) That no powers can be delegated to a parochial committee except such as the authority which appointed it could exercise within the parish or contributory place for which the committee is appointed. From this it follows, the Board said, that the appointment of officers cannot be delegated to a parochial committee; and it would also seem that the power to issue precepts for contributions cannot be so delegated, as it is a matter connected with the general administration of the affairs of the whole district, and because the council incur the liabilities for the whole of their district. The council will be the only body responsible for the financial transactions of the district, and the auditor will therefore be unable to accept any accounts of the committee as such. In like manner, the Board in their relations with the district only recognised the council, who alone were allowed to communicate with the Board.

Duties of parochial committees.

In 1922 the Minister of Health mentioned, as being among the powers which could be delegated to a parochial committee, the following:—“(1.) To inspect the parish from time to time with a view to ascertaining whether any works of construction are required, or any nuisance exists which should be abated. (2.) To superintend the execution and maintenance of any works which may be required or have been provided for the special use of the parish, and to give directions for any repairs or other matters requiring immediate attention in relation to such works which fall within the reasonable scope of the authority which they

(1) *Post*, Vol. II., p. 2018.

(2) *Post*, Vol. II., p. 1472.

(3) See L. G. Act, 1894, s. 17 (5), *post*, Vol. II., p. 2021.

(4) Sect. 188, *ante*, p. 512.

(5) In their Second Annual Report (for 1872-1873), p. xlii.

possess as agents of the rural district council. (3.) To consider complaints of any nuisance and the action of the medical officer of health or sanitary inspector thereon, and to inform those officers of any nuisances requiring attention, and to give such directions for the abatement of the same in cases of urgency as the circumstances may seem to require. (4.) To examine and certify all accounts relating to expenditure chargeable as special expenses to the parish. (5.) To report to the rural district council from time to time the several matters requiring their attention, and the manner in which their officers and servants have discharged their duties."

Sect. 202, n.

Sect. 203. Any casual vacancy occurring by death resignation disqualification, or otherwise in any committee may be filled up within six weeks, by the authority which formed such committee, out of qualified persons.

Casual vacancies in committees may be filled.

Note.

The present section applies to the committees of rural as well as of urban district councils.

Casual vacancies.

With regard to casual vacancies on district councils, see sect. 48, sub-sect. (4) of the Local Government Act, 1894, and the Note to that section.¹

Parke, J., said, of a provision requiring an election of poor law guardians " within three months before the 4th May in each succeeding year," ² " the general rule is to construe such clauses as directory." ³ And in another case, ⁴ relating to the making good of dilapidations " within three months after the avoidance of any benefice," Lopes, J., said : " In construing the statute we must strike a balance between the inconvenience of holding the direction of the bishop and the proceedings subsequent thereto to be null and void, and the inconvenience of giving effect to the direction when it has been made after the prescribed time. It seems to me that the more objectionable course is to construe the statute as imperative." These observations would appear to be applicable to the time fixed by the present section.

Directory or mandatory.

Sect. 204. [Meetings and proceedings of committees.]

P.H. 1872, s. 3.

Note.

This section was repealed by sect. 89 and Sched. II. of the Local Government Act, 1894, and other provisions were made with respect to the proceedings of committees.⁵

Repeal.

Sect. 205. Inspectors of the [Minister of Health] may attend any meetings of a rural authority or of an urban authority (being a local board ⁶) when and as directed by the [Minister].

Inspectors may attend meetings of certain authorities.

The local authority of the district of Oxford shall not, for the purposes of this section, be deemed to be a local board.

P.H. 1872, s. 15.

Note.

With regard to the appointment and powers of such inspectors, see sect. 296 and Note, *post*.

Inspectors.

The Oxford Local Board is now superseded by the Corporation of the City : see the Note to sect. 342, *post*.

Oxford.

Sect. 206. Every local authority shall make an annual report, in such form and at such time as the [Minister of Health] may from time to time direct, of all works executed, and of all sums received and disbursements made by them under and for the purposes of this Act during the preceding year, and shall send a copy

Local authority to report.
L.G., s. 76.

(1) *Post*, Vol. II., p. 2083.
(2) 8 Geo. IV. c. xxix.
(3) *Rex v. Norwich Cpn.* (1830), 1 B. & Ad. at p. 317. See also *per* Lord Ellenborough, C.J., in *Rex v. Derbyshire JJ.* (1803), 4 East, at p. 144.
(4) *Caldow v. Pixell* (1877), L. R. 2 C. P. D.

at p. 568. See also *Hughes v. Wavertree Loc. Bd.* (as to time for stating case), *post*, p. 702 (31).
(5) See s. 56 (3), and Sched. I., Part IV., *post*, Vol. II., pp. 2091, 2117.
(6) Now "urban district council," see L. G. Act, 1894, s. 21, *post*, Vol. II., p. 2033.

Sect. 206. to the [Minister]; an urban authority shall also publish a copy in some local newspaper circulating in their district.

Note.

**Annual
returns.**

By the Local Government Act, 1858,⁶ urban sanitary authorities were required to make and publish a similar annual report. This duty is now imposed upon all district councils by the present section, but rural district councils are not required to publish the report in a local newspaper; and it was not the practice of the Local Government Board to require borough councils, whose accounts are not subject to audit by a district auditor, to submit such a report.

**Local
taxation
returns.**

As to the returns which clerks or officers keeping the accounts of corporations, boards, and other bodies or persons authorised to levy compulsory rates, taxes, tolls, or dues, have to make annually to the Minister of Health, see the Local Taxation Returns Acts, 1860 and 1877.⁷

The Highway Accounts Returns Act, 1879,⁸ extended the provisions of the Acts of 1860 and 1877 to returns of rates, receipts, and expenditure, as regards highways, and applied the Acts to highway boards and surveyors of highways.

**Financial
statement.**

The District Auditors Act, 1879,⁹ requires local authorities whose accounts are audited by a district auditor to submit to the auditor a financial statement at each audit, to be forwarded by him when duly stamped and certified to the Minister of Health; and provides that, if a financial statement is so sent in, a return of receipts and expenditure need not, unless the Minister so requires, be sent to him in pursuance of the Local Taxation Returns Acts. The Highway Accounts Returns Act, 1879, above mentioned, contains a similar provision dispensing with returns in respect of highways, on a financial statement being duly made.¹⁰

**Cemetery
accounts.**

The Cemeteries Clauses Act, 1847,¹¹ incorporated with the Public Health (Interments) Act, 1879,¹² requires certain returns of accounts under those Acts to be made to the clerk of the peace.

**Census of
production.**

The Census of Production Acts, 1906 and 1917,¹³ provide for the taking of a census of production in 1908, and thereafter as ordered by the Board of Trade. For the purposes of these Acts, "the exercise and performance by a local or other public authority of the powers and duties of that authority shall be treated as the trade or business of that authority."¹⁴

(6) 21 & 22 Vict. c. 98, s. 76.

(7) *Post*, Vol. II., p. 1684.

(8) 42 & 43 Vict. c. 39, s. 2.

(9) See s. 3, *post*, Vol. II., p. 1797.

(10) 42 & 43 Vict. c. 39, s. 2.

(11) See s. 60, *post*, Vol. II., p. 1642.

(12) See s. 3, *post*, Vol. II., p. 1635.

(13) 6 Edw. VII. c. 49, s. 1; 7 Geo. V.

c. 2, s. 1.

(14) 6 Edw. VII. c. 49, s. 7.

PART VI.
RATING AND BORROWING POWERS, ETC.

EXPENSES OF URBAN AUTHORITY AND URBAN RATES.

Sect. 207. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act, subject to the following exceptions; (namely,)

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of the borough fund or borough rate, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving sewerage or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid.

Mode of defraying expenses of urban authority. P.H. 1872, s. 16.* P.H. 1874, s. 8.* (P.H., s. 87.)

* See Note to s. 6, ante, p. 42.

Note.

The district fund is established under sect. 209, and the general district rate is made under sect. 210, subject to the provisions of sect. 211 and sects. 218-228.

In the districts which come within the exceptions in the present section, the urban district council may obtain power to defray their expenses out of a district fund and general district rate under sect. 208.

Sect. 216 makes provision for defraying the expenses of the repair of highways in districts where a general district rate is levied.

By sect. 319 the making and levying of special district rates in certain exceptional cases, and the discharge of sums borrowed on the credit of them under the Local Government Acts, are not to be affected by the present Act.

The Local Government Board stated that it was desirable that all orders of urban district councils upon their treasurers should be signed at a meeting of the council, or their duly authorised committee, by two members at least of the council or committee, and be countersigned by the clerk.

District fund and general district rate.

Highway expenses.

Special district rates.

Payments from district fund.

Sect. 207, n.
Payments
from district
fund—cont.

The Board also stated that from their experience they considered it undesirable that the surveyor of a rural district council should make any payments, other than the wages of labourers employed by the council, when such payments exceed £2. The Board thought that the preferable course was for the council to pay all debts exceeding £2 by means of cheques drawn upon their treasurer in favour of the respective creditors, the cheques being handed to the creditors at a meeting of the council or forwarded to them by the clerk; and that these transactions should be recorded in the ledger, and not in the surveyors' accounts.

The Board further stated that, in their opinion, materials and other articles required on behalf of a rural district council should not in the ordinary course be ordered by officers of the council on their own authority. The Board considered that the surveyors should report to the council what repairs or other work they considered necessary, in what way such repairs and work should be effected, and what materials would be required, and that then the requisite materials and work should be ordered through the medium of the order check book, the orders being signed by the clerk.

Cheques.

An order to pay money, in the form of an ordinary cheque, but with a proviso that an attached receipt form should be filled up, was held not to be a "cheque" within the Bills of Exchange Act, 1882.¹

Stamp duty.

The Board of Inland Revenue issued a minute in May, 1904,² expressing their opinion that, under the Stamp Act, 1891,³ letters of request by local authorities to their bankers or treasurers to pay creditors named in a list needed a penny stamp in respect of each name in the list. The Board appear, however, to have accepted the practice of local authorities to send such lists unstamped so long as each creditor receives a stamped cheque for the sum specified in the list as payable to him.

Surplus
borough fund.

Even in cases not falling under the first exception, expenses under the present Act of the council of a borough may in certain cases be paid out of the borough fund, under the Municipal Corporations Act, 1882,⁴ which authorises the application of the surplus of the borough fund for the public benefit of the inhabitants and improvement of the borough; and provides that if the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, then the municipal corporation, as the sanitary authority, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the present Act.

The corporation are not entitled to make their borough rate at an excessive amount for the express purpose of creating a surplus.⁵

A contract made by a municipal corporation for the benefit of the inhabitants or improvement of the borough, such as freeing a toll bridge by undertaking to pay an annual sum to the proprietors of the bridge for a certain number of years, is not *ultra vires*. But if in any particular year there were no surplus of the borough fund they could not make the payment.⁶ The Court of Appeal, whose decision was affirmed by the House of Lords, had held that a judgment given against the corporation for a sum of money which was not in the first instance legally payable out of the borough fund did not justify the corporation in satisfying the judgment out of that fund.⁷

The enactments regulating the borough fund and rate will be found in Part VII. of the Municipal Corporations Act, 1882.⁸

Folkestone.

By sect. 6 the borough of Folkestone is not to be deemed a borough for the purposes of the present Act, but so much as is not included in the local government district of Sandgate is an urban district under the jurisdiction of the authority for executing the Folkestone Improvement Act, 1855, now, the council of the borough.

(1) *Bavins v. London and South Western Bank* (1899, C. A.), L. R. 1900, 1 Q. B. 270; 69 L. J. Q. B. 164; 48 W. R. 210.

(2) See 2 L. G. R. (Orders) 211-213.

(3) 54 & 55 Vict. c. 39, ss. 32, 38 (1).

(4) See s. 143, *post*, Vol. II., p. 1831.

(5) See, with reference to a similar power in a local Act, *Newcastle-upon-Tyne Cpn. v. A.G.*, L. R. 1892 A. C. 568; 62 L. J. Q. B.

72; 67 L. T. 728; 56 J. P. 836.

(6) *Ibid.*

(7) *A.G. v. Newcastle-upon-Tyne Cpn.* (1889, C. A.), L. R. 23 Q. B. D. 492; 58 L. J. Q. B. 558; 54 J. P. 292. Affirmed in H. L., see footnote (5), *supra*.

(8) See ss. 139-149, *post*, Vol. II., pp. 1829. 1833.

The "Sanitary Acts" consist of the Acts mentioned in the first part of Sched. V. of the present Act, which are repealed by sect. 343, and certain other Acts, viz. the Bakehouses Regulation Act, 1863, the Artisans and Labourers Dwellings Act, 1868, the Baths and Washhouses Acts, 1846 and 1847, the Labouring Classes Lodging-houses Act, 1851, and the Labouring Classes Dwelling-houses Acts, 1866 and 1867, of which only the Baths and Washhouses Acts are unrepealed.

Sect. 207, n.
Meaning of
Sanitary Acts.

At the time of the passing of the present Act the mode of defraying the expenses of urban sanitary authorities was governed by the Public Health Act, 1872,⁹ which enacted as follows:—"All expenses incurred or payable by an urban sanitary authority under the Sanitary Acts shall, if the Local Government Acts,¹⁰ or the provisions of those Acts with respect to rating, were at or immediately before the passing of this Act in force throughout the district of such authority, or within a local government district wholly within such district, be defrayed in manner provided by those Acts; and if the Local Government Acts were not so in force at or immediately before the passing of this Act be defrayed as follows; that is to say, (1) In the case of the council of a borough, out of the borough fund or borough rate; (2) In the case of improvement commissioners, out of any rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district: Provided that where an urban sanitary authority had, before the passing of this Act, power to levy within its district a rate or rates for paving, sewerage, or other sanitary purposes, all expenses incurred by such authority in the performance of its duties under the Sanitary Acts shall be defrayed out of such rate or rates, except where at the time of the passing of this Act any such expenses were chargeable upon the borough fund or borough rate, in which case such expenses shall continue so chargeable."

Mode of
defraying
expenses.

With reference to the term "urban sanitary authority" at the commencement of the proviso to the section above quoted, the Sanitary Law Amendment Act, 1874,¹¹ enacted that the provision should be deemed to have applied to every authority acting at the time of the passing of the Public Health Act, 1872 (by which Act urban sanitary authorities were first created), under the powers conferred upon them by a local Act with respect to any sanitary purpose. The same Act also declared that "a rate levied within the district," in the same proviso, should signify one which was levied throughout the whole of the district.¹² The proviso was explained by Lord Hatherley, L.C., as follows: "I think it is intended to express that when any urban authority reconstituted by the Act had before the passing of the Act been invested with powers of rating for special purposes and for expenses, they shall still, as reconstructed* by the Act of 1872, have the same powers after the passing of that Act, and the expenses shall be paid out of the rate so levied, unless where they were then chargeable on the borough fund, in which case they should continue so to be. It seems to me that the powers, though transferred by sect. 7 to the new urban authority, were yet intended to be kept distinct, and were to be exercised in each district according to the local Act of the district, though by a new body. . . . I think the whole scheme in 1872 was to preserve the powers of levying expenses exactly as they stood, and merely to transfer the powers from one set of officials to another." It was accordingly held by the House of Lords that the urban authority of a borough, which included a portion of a district placed by a local Act under improvement commissioners, had no power to rate a railway company for sanitary purposes to a borough rate on the full value of their property, but must rate them to a general district rate on one-fourth of such value.¹³

* *Sic.*

Provisions contained in a local improvement Act for levying an improvement rate, and exempting the persons rated to that rate from contributing to rates for similar purposes levied in the borough, which extended beyond the limits of the Act, were held not to be repealed by the Public Health Act, 1875; and a borough rate made in part for raising money towards carrying the local Act into execution was held to be invalid.¹⁴

Rates under
local Acts.

(9) 35 & 36 Vict. c. 79, s. 16.
(10) Viz., 11 & 12 Vict. c. 63; 21 & 22 Vict. c. 98; 24 & 25 Vict. c. 61; 26 Vict. c. 17; and any enactment amending the same; see 35 & 36 Vict. c. 79, s. 60.
(11) 37 & 38 Vict. c. 89, s. 8.

(12) 37 & 38 Vict. c. 89, s. 8.
(13) *Walsall Overseers v. London and North Western Ry. Co.*, L. R. 4 A. C. 467; 48 L. J. M. C. 166; 41 L. T. 106.
(14) *Monmouth Cpn. v. Monmouth Overseers* (1878), 38 L. T. 612.

Sect. 207, n.

Under an improvement Act for a district forming part of a parish, the improvement commissioners had power to levy rates for the purposes of the Act, which exonerated the ratepayers of the district from contributing to highway expenses in the residue of the parish, and the ratepayers of the residue of the parish from contributing to the highway expenses of the district. The district was extended so as to be co-extensive with the parish by an order of the county council, duly confirmed, which was silent as to the improvement Act. It was held in the Court of Appeal by A. L. Smith and Romer, L.JJ. (Vaughan Williams, L.J., dissenting), reversing the decision of the Divisional Court, that the urban district council of the extended district were right in levying a single rate to cover indiscriminately the highway expenses of the whole extended area.¹⁵

It was held that the exemption of Serjeants' Inn from poor rates on payment of a certain annual sum, under a private Act of 1833, even if it applied after the premises were sold and the society ceased to exist (which the court held that it did not), did not apply to rates created by subsequent Acts and added to the poor rate for purposes of collection.¹⁶

Rate in the nature of a general district rate.

A rate under the Cambridge Improvement Act was held not to be "a rate in the nature of a general district rate" within the meaning of the present section, because the university and colleges were not rated to it, but paid contributions which were fixed without regard to their rateable value; and an appeal against an order of a court of summary jurisdiction requiring a railway company to pay a rate made upon them for sanitary purposes under the Improvement Act on the full rateable value of their property was accordingly allowed.¹⁷

Sect. 181 of the Towns Improvement Clauses Act, 1847,¹⁸ if incorporated in a local Act, authorises the rating of owners of small tenements instead of the occupiers, but provides for no allowances. A local Act of 1865,¹⁹ in which that enactment was incorporated, provided for the rating of all hereditaments in the town at 2s. 6d. in the £, except that houses not within 100 yards of a street lamp were to be rated at one-fourth. The improvement commissioners levied an improvement rate under these provisions. In 1912, being then an urban district council, they levied a rate exceeding 2s. 6d. in the £, with a heading referring to the local Act, the present section, and sect. 227 of the present Act. They rated the owners of small tenements to this rate without making the allowance provided for by sect. 211 of the present Act. The justices dismissed an application for a distress warrant on the ground that the council, having described three preceding rates as general district rates made under the present Act, must make the allowance provided for by sect. 211. The council appealed by special case, and the owners admitted that this ground was erroneous, but contended²⁰ that other grounds were open to them. Counsel for the appellants waived the objection to such grounds being raised, because,²¹ "if it be not argued now, someone else may raise it in another case." It was contended accordingly by the owners that the rate was bad, because occupiers only could be rated at the full amount. Their grounds for this contention were: (1) A rate above 2s. 6d. in the £ was only leviable by reason of sect. 227 of the present Act, the rate was therefore levied under that Act alone, and that Act authorised the rating of occupiers only in full; and (2) that the local Act could only be utilised by reason of the present section, this section only authorised the defraying of sanitary expenses out of rates levied under local Acts if such rates were "in the nature of a general district rate," the rate in question was levied subject to an exemption as to distance from street lamps, the exemption was not in force in connection with general district rates, and therefore the rate in question was not one "in the nature of a general district rate," and the present section did not apply. It was held, as to (1), that, the powers of the present Act being cumulative, the rate was levied under the Acts of 1847, 1865, and the present

(15) *Hill v. Crediton U.D.C.* (1899), 80 L. T. 861.

(16) *Jonas v. St. Dunstan in the West Churchwardens and Overseers* (1908, C. A.), 98 L. T. 691; 72 J. P. 157; 6 L. G. R. 557.

(17) *Great Eastern Ry. Co. v. Cambridge Improvement Comrs.* (1889), 61 L. T. 243.

(18) 10 & 11 Vict. c. 34, s. 181.

(19) *Ross*, 28 Vict. c. cviii. ss. 22, 65.

(20) On authority of *Knight v. Halliwell* (1874), 38 J. P. 470. But see *Kates v. Jeffery*, ante, p. 231.

(21) See 11 L. G. R. at p. 1231.

Act, and not under the present Act alone; and, as to (2), that the rate, being leviable over the whole district for sanitary purposes, was "in the nature of a general district rate," and that therefore the present section applied, and the owners were rateable in full.²²

Sect. 207, n.

The expenses of the council of an urban district in the execution of the additional powers conferred on them by the Local Government Act, 1894,²³ are generally to be defrayed, in a borough, out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the present Act.

Expenses
under L. G.
Act, 1894.

Sect. 208. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts, the [Minister of Health] may, on the application of such authority, or of any ten persons rated to the relief of the poor within the district, declare by provisional order that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways.

Power in cer-
tain cases by
provisional
order to alter
mode.
P.H. 1874, s. 9.

Note.

With regard to the mode in which the expenses incurred by an urban authority were paid at the time of the passing of the present Act, see the Note to sect. 206 on the Sanitary Acts.

The Sanitary Law Amendment Act, 1874,²⁴ empowered the Local Government Board to alter, by provisional order, the incidence of rating in urban districts, in any way that seemed to them fair and equitable. This section was intended to meet cases where the system of rating prescribed by the Local Government Act was not in force, and the present section now expressly restricts the power of the Minister of Health in this matter, so that in future he can only declare that the expenses of the authority shall be defrayed out of a general district rate, subject, however, to the provisions in sect. 216, relating to the mode of raising the sums required for the repair of the highways. The application for a provisional order to alter the incidence of rating must now be made by the authority, or by ten ratepayers.²⁵

Provisional
orders as to
rating.

The borough of Denbigh obtained such an order in 1875.²⁶

With regard to provisional orders, see sects. 297 and 298; and with regard to the highway rate, see sect. 216.

(22) *Ross v. Daniels* (1913, K. B. D.), 109 L. T. 933; 77 J. P. 456; 11 L. G. R. 1225.

(23) See s. 28, *post*, Vol. II., p. 2048.

(24) 37 & 38 Vict. c. 89, s. 9.

(25) See L. G. Bd. Circular, 30th Sept., 1875.

(26) 38 & 39 Vict. c. clxxv., Sched.

Sect. 209.

GENERAL DISTRICT RATE.

District fund
account.
P.H., s. 87.

Sect. 209. In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the district fund: a separate account called "the district fund account" of all moneys carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority; and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper.

Note.

Mode of
defraying
expenses.

District fund.

The cases in which the expenses of urban district councils are to be defrayed out of the district fund and general district rate are specified in sect. 207.

The moneys directed by the Act to be carried to the district fund account are those arising—under sect. 175, from the re-sale of lands purchased for any of the purposes of the Act which are not wanted for that purpose; under sect. 254, from all penalties or sums recovered on account of any penalty paid over to the treasurer; and, under sect. 42, from profits made on the sale of house-refuse, etc., and of all matters collected by the local authority or contractor in the whole or any part of their district.

Where a municipal corporation had carried their receipts in respect of the disposal of sewage to the borough fund, the court said they had no doubt that the corporation were bound to carry the fund in question to the account of the district fund, so as to reduce their general district rate, and that they were wrong in carrying it to the borough fund.¹

Income tax.

Interest was allowed on the moneys from time to time lying to a local authority's credit at a bank. Contentions by the authority (a) that the interest was an accretion to the rates leviable by them, and that, as those rates were not assessable to income tax, the accretion was not assessable, and (b) that they did not "receive," and were not "entitled to," the moneys in question, were not upheld. *Per Palles, L.C.B.*: "The moment the county council lends out these moneys at interest, the result thereof is to provide a new 'subject of taxation' . . . which is taxable. . . . The relation between the county council and its treasurer is the ordinary relation of customer and banker. . . . It follows that the receipt by the treasurer of these sums for interest must, as between the Crown and the county, be deemed to be a 'receipt' by the county; and further, that . . . the council was 'entitled to' the interest." *Per Kenny, J.*: "It may be that the county treasurer, as the custodian of the fund, is liable for the tax; but the casting of such liability on the treasurer cannot relieve from assessment the body which receives and benefits by the payment of the interest."²

Boards which are representatives of the ratepayers of districts may be trading corporations deriving profits or gains from their business for the purposes of the Income Tax Acts.³

A question arose as to the amount of income tax (under Sched. D of the Income Tax Act) which should be deducted (and accounted for to the Crown) by the London County Council when they paid interest on loans charged upon their funds and property. It was held by the House of Lords that they were not bound to deduct and account for the tax on such proportionate parts of the interest as the council paid out of (a) interest received by them (less tax) from persons to whom they had re-lent part of the money raised by the loans, and (b) income of their property (which they received, less tax under Sched. A)⁴; but afterwards the House of

(1) *Reg. v. Leamington Cpn.*, *Times*, 16th Dec., 1879.

(2) *Matthews v. Cork C.C.* (K. B. D., Ir.), 1910 Ir. K. B. 521; 1 Glen's Loc. Gov. Case Law 34. See also *Glamorgan Q.S. v. Wilson*, L. R. 1910, 1 K. B. 725; 79 L. J. K. B. 455; 102 L. T. 500; 74 J. P. 299, where interest on licensing compensation fund at bank was held taxable.

(3) *Paddington Burial Bd. v. Inland*

Revenue Comrs. (1884), L. R. 13 Q. B. D. 9; 53 L. J. Q. B. 224; 50 L. T. 211; 48 J. P. 311. See also *Humber Conservancy Bd. v. Bater* (as to income tax on conservancy dues), L. R. 1914, 3 K. B. 449; 83 L. J. K. B. 1745; 111 L. T. 856.

(4) *London C.C. v. A.G.*, L. R. 1901 A. C. 26; 70 L. J. Q. B. 77; 83 L. T. 605; 65 J. P. 227.

Lords, reversing the Court of Appeal who had affirmed Channell, J., held that in paying the interest on the loans raised by them they were not entitled to deduct and retain for their own use so much of the income tax on such interest as was sufficient to recoup them for the amount deducted (and accounted for to the Crown) in respect of tax from the interest on the money re-lent and from the income of their property.⁵

An urban district council were, for the purposes of the Income Tax Act, 1842,⁶ held to be "successors" of a company that had carried on as one business their business as assignees of a horse-tramway company and their business as assignees of an omnibus company, the council having purchased the tramway undertaking under the Tramways Act, 1870, and under a special Act converted it into an electric tramway.⁷

A company carried on, and received for their own benefit the profits of, an electric lighting undertaking under an agreement with an urban district council, who were authorised by provisional order to supply electricity, the generating station being provided by the council, but the plant and apparatus for it being provided by the company, and the costs repaid to them by the council. The company undertook to pay the council half-yearly such sums as should be equal to the sums paid by the council during the preceding year for interest and sinking fund on the moneys borrowed by them for providing the generating station and for the cost of the plant and apparatus. Warrington, J., held that these half-yearly sums were payments from which the company were entitled to deduct income tax under sect. 40 of the Income Tax Act, 1853,⁸ although the amount of the payments was ascertained by reference to expenditure on capital account, and although the council might apply, or might be bound to apply, the money received in payment of capital charges.⁹

From the profits of the several undertakings of a local authority (namely, gasworks, waterworks, etc.), the requisite sums to pay the interest on the respective loans raised for the purposes of the undertakings were, in pursuance of the Leeds Corporation Act, 1901,¹⁰ carried to a common "dividends fund." The loans were charged indifferently on all undertakings, and the interest was to be paid and was paid less tax from the dividends fund; but, where any undertaking showed insufficient profit to pay the interest on its loans, the deficiency was to be made up from the appropriate fund or rate. Income tax had been held by Hamilton, J., to be payable, not only on the net revenues of the undertakings, but also on the amounts which had been raised from the funds and rates of the local authority to meet deficiencies in the dividends fund, and from which the local authority had deducted the tax in paying those amounts to the persons entitled to the interest on the loans, on the ground that those amounts were not paid out of profits or gains which had already been "brought into charge" to the income tax within the meaning of sect. 102 of the Income Tax Act, 1842.¹¹ The Court of Appeal reversed this decision on the ground that, on the construction of the local Act, the dividends or interest on the loans were no longer payable out of the net receipts of the particular undertaking, such receipts not being earmarked for that purpose. The House of Lords reversed the decision of the Court of Appeal, restoring that of Hamilton, J., holding that the local Act of 1901 distinguished between a fund to be created by a mandate of the Legislature and an account to be kept of that fund for its due administration; that it preserved instead of repealing the provisions of the earlier Acts, by which it was assumed that certain dividends were properly payable out of the several revenues respectively instead of being permissibly payable in general out of all resources in the aggregate; that the proportions of the income received in respect of the particular undertakings remained distinguishable portions of interest, although the securities for the loans had been unified; and that, therefore, the dividends in question could not be treated as having been paid out of the profits which had already been brought into charge to the tax, and the corporation were not entitled to retain the tax deducted from such dividends.¹²

Sect. 209, n.
Income tax—
continued.

(5) *A.G. v. London C.C.*, L. R. 1907 A. C. 131; 76 L. J. K. B. 454; 96 L. T. 481; 71 J. P. 217; 5 L. G. R. 465.

(6) 5 & 6 Vict. c. 35, s. 100, Sched. D., Case I., Rule 4.

(7) *Re Stockham (Surveyor of Taxes) and Wallasey U.D.C.* (1906, K. B. D.), 95 L. T. 834; 71 J. P. 244; 5 L. G. R. 200.

(8) 16 & 17 Vict. c. 34, s. 40.

(9) *Surbiton U.D.C. v. Callender's Cable*

and Construction Co. (1910), 8 L. G. R. 244; followed by *Neville, J.*, in *Poole Cpn. v. Bournemouth Cpn.*, 103 L. T. 828; 75 J. P. 13.

(10) 1 Edw. VII. c. cclv., ss. 4, 33, 34, 36-49.

(11) 5 & 6 Vict. c. 35, s. 102.

(12) *Sugden v. Leeds Cpn.*, L. R. 1914 A. C. 483; 83 L. J. K. B. 840; 108 L. T. 578; 77 J. P. 225; 11 L. G. R. 662.

Sect. 210.
Making general district rate.
P.H., s. 87.
Ibid., s. 89.
L.G., s. 54 (4).
P.H., s. 99.

Sect. 210. For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority shall from time to time, as occasion may require, make by writing under their common seal, and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates."

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate : in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded.

Public notice of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a statement of the proposed rate is deposited for inspection, shall be given by the urban authority in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto; but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given.

Note.

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General District Rate.

With regard to the district fund, see sect. 209 and Note. General district rates are to be levied by all urban authorities except in the cases mentioned in sect. 207.

Sect. 211 (2) mentions the "period for which the rate was made," so that it appears to be intended that it shall be made for a definite period. As to "concurrent" rates, see the Note to sect. 217, *post*.

As to the mode of assessing the general district rate, see sect. 211, and as to the mode of recovering it, sect. 256; see also the "general provisions as to urban rates," namely, sects. 218-228.

Burial rates. The Local Government Act, 1894,¹ does not alter the incidence of rates levied to defray expenses under the Burial Acts; and urban district councils, when constituted burial boards,² are to levy as part of the general district rate or improvement rate, as the case may be, or by a separate rate under the name and designation of a "burial rate" to be assessed and recovered in like manner as a general district rate or improvement rate, as the case may be, within the district for which they act, such sums of money as are from time to time necessary for their purposes as a burial board.³ Any surplus that may arise is to be applied in aid of the general district rate or improvement rate.⁴

Special district rate. By sect. 319, the making and levying, in certain exceptional cases, of special district rates, which were leviable under the Public Health Act, 1848, and the discharge of sums borrowed on the credit of them, are not affected by the present Act.

Seal. A supplemental general rate of a metropolitan borough council did not bear the council's seal, and was not signed, but it was held that these omissions were immaterial; though, for other reasons, the rate was bad.⁵

Illegal Expenditure of Rates.

Rates levied under the present Act constitute a statutable fund, which can only be legally applied to the purposes contemplated by the statute, or to objects specifically engrafted on them by subsequent statutes. And (*per* Lord Denman, C.J., with reference to the legality of charging certain expenses on the poor rate) "no usage, however proper in itself, or however uninterrupted, can prevail against that which the plain construction of a statute forbids."⁶

Powers given to a corporation "however absolute in terms, are always to be construed as subject to a paramount and inherent restriction that they are to be exercised in subjection to the special purposes of the " corporation. " This is not a mere canon of English municipal law, but a great and broad principle,

(1) See s. 7 (6), *post*, Vol. II., p. 2004.
(2) See s. 310, *post*; and L. G. Act, 1858, s. 49, re-enacted in Sched. V., Part III., *post*.
(3) 23 & 24 Vict. c. 64, ss. 1, 2.
(4) *Ibid.*, s. 3.
(5) *Evans v. Battersea B.C.*, *post*, p. 600 (28).
(6) *Reg. v. Stewart* (1840), 12 A. & E. at p. 777.

which must be taken, in absence of proof to the contrary, as part of any given system of jurisprudence.”⁶

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Private street works expenses recoverable from the frontagers may not be charged to the rates.⁷

With regard to the disallowance and surcharge by the district auditor of items of illegal expenditure appearing in the accounts of district councils, see sect. 247 and the Note thereto.

Surcharge of illegal expenditure.

The Local Authorities (Expenses) Act, 1887,⁸ provides that if any expenses by a district council have been sanctioned by the Minister of Health, they shall not be disallowed by the auditor.

In refusing *certiorari* to quash an illegal rate, Palles, L.C.B., said: “What, then, were the rights of a ratepayer in reference to that illegal resolution? His plain obvious remedy was, at the moment that it came to his knowledge and before any money had been expended, to apply to the Attorney General for liberty to file as relator an information for an injunction, and thus raise the question at once. . . . What then was his next remedy? Surely to have attacked the rate by way of appeal. Upon that appeal it would have been competent to have directed that a new rate should be struck, so that the public inconvenience would have been much less than that incident to the present proceedings. . . . Now at the end of October we are asked to determine that a rate struck in April, involving so large a sum as £338,000, a considerable part of which must have been collected, is void. . . . The prosecutor has thought fit to let his other remedies lapse, and the doctrine applies *vigilantibus non dormientibus jura subveniunt*.⁹

Remedies of ratepayer.

A decision of the auditor with respect to the legality of expenditure may be brought before the court by *certiorari* under sect. 247 (8).

Jurisdiction of the court.

The court also has jurisdiction to restrain an illegal application of rates, though it will not interfere with the power of the Minister of Health to remit the surcharge of payments which have been made unlawfully.¹⁰

On an application for an *interim* injunction to restrain an urban district council until trial of the action from making any order for payment out of the general district rates of any expenses of festivities in connection with the coronation of King George V., Neville, J., without deciding the question of the legality of any such payment, refused the application on the ground that the Local Government Board had, on April 18th, 1911, made a general order in pursuance of the Local Authorities (Expenses) Act, 1887,⁸ sanctioning any reasonable expenses in connection with public local celebrations of the coronation so far as such expenses should be charged in accounts subject to audit by the district auditor.¹¹

A rate made for (amongst other purposes) defraying the expenses of an accountant and his assistant in examining the accounts of a local board was quashed by the sessions on appeal. The Court of Queen’s Bench, whilst confirming the judgment of the sessions, said, “There may be, no doubt, circumstances under which it would be perfectly legal to employ an accountant; but of these circumstances the sessions are to judge. Here it appears that the sessions inquired into all these circumstances, and heard evidence on both sides. The result of their inquiry is that in their judgment the charge could not be justifiably imposed upon the ratepayers. If it were for us we should concur in their judgment.”¹²

Employment of accountant.

As to the purchase by local authorities of periodical publications, see the Note to sect. 247.

Purchase of periodicals.

Sums paid (1) to a person for nursing a case of scarlet fever at the patient’s own home, and (2) as compensation to a man for abstaining from work on account of infectious disease in his family, charged in the petty cash account of the clerk to an urban district council, were disallowed by the district auditor, and on appeal to the Local Government Board against the disallowance, the Board stated that they concurred in the auditor’s opinion that there was no

Expenses in relation to infectious disease.

(6) *Per* Wickens, V.-Ch., in *Pickering v. Stephenson* (1872), L. R. 14 Eq. 322, at p. 340; 41 L. J. Ch. 493; 26 L. T. 608.

(7) See the *Wandsworth and Putney Cases*, ante, pp. 334 (41), 376 (6).

(8) Quoted in Note to s. 247, post.

(9) *Rex (Dublin Citizens Assoc.) v. Dublin Cpn.*, 1911 Ir. K. B. 245; 2 Glen’s Loc. Gov. Case Law 234.

(10) *A.G. v. Merthyr Tydfil Guardians*, L. R. 1900, 1 Ch. 516; 69 L. J. Ch. 299; 82 L. T. 662; 64 J. P. 276. *Rex v. Brighton Cpn. (certiorari)*; *A.G. v. De Winton* (injunction), post, p. 634. In actions for this purpose the Attorney General is a necessary party—see *Holden v. Bolton Cpn.* (1887), 3 T. L. R. 676; *Weir v. Fermanagh C.C.*, ante, p. 210 (42).

(11) *A.G. v. East Barnet Valley U.D.C.* (1911), 75 J. P. 484; 9 L. G. R. 913. The action was not continued to trial—see 2 Glen’s Loc. Gov. Case Law 76, 77.

(12) *Reg. v. Workop Loc. Bd. of Health* (1857), 21 J. P. 451.

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legal authority for these payments, and accordingly they confirmed the disallowance.¹³ They also expressed the opinion that sect. 133 is not applicable to the payment by a district council of subscriptions to the funds of the Queen's Jubilee Nurses, and that such subscriptions are not authorised.

Labour bureaux.

The Local Government Board stated that the general law did not authorise urban district councils to incur expenses in connection with the establishment and carrying on of labour bureaux for the unemployed. Reference should, however, now be made to the Unemployed Workmen Act, 1905,¹⁴ and the Labour Exchanges Act, 1909.¹⁵

Political propaganda.

It was held to be contrary to public policy and therefore illegal for a local authority to expend rates on payment of the election expenses of candidates (for membership of local authorities of districts which the authority were seeking to annex) who were pledged to support the annexation scheme.^{15a}

Mayor's chain.

The purchase of a gold chain for the mayor of a borough out of the borough funds was held to be illegal.¹⁶

Mural tablet.

The Local Government Board confirmed the disallowance and surcharge by the district auditor of payments made for fixing in the council chamber at the offices of an urban district council a tablet inscribed with the names of the chairmen who had held office since the formation of the district.

Ceremonies.

A vestry incorporated under the Metropolis Management Acts were held to have no power to apply the rates in paying the expenses of a dinner or a ball or other ceremonies in connection with the opening of a new vestry hall.¹⁷ As to jubilee, coronation, and peace celebrations, see the Note to sect. 247.

Travelling expenses.

Where an auditor's disallowance of an item for cab hire for the members of a metropolitan district board was brought before the court, and it appeared that the district was large and that the members had a long distance to go to attend to their duties, the court expressed the opinion that if the members went from the committee-room to go and view works, they might take conveyances; but that the matter was one in which they would not interfere with the discretion of the auditor.¹⁸ But in a later case it was held that an urban district council could not pay the travelling expenses of the councillors when engaged on their ordinary duties, the burden of which they took upon themselves by consenting to be elected, although those duties may in the particular case be of an extremely onerous and burdensome kind by reason of the peculiar circumstances of the district; and the court therefore upheld the surcharge of the expenses of repairing an omnibus kept for conveying members from one part of the district to another.¹⁹

The Local Government Board also confirmed the disallowance and surcharge of the cost of an omnibus for the use of the members of an urban district council inspecting works in progress, roads, etc. They remitted the disallowance and surcharge in this case, but a subsequent payment for painting and repairing the omnibus having been also disallowed and surcharged, the Board confirmed the auditor and refused further remission. But they reversed the disallowance of the amount paid for the licence on an omnibus on the ground that the Crown could have enforced payment of the duty although the council had no authority to maintain the omnibus.

The Board upheld the disallowance of payments for expenses of members of an urban district council, incurred in visiting places with their officers to witness the testing of sewage pipes, and of gas valves, etc.

But they allowed the expenses of a member, incurred in travelling outside the district in order to attend the meetings of a*port sanitary authority as the representative of the council; and they intimated that they considered that the reasonable expenses of a member representing the council on an isolation hospital committee, incurred in attending the committee meetings, might be defrayed as part of the expenses of the committee.

Refreshments at inquiries.

The Board upheld the disallowance by a district auditor of payments for refreshments for members and officers of a district council and other persons at a local inquiry held by one of the Board's inspectors.

(13) But see I. D. (Prevention) Act, 1890, s. 15, *post*, Part II., Div. I.

(14) *Post*, Vol. II., p. 2185.

(15) *Post*, Vol. II., p. 2187.

(15a) *Kemp v. Glasgow Cpn.*, L. R. 1920 A. C. 836; 89 L. J. P. C. 227; 123 L. T. 497; 84 J. P. 225; 18 L. G. R. 377.

(16) *A.G. v. Batley Cpn.* (1872), 26 L. T.

392.

(17) *A.G. v. Bermondsey Vestry* (1882, C. A.), L. R. 23 Ch. D. 60; 52 L. J. Ch. 567; 48 L. T. 445; 47 J. P. 453.

(18) *Reg. v. Plumstead Bd. of Works*, *Times*, 2nd June, 1870.

(19) *Reg. v. Dolby* (1902), 87 L. T. 27; 66 J. P. 521.

And they stated that they were not aware of any statutory or other authority empowering an urban district council to charge in their accounts the expenses of their clerk, who was appointed to act as their representative on the Executive Committee of the Urban District Councils Association.¹⁸

The Board considered that a district council are not authorised to create a sinking fund for insuring their property against fire, instead of paying premiums to an insurance company.

An urban district council may guarantee the cost of providing postal and telegraphic facilities : see the Note to sect. 175.¹⁹

The Health Resorts and Watering Places Act, 1921,²⁰ of which the title is “an Act to empower local authorities to advertise health resorts and watering places,” was passed on the 28th July, 1921, and is an “adoptive” Act. It provides as follows :—“1. Subject to the provisions of this Act, the council of any borough or urban district may advertise the advantages and amenities of the borough or district, or any part thereof, as a health resort or watering place by the insertion of advertisements in newspapers not published within the borough or district so sought to be advertised, or by handbooks or leaflets, or by placards at railway stations, and may expend money for the purpose as provided by this Act. 2. The council of any borough or urban district may expend for the purposes of this Act the profits received by them from the letting of chairs, tents, tent sites, bathing machines, platform sites for entertainments, and sites of stalls for beach vendors, or from charges for admission to any gardens, parks, inclosures, and places of interest, in respect of which such council are entitled to make such charges, or from any other profits which accrue to such council in providing entertainments or recreation for visitors, provided that the council shall not be entitled to expend any other money for such purposes, and the sum so expended in any one financial year shall not exceed the amount which would be produced by a rate of one penny in the pound levied on the rateable value of the borough or district. 3. This Act shall extend to any borough or urban district in England or Wales in which it is adopted under the provisions of the Public Health Acts Amendment Act, 1890,²¹ and sect. 3 of that Act shall have effect as if this Act were an adoptive part of that Act.”

Costs of Legal Proceedings.

As to the promotion of, and opposition to, Bills in Parliament by local authorities, see the Borough Funds Acts.²²

As to High Court proceedings for the protection of watercourses from pollution, and for the abatement of nuisances, see sects. 69 and 107 of the present Act.²³

Piles had been driven into a river-bank by a former occupier of the riparian soil. An action being brought on behalf of the municipal corporation, who claimed the right to the soil, it was held that costs of litigation, undertaken *bonâ fide* and on reasonable grounds for the defence of corporate rights, might be paid out of the borough fund, though such litigation were eventually unsuccessful.²⁴

It was held that, although the expenses of a Chancery suit, *bonâ fide* and necessarily incurred, might properly be defrayed from the produce of a general district rate, the expenses of defending *quo warranto* proceedings, incurred in the merely personal affair of individual members of a local board, could not lawfully be charged to the ratepayers of the district, and that consequently a rate was bad, which appeared by the estimate to have been made for the purpose of defraying those costs.²⁵

In the case of a private company,²⁶ and also in the case of a municipal corporation,²⁷ the court held that the costs of proceedings taken against one member for something done in connection with official duties could not be paid out of the funds of the company or corporation. But an incorporated association which published a journal, edited by a member, was held by the Court of Appeal to be entitled to expend its funds in defending an action brought against the editor for libel in

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at meeting of
association.

Fire
insurances.

Postal
facilities.

Advertising
health resorts.

Bills in
Parliament.

Abatement of
nuisances.

Unsuccessful
litigation.

Proceedings
against
members.

(18) But see *post*, p. 640 (33a).

(19) *Ante*, p. 465.

(20) 11 & 12 Geo. V. c. 27, ss. 1-3.

(21) *Post*, Part I., Div. II.

(22) Set out *post*, Vol. II., pp. 1698-1708.

(23) *Ante*, pp. 159, 205.

(24) *Reg. v. Tamworth Cpn.* (1868), 19 L. T. 433; 17 W. R. 231; and see *Bright v. North* (1847), 16 L. J. Ch. 255; 2 Ph. 216.

(25) *Reg. v. Marris* (1857), 28 L. T. (o.s.)

266; 5 W. R. 254; 21 J. P. 580. See also *Reg. v. Bridgwater Cpn.* (1839), 10 A. & E. 281; 2 P. & D. 558; as to payment of costs of defending alderman against criminal information, and the *Exeter Case*, *post*, p. 634 (40), as to proceedings against officers.

(26) *Pickering v. Stevenson*, *ante*, p. 569.

(27) *Reg. v. Liverpool Cpn.* (1872), 41 L. J. Q. B. 175; 20 W. R. 389; s.c. *nom. Willmer v. Liverpool Cpn.*, 26 L. T. 101.

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respect of an article inserted in the journal under the express instructions of the association.²⁸

Proceedings by ratepayer.

A metropolitan vestry were held not to be entitled to expend their funds in defraying costs incurred by a ratepayer of their parish in a test case against a water company.²⁹

The costs incurred by a chief constable in opposing licensing appeals at the quarter sessions, by direction of a borough council, could not, the House of Lords held, be lawfully paid out of the borough fund.³⁰

Highway proceedings.

Local authorities may, however, support private litigants in highway proceedings.^{30a}

*Costs of Parliamentary Proceedings.***Promotion of Bills.**

The Borough Funds Act, 1872,³¹ authorises urban district councils to incur expense in the promotion of Bills in Parliament, if the Minister of Health and electors consent. Apart from this Act, a district council have no general power to defray the cost of promoting a Bill in Parliament out of their statutory funds.

Thus, where certain improvement commissioners were empowered to do "all acts, matters and things for promoting the health, comfort, and convenience of the inhabitants," and for that purpose applied the rates of the town to the promotion of a Bill in Parliament, it was held that the words of the Act did not authorise such expenditure.³²

Where a local board misapplied the rates towards defraying the costs of a Bill in Parliament, the court granted an injunction to restrain the further prosecution of the Bill, which, however, had been abandoned before the hearing. The injunction was dismissed (with costs to be paid by the relator) as against a member of the board, who had opposed the scheme embodied in the Bill, but costs were decreed against the other members.³³

An injunction was granted to restrain a municipal corporation from applying the borough fund towards defraying the expenses of a Bill before Parliament for improvements and increased powers, it being alleged that there was no surplus of the borough fund.³⁴ On the other hand, during the progress of a Bill promoted by a tramway company for additional lines in a borough, the corporation authorised their clerk to make terms with the company as to the purchase of their undertaking. One of the terms was that the corporation should pay the cost of promoting the Bill, and it was held that there was nothing in the Municipal Corporations Act, 1835, to prevent payment of such cost out of the borough fund.³⁵

The court refused to allow money raised for poor rates under a local Act to be applied in payment of the expenses of a Bill in Parliament, promoted by the guardians, but rejected.³⁶ And a rural sanitary authority were restrained from defraying the expenses of promoting a Bill.³⁷ The common law vestry of a parish also was held to have no power to promote a Bill.³⁸

Opposition to Bills.

Apart from the Act of 1872, which enables urban district councils to oppose Bills in Parliament subject to certain conditions and restrictions, the power of a local authority to incur expense in opposing such a Bill depends upon the nature of the Bill and the manner in which (if at all) it affects them or their property or functions.

Thus, it was held that a highway board had no power to incur expenses in opposing a turnpike trust Bill in Parliament, even though the Bill affected some of the parishes in the district and the opposition was successful.³⁹

In another case, orders for the payment out of the borough fund of the expenses incurred by a municipal corporation in successfully opposing before justices certain proposed statutory rules and regulations of a waterworks company, and in opposing

(28) *Breay v. Royal British Nurses' Association*, L. R. 1897, 2 Ch. 272; 66 L. J. Ch. 587; 76 L. T. 735.

(29) *A.G. v. Camberwell Vestry* (1894), 71 L. T. 478.

(30) *Tynemouth Cpn. v. A.G.*, L. R. 1899 A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404.

(30a) See *post*, Vol. II., p. 2046.

(31) *Post*, Vol. II., p. 1698.

(32) *A.G. v. West Hartlepool Improvement Comrs.* (1870), L. R. 10 Eq. 152; 39 L. J. Ch. 624; 22 L. T. 510; followed in *A.G. v. Yorkshire (W.R.) Rivers Bd.* (1905, Ch. D.), 69 J. P. 177; 3 L. G. R. 764.

(33) *A.G. v. Tottenham Loc. Bd. of Health*

(1872), 27 L. T. 440. See also, as to costs against individual councillors, the *Cork Case*, *ante*, p. 210 (41).

(34) *A.G. v. Norwich Cpn.* (1851), 21 L. J. Ch. 139.

(35) *Reg. v. Liverpool Cpn.* (1873), 28 L. T. 500; 21 W. R. 674.

(36) *A.G. v. Southampton Guardians* (1849), 17 Sim. 6; 18 L. J. Ch. 393; 13 Jur. 669.

(37) *Cleverton v. St. German's R.S.A.* (1886), 56 L. J. Q. B. 83.

(38) *A.G. v. Lambeth Vestry*, 1888 W. N. 19; 1889 Loc. Gov. Chron. 9.

(39) *Reg. v. Kingsbridge Highway Bd.* (1868), 18 L. T. 554; 16 W. R. 1115; 32 J. P. 502.

a Bill promoted by the company, with the view of obtaining further powers (which Bill was eventually withdrawn by the company), were held invalid, as the expenses were not "necessarily incurred in carrying into effect the provisions" of the Municipal Corporations Act, 1835,⁴⁰ and did not fall within any of the payments specified in the Act; but *semble*, if there had been a surplus of the borough fund, it might have been applied towards the payment of such expenses.⁴¹

And, where the Act of 1872 had not been complied with, a municipal corporation were restrained from applying the borough fund towards opposing a gas company's Bill which merely affected the corporation as consumers of gas by altering its price.⁴² This was followed by Kekewich, J., in a case in which an urban district council, without complying with the Act, opposed a gas company's Bill, not on the ground that it interfered with their duties, property, or privileges as a council, but on the ground that it was not for the benefit of the public, and that it was not desirable in the public interest that it should pass. The learned judge remarked: "They are not protecting their own rights and privileges, but are endeavouring to protect the public in matters with which they are not concerned."⁴³

On the other hand, an application for a *certiorari* against the corporation of Dublin, who had applied borough funds to oppose a Bill, was refused, as it was shown that the provisions of the Bill would have the effect of reducing the income of the corporation.⁴⁴

Commissioners of sewers were held entitled to levy a rate for costs *bonâ fide* and prudently incurred in opposing a Bill likely to injure their level, this being a matter incidental to their duties.⁴⁵

Where there was a resolution of ratepayers to oppose a gas company's Bill in Parliament, the court refused an injunction to restrain the corporation from applying the corporate funds in opposing the Bill.⁴⁶

And in another case a peremptory *mandamus* was granted to compel certain commissioners of sewers to make a rate for the purpose of paying the costs of their clerk in opposing a Bill in Parliament, which, if it had passed in its then state, would have injuriously affected the lands of the commissioners.⁴⁷

Vice-Chancellor Wood said: "One of the provisions of the Act (the Municipal Corporations Act, 1835⁴⁸), is for the general government of the whole borough, and for the suppression of all nuisances which are not already punishable. . . . Now it seems to me very strange to say, if it be a corporate duty to prevent nuisance, and to prevent them by bye-laws, yet if an enormous and gigantic nuisance was about to be perpetrated, and the corporation were to take steps by applying to this court, through the medium of the Attorney General, for an injunction to restrain such nuisance, that they would not be allowed the costs of such a proceeding . . . if they (the promoters) were about to abstract these 800,000 gallons of water a day from the town, or if there had been a perfectly pure stream used for the purpose of drinking . . . and they had brought down an enormous mass of foul water which rendered the river perfectly inapplicable for the use of the inhabitants, . . . that they shall not lay out a farthing to prevent a large nuisance like that to all the inhabitants of the borough. It seems to me that a case of that kind would be within the words 'all other expenses necessarily incurred for carrying into effect the provisions of the Act,' which, as Lord Cottenham says,⁴⁹ do not mean mere expenses of meetings, but expenses of duties imposed upon them. But if they would be justified in applying by injunction to restrain the nuisance, they are equally justified in offering their opposition to an Act of Parliament to prevent that nuisance being legalised."⁵⁰

And Jessel, M.R., held that, as the Act of 1872 did not take away or diminish any rights or powers possessed by a governing body or inhabitants of a district independently of the Act,⁵¹ a municipal corporation were entitled to incur expense

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(40) 5 & 6 Wm. IV. c. 76, s. 92.

(41) *Reg. or Roberts v. Sheffield Cpn.* (1871), L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; 24 L. T. 659; 26 J. P. 229.

(42) *A.G. v. Swansea Cpn.*, L. R. 1898, 1 Ch. 602; 67 L. J. Ch. 356; 78 L. T. 412; 62 J. P. 408.

(43) *A.G. v. Rickmansworth U.D.C.* (1902), 86 L. T. 521; 66 J. P. 410.

(44) *Reg. v. Dublin Cpn.* (1862), 9 L. T. 123.

(45) *Bright v. North* (1847, Lord Cottenham, C.), 2 Phil. 216; distinguished in *A.G. v. Andrews* (1850), 2 Mac. & Gordon 225; 20 L. J. Ch. 467; 14 Jur. 905.

(46) *A.G. v. St. Helen's Cpn.*, 1870 W. N. 150.

(47) *Reg. v. Norfolk Comrs. of Sewers* (1850), 15 Q. B. 549; 20 L. J. Q. B. 121; 15 Jur. 121.

(48) 5 & 6 Wm. IV. c. 76, s. 90, corresponding to M. C. Act, 1882, s. 23, *post*, Vol. II., p. 1808.

(49) In *A.G. v. Norwich Cpn.* (1837), 2 Mylne & C. 406; 1 Jur. 398.

(50) *A.G. v. Wigan Cpn.* (1854), Kay 268; 23 L. J. Ch. 429; 18 Jur. 238, affirmed 5 De G. M. & G. 52; 23 L. J. Ch. 429; 18 Jur. 299.

(51) See s. 8, *post*, Vol. II., p. 1705.

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in opposing a Bill in Parliament without having previously complied with the requirements of the Act. He held that such corporations, who had been reduced by the Municipal Corporations Act, 1835, from the position of owners to that of trustees, possessed the ordinary rights of trustees to defend their trust property and rights as trustees from attack at the expense of the trust estate, and consequently might defray out of the rates the expenses of resisting an attack made upon their rights by a Bill in Parliament for the establishment of a market in their district.⁵²

So also the Court of Appeal held that overseers were entitled to oppose, at the cost of the poor rate, a Bill in Parliament which threatened to throw an additional burden on that rate.⁵³

In another case, however, the House of Lords, distinguishing the *Brecon Case* above cited, held that payment of the costs of opposing a Bill for the inclusion of the borough of Leith in the City of Edinburgh, out of a statutory fund which was held for a different purpose, was *ultra vires*, and that therefore such costs were not payable by the magistrates and council of Leith as expenses incurred in the execution of the Public Health (Scotland) Act, 1867.⁵⁴

Enforcing Payment of Costs.

Garnishee
order.

The costs of an action, brought against a rural sanitary authority to restrain them from fouling a stream, were on the 26th of January, 1885, ordered to be paid by the authority, and were taxed on the 25th of April, 1890. It was held that a sum raised by poor rate in 1890 in pursuance of a precept of the authority was not attachable in the hands of their treasurer under a garnishee order: nor could the balance of a loan raised to purchase land for sewage disposal within a contributory place in the district be so attached; nor could the land purchased for sewage disposal out of the moneys charged on the contributory place be taken under a writ of *elegit* for the purpose of satisfying the costs, but only property which had been acquired by means of the common fund which was chargeable with such costs. It was further held that, the contributory place having become an urban district, and the order of the Local Government Board for adjustment of accounts under sect. 295 being final and making no provision for the costs, there was no mode of adjusting the accounts subsequently as regards these costs.⁵⁵

Writ of
elegit.

Adjustment.

Retrospective Rates.

Appeal.

An objection to a rate on the ground that it is retrospective must be taken on appeal against the rate, and not when proceedings are taken to enforce it.⁵⁶

Ground of
objection to
retrospective
rates.

Lord Abinger, C.B., said: "The general inconvenience of retrospective rates has been long known and recognised in courts of law, on the ground that succeeding inhabitants cannot legitimately be made to pay for services of which their predecessors have had the whole benefit."⁵⁷

In a more recent case, in which the Divisional Court upheld a decision of the quarter sessions, quashing a general district rate on the ground that it was retrospective, Channell, J., explained the objection to retrospective rates as follows:—"It means that any ratepayer is entitled to say that he is being charged with a sum which ought to have been charged upon and paid by the ratepayers in previous years. The principle is that these bodies are only entitled to charge upon future ratepayers present expenditure so far as they have statutory borrowing powers; the effect of their borrowing powers is to enable them to charge instalments of present expenditure upon future ratepayers, and borrowing powers are granted upon the understanding that the capital expenditure benefits the future ratepayers." In this case it appeared from the estimate for the rate that payment of a debt more than six months old was intended to be made out of the rate, and the court held that, although by sect. 218 the estimate is not to be deemed part of the rate, nor in any way to affect its validity, the estimate may on appeal be looked at in order to ascertain the true facts. The court also

(52) *A.G. v. Brecon Cpn.* (1878), L. R. 10 Ch. D. 204; 49 L. J. Ch. 153; 40 L. T. 52.

(53) *Reg. v. White* (1884), L. R. 14 Q. B. D. 358; 52 L. T. 116; 49 J. P. 294; s.c. *nom. Reg. v. Sibly*, 54 L. J. M. C. 23; following *Rex v. Essex Inhabitants* (1792), 4 T. R. 591. But see *Klenk v. Farris*, as to churchwardens and overseers, *post*, Vol. II., p. 2002 (11).

(54) *Leith Council v. Leith Harbour and Docks Comrs.*, L. R. 1899 A. C. 508; 68 L. J.

P. C. 109; 81 L. T. 98; 64 J. P. 180.

(55) *Earl Jersey v. Uxbridge R.S.A.*, L. R. 1891, 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858.

(56) *Reg. v. Streetfield or Middlesex JJ.* (1863), 32 L. J. M. C. 236; 11 W. R. 736; 27 J. P. 391.

(57) *Woods v. Reed* (1837), 2 M. & W. at p. 784; 6 L. J. M. C. 105; 1 Jur. 407. See also *Saul's Case*, *post*, p. 607 (12).

held that the corporation could not borrow from their bankers for the purpose of paying the original debt, and so make such debt a debt due to the bankers and incurred within the six months.⁵⁸

A. L. Smith, J., after referring to the above-quoted remarks of Lord Abinger, C.B., said: "There have been cases in which this court has compelled the levy of retrospective rates, and the reason has been this, that from the necessity of the case it has been impossible for the amount of the debt to have been ascertained until some time after it had become payable, and rates levied for its payment could not have been levied other than retrospectively."⁵⁹

And in a case in which the plaintiff in an action claimed a writ of *mandamus* to a local board to make and levy a district rate for the payment of a judgment obtained by the plaintiff against the local board, it was held that a rate might be made retrospectively in order to raise money for the payment of charges and expenses that might have been incurred more than six months previously, provided that under the circumstances the delay were excusable and shown not to be undue.⁶⁰

In another case the Court of Appeal upheld the grant of a *mandamus* to compel a rural authority to raise funds to satisfy a judgment signed by consent against them in May, 1897, in an action commenced in March, 1897, though the cause of action accrued in May, 1895, the delay not having been unreasonable, and the rule for the *mandamus* having been obtained in October, 1897.⁶¹

Where a mutual mistake had been made for five years with regard to the amounts payable under certain agreements for the drainage of part of a rural district into the sewers of an urban district, judgment for the amount of the arrears was given by Neville, J., but he refused to grant a *mandamus* commanding the rural district council to issue precepts for such arrears. On appeal, however, against such refusal, the Court of Appeal, holding that the court had a discretion to grant a *mandamus* to levy a retrospective rate, granted the writ in respect of the last year's arrears, which had been demanded during that year, but refused it in respect of the earlier arrears.⁶²

In an earlier case a rule had been obtained to show cause why the local board should not make a rate for the purpose of paying a debt due to a contractor. The work, it appeared, was done in 1857, and concluded in April of that year, and the writ was issued on the 2nd June. In the following July a verdict was obtained, but judgment was not signed till February, 1858; and the question was whether the six months within which the rate must be made was to date from the time when the debt was contracted, or from the date of the judgment. The rule was made absolute, on the ground that there was no wilful delay, and that the judgment was delayed by misfortune.⁶³ In the case cited below⁶⁴ a delay of thirteen years was held inexcusable.

Commissioners under a local Act became indebted to their architect for work and labour and plans, and the district for which they acted was afterwards placed under a local board, it being provided that if the property and estate of the commissioners should be insufficient to discharge their liabilities the deficiency should be charged upon the rates leviable under the Public Health Act, 1848. It was held that the provisions in that Act⁶⁵ did not apply to the liabilities of the commissioners, which were made a charge upon the rates.⁶⁶ Lord Campbell, C.J., in that case said that sect. 89 of the Public Health Act, 1848, did not contemplate such a charge as the one which was in question, but only such as might be incurred by the board of health in carrying out that Act, and not such as are charged on the rates. He added that the expression, "charged on the rates," impliedly gave a power to make a rate to pay such debts. Error having been brought to review the judgment of the Court of Queen's Bench in this case, it was held by the Court of Error that a plea that the cause of action did not accrue

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Excusable delay.

Statutory charge on rates.

(58) *Smith v. Southampton Cpn.*, L. R. 1902, 2 K. B. 244; 71 L. J. K. B. 639; 87 L. T. 171; 67 J. P. 5.

(59) *Reg. v. Bedlington Overseers* (1884), *post*, p. 622 (37).

(60) *Worthington v. Hulton* (1865), L. R. 1 Q. B. 63; 6 B. & S. 943; 35 L. J. Q. B. 61; 13 L. T. 463. See also *Reg. v. Rotherham Loc. Bd.*, *post*, p. 576, and *Julius v. Bishop of Oxford* (1880), L. R. 5 A. C. 214, 244; 49 L. J. Q. B. 577; 42 L. T. 546; 44 J. P. 600.

(61) *Reg. v. Leigh R.D.C.*, L. R. 1898, 1 Q. B. 836; 67 L. J. Q. B. 562; 78 L. T. 604;

62 J. P. 355.

(62) *Croydon Cpn. v. Croydon R.D.C.*, L. R. 1908, 2 Ch. 321; 72 J. P. 369; 6 L. G. R. 316, 1087. Followed in the *Wolstanton Case*, *post*, p. 576.

(63) *Swire v. Burley Loc. Bd.* (1859), 33 L. T. (O.S.) 222.

(64) *Rex v. Hertford Overseers*, *ante*, p. 527.

(65) 11 & 12 Vict. c. 63, s. 89.

(66) *Ward v. Lowndes* (1859), 1 E. & E. 940; 28 L. J. Q. B. 265; 5 Jur. (N.S.) 1124; 23 J. P. 357.

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within six months before the action was brought, and that the said debts were not nor are a charge or expense incurred by the said local board within six months before suit, or within six months before demand for the said rate, was no answer to the claim, as the six months' limitation for levying a retrospective rate did not apply to a debt or claim like that of the plaintiff's made chargeable by Act of Parliament.⁶⁷ The same case seems to show that a plea that the alleged causes of action did not accrue within six years is a bad plea to a claim for a *mandamus*, as the Statute of Limitations does not bar an application for such a writ; and that a claim for a *mandamus* to levy a rate to pay a debt is good, though it does not state the amount of the debt.

Renewal
of charge
on rates.

A question as to what are expenses incurred within six months before the making of a rate came before the court in a case where a local board had entered into a contract for the execution of certain works, which were not paid for in full at the termination of the contract, and for the recovery of which an action was brought. On the 21st of June, 1856, the works having been completed, there was due to the contractor a balance of £1,013 16s. 8d.; and upon an action being commenced for the recovery of that sum, an agreement was entered into between the plaintiffs and the local board, by which the former agreed to receive £1,000, with interest and costs, and the local board, on their part, agreed to a judge's order that immediate judgment should be had for such sum, interest, and costs, and that payment should be made on the 27th of December, 1856, in default of which judgment should issue; and a judge's order was accordingly obtained. The local board having failed to make the payment in accordance with the agreement, the plaintiffs put in execution, which only realised £75 15s. 6d.; and afterwards, on the 7th of May, 1857, gave notice to the local board that they required them to make a rate for the purpose of raising the money due to them, and also that they would apply to the Queen's Bench for a *mandamus* to compel them to do so. Application for a *mandamus* was accordingly made, and it issued on the 12th of June, 1857, which was within six months after the 27th of December, when the money was agreed to be paid. On behalf of the local board it was contended that the charges for which they could make a rate were charges made so by the Act, and that a rate could only be made within six months from the time the money was due under the contract, and consequently that they could not be compelled to make a rate, as they had no power to do so. But putting a reasonable construction upon the statute, so as to do justice to all parties, the court held that a new charge was created after the 27th of December, 1856, and therefore gave judgment for the Crown that a *mandamus* should issue compelling the local board to make a rate to pay the claim.⁶⁸

This was followed by Neville, J., in connection with disputed claims for expenses of a joint hospital, the expenses being claimed in respect of establishment charges for the financial years ended on the 31st March, 1907, 1908, and 1909, and the writ in an action for a declaration and a *mandamus* to levy a rate to satisfy the claims not having been issued until December, 1909, in consequence of the pendency of negotiations between the parties.⁶⁹

The *Rotherham Case* was distinguished in an action against a local board, in which it was alleged that the plaintiffs paid a rate in 1856 to which they had been assessed by the board. It was admitted that the money had been received by the board erroneously, but they urged that they had no funds out of which they could repay it, and could not levy a rate to repay it, as more than six months had elapsed. An action had been brought in January, 1862, and judgment recovered. The court, however, refused a *mandamus* under the Common Law Procedure Act, as more than six months had elapsed before the commencement of the former action. *Per* Cockburn, C.J.: "If this action had been brought within the six months allowed by the statute, and judgment obtained afterwards, *Reg. v. Rotherham Local Board*⁶⁸ would apply; and I am disposed to think that then the charge would have been within sect. 89,⁷⁰ although I will not lay that down." "I protest," he said, "against the doctrine that, in order to get the benefit of any judgment, no matter what, the jurisdiction of this court is to be invoked to give subsidiary aid by *mandamus*. The Legislature never intended that the ratepayers were to be made liable simply because the local board submitted to judgment. If so, they

(67) *Ward v. Lowndes* (Ex. Ch.), 1 E. & E. 956; 29 L. J. Q. B. 40; 6 Jur. (N.S.) 247; 1 L. T. 268; 24 J. P. 228.

(68) *Reg. v. Rotherham Loc. Bd.* (1858), 8 E. & B. 906; 27 L. J. Q. B. 156; 4 Jur.

(N.S.) 261; 22 J. P. 641.

(69) *Wolstanton United U.D.C. v. Tunstall U.D.C.*, ante, pp. 450 (11), 451 (12).

(70) 11 & 12 Vict. c. 63, s. 89.

might be rendered liable after the lapse of twenty, thirty, or forty years, when the ratepayers had been altogether changed.”⁷¹

In another case, in which the plea was raised that the local authority had no funds applicable to a certain claim, it was held that the plaintiff was entitled to judgment and to take his chance of being able to enforce it.⁷²

A plaintiff claimed a *mandamus* to compel a local board to levy a rate, and pay him an amount awarded for damage, which occurred more than six months before the application, the award having been made within those six months. It was held that the plaintiff was entitled to his writ, for the six months must be reckoned from the time when the award was made; and that it would be no answer that the board might possibly have funds to pay the amount required, and that a fresh rate might not be necessary.⁷³

Mandamus to levy Rate.

A *mandamus* may be issued under the Judicature Act, 1873,⁷⁴ to levy a rate to satisfy a judgment.⁷⁵ In an Irish case a *mandamus* to levy a rate to satisfy a judgment for works executed by a contractor for certain drainage commissioners was refused on the ground that under the commissioners' Acts they only had power to levy rates for the maintenance of works, and not for their original construction, the cost of construction being otherwise provided for.⁷⁶

Where a local authority refused to levy a rate to meet certain precepts, *mandamus* was held to be the only effective remedy.⁷⁷ But the writ must be enforced by attachment of individual members, their names must be inserted in the rules *nisi*, and each must be served personally, though these matters may be waived.⁷⁸

The Crown Office Rules, 1906, require that “every application for the costs of a *mandamus* shall, unless the court or a judge shall otherwise order, be made before the fifth day of the sittings next after that in which the right to make such application accrued, and shall be upon notice of motion to be served two days before the day named therein for moving, and shall be brought on as if it were an *ex parte* motion and not be put in the Crown paper.”⁷⁹

Where, however, through the delay of a plaintiff in enforcing his demand against a local board, it becomes necessary for the board to have the authority of a *mandamus* to justify them in paying a sum of money, the court will not make a rule absolute calling on the board to pay the costs of the *mandamus*.⁸⁰

Where a county council was directed by *mandamus* to order a district council to repair a highway,⁸¹ the county council had to pay the costs under the above Rule, though both councils showed cause.⁸²

Sect. 211. With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect; (namely,)

(1.) General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions regulations and conditions; (namely,)

(a.) The owner, instead of the occupier, may at the option of the urban authority be rated in cases—

Where the rateable value of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or

(71) *Burland v. Kingston-upon-Hull Loc. Bd.* (1862), 3 B. & S. 271; 32 L. J. Q. B. 17; 9 Jur. (N.S.) 275; 7 L. T. 316; 27 J. P. 230.

(72) *Bush v. Martin* (1863), 2 H. & C. 311; 10 Jur. (N.S.) 347; 9 L. T. 510; 27 J. P. 825.

(73) *Ringland v. Lowndes* (1863), 15 C. B. (N.S.) 173; 33 L. J. C. P. 25; 10 Jur. (N.S.) 48; 9 L. T. 479.

(74) 36 & 37 Vict. c. 66, s. 25 (8).

(75) *Easton & Co. v. Nar Valley Drainage Comrs.* (1892), 8 T. L. R. 649; *Reg. v. Selby Dam Drainage Comrs.*, L. R. 1892, 1 Q. B. 348; 61 L. J. Q. B. 372; 66 L. T. 17; 56 J. P. 356.

(76) *Reg. v. Tramore Draining Bd.* (1892), 30 L. R. Ir. 329.

(77) *Rex (London C.C. and Metropolitan Asylum District Managers) v. Poplar B.C.* (No. 1), L. R. 1922, 1 K. B. 72; 91 L. J. K. B. 163; 126 L. T. 189; 85 J. P. 273; 19 L. G. R. 675. See also *Berney v. Ringland*

P.C., post, Vol. II., p. 2011; and *Rex (Woolwich Guardians) v. Woolwich B.C.* (1922, K. B. D.), 128 L. T. 374; 87 J. P. 30; 20 L. G. R. 820, where alternative procedure under L. A. (F. P.) Act, 1921 (11 & 12 Geo. V. c. 67), ss. 2, 3, was held no bar to *mandamus*.

(78) *Rex (London C.C. and Metropolitan Asylum District Managers) v. Poplar B.C.* (No. 2), L. R. 1922, 1 K. B. 95; 91 L. J. K. B. 174; 126 L. T. 138; 85 J. P. 259; 19 L. G. R. 731.

(79) C. O. R., 1906, rule 66. As to “poor persons,” see R. S. C., 1914, rule 31F.

(80) *Reg. v. Burleigh Loc. Bd. of Health* (1859), 1 L. T. 92.

(81) *Rex v. W. Sussex C.C.*, post, Vol. II., p. 1771.

(82) (1921, June 24, Lord Trevethin, C.J., and McCardie, J.), MS. and W. N. 229 n.

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Renewal of charge on rates—cont.

Judgments.

Precepts.

Costs.

Assessment, &c., of general district rate.
L.G., s. 54.
P.H., s. 89.

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Where any premises so liable are let to weekly or monthly tenants; or
Where any premises so liable are let in separate apartments, or where the
rents become payable or are collected at any shorter period than quarterly :

Provided that in cases where the owner is rated instead of the occupier he shall
be assessed on such reduced estimate as the urban authority deem reasonable of
the net annual value, not being less than two thirds nor more than four fifths of
the net annual value; and where such reduced estimate is in respect of tenements
whether occupied or unoccupied, then such assessment may be made on one half
of the amount at which such tenements would be liable to be rated if the same
were occupied and the rate were levied on the occupiers :

(b.) The owner of any tithes, or of any tithe commutation rentcharge, or
the occupier of any land used as arable meadow or pasture ground only, or as
woodlands [, orchards,¹ allotments,²] market gardens or nursery grounds, and
the occupier of any land covered with water, or used only as a canal or towing-
path for the same, or as a railway constructed under the powers of any Act
of Parliament for public conveyance, shall be assessed in respect of the same
in the proportion of one fourth part only of such net annual value thereof :

(c.) If within any urban district or part of such district any kind of property
is exempted from rating by any local Act in respect of all or any of the
purposes for which general district rates may be made under this Act, the
same kind of property shall, in respect of the same purposes, and to the same
extent within the parts to which the exemption applies (but not further or
otherwise), be exempt from assessment to any general district rates under this
Act unless the [Minister of Health] by provisional order otherwise [directs].

(2.) If at the time of making any general district rate any premises in respect
of which the rate may be made are unoccupied, such premises shall be included in
the rate, but the rate shall not be charged on any person in respect of the same
while they continue to be unoccupied; and if any such premises are afterwards
occupied during any part of the period for which the rate was made and before the
same has been fully paid, the name of the incoming tenant shall be inserted in the
rate, and thereupon so much of the rate as at the commencement of his tenancy
may be in proportion to the remainder of the said period shall be collected recovered
and paid in the same manner in all respects as if the premises had been occupied
at the time when the rate was made :

(3.) If any owner or occupier assessed or liable to any such rates ceases to be
owner or occupier of the premises in respect whereof he is so assessed or liable,
before the end of the period for which the rate was made, and before the same is
fully paid off, he shall be liable to pay only such part of the rate as may be in
proportion to the time during which he continues to be such owner or occupier;
and in every such case if any person afterwards become owner or occupier of the
premises during part of the said period, he shall pay such part of the rate as may
be in proportion to the time during which he continues to be such owner or occupier,
and the same shall be recovered from him in the same manner as if he had been
originally assessed or liable :

(4.) The urban authority may divide their district or any street therein into
parts for all or any of the purposes of this Act, and from time to time abolish or
alter any such divisions, and may make a separate assessment on any such part
for all or any of the purposes for which the same is formed; and every such part,
so far as relates to the purposes in respect of which such separate assessment is
made, shall be exempt from any other assessment under this Act : Provided that if
any expenses are incurred or to be incurred in respect of two or more parts in
common the same shall be apportioned between them in a fair and equitable
manner.

Note.

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General District Rate.

The cases in which municipal and other urban district councils are authorised
to make general district rates are specified in sect. 207. Sect. 210 limits the

Enactments
relating to
general
district rate.

(1) Added by P. H. (Rating of Orchards) Act, 1890, post, p. 584. (2) Added by Allotments Rating Exemption Act, 1891, post, p. 584.

purposes to which the proceeds of the rate may be applied, and requires previous notice of the intention to make the rate to be given. Sects. 218-228 contain further provisions, with reference to the estimate for the rate, the publication, amendment, and collection of the rate, and other matters, and sect. 256 provides for its enforcement by summary proceedings.

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In the case of the poor rate the Local Government Board expressed the opinion that the amount to be charged in respect of each hereditament should be worked out to the nearest farthing *below* the amount arithmetically calculated. The same practice should be adopted in the case of the general district rate.

Calculation
of amounts.

Occupier of Rateable Property.

The enactment that general district rates are to be levied “ on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor ” has reference to the description of the property and not to the character of its occupation in the particular instance, and it makes assessable to general district rates all property which, from its nature, is *primâ facie* assessable to the poor rate.¹

Meaning
of occupation.

This was so held with reference to the workhouse of a township, which was not only used solely for public purposes, but, it was contended,² was not rateable to the poor rate because the sum assessed on it in respect of that rate would have been payable by the guardians of the township out of the rate itself.

It is beyond the scope of this work to discuss the character of the occupation which renders a person liable to be rated to the poor rate and to other rates, but the following case may be cited as it arose in connection with a general district rate. A lessee for a term of years of a lock-up shop used it as a fancy bazaar, but during the winter, business being unremunerative, he closed the shop and removed his stock, leaving only a few fixtures and articles used in the shop. It was held that he was liable to pay a general district rate made upon the premises for the period during which they were closed.³

Valuation List.

It will be noticed that no other basis for the rate than the valuation list (if there is one in force) under the Union Assessment Committee Act, 1862,⁴ or (if there is no valuation list in force) the poor rate, can be adopted. The only places in which the Act of 1862 is not in force at present are East Stonehouse, Manchester, and Plymouth.⁵

The rate is to be based upon the valuation in force at the time when the rate is made; but if the valuation list is altered on appeal to the assessment committee, thereby showing that it was incorrect as it originally stood, it appears that the urban authority must amend their rate in accordance with the alteration of the list, for otherwise they will be unable to enforce payment.⁶

Alteration
of list.

With reference to the case in which it was so decided, the Local Government Board suggested that, where the amount of the rate has been paid before the value in the valuation list has been reduced, the council should refund the over-payment.⁷

Refunding
over-
payment.

An urban district council inquired of the Local Government Board whether they would be justified in inserting in the rate-book new properties which had been occupied, and included in a supplemental valuation list, since the general district rate was made. The Board disclaimed authority to decide the question, but stated that they were disposed to consider that, where a supplemental valuation list had been approved by the union assessment committee with reference to a new house or building under sect. 38 of the Poor Law Amendment Act, 1868,⁸ an urban district council might, at any time before the end of the period for which a general district rate was made, assess the occupier or owner of the premises to

Supple-
mental list.

(1) *Toxteth Park Guardians v. Toxteth Park Loc. Bd. of Health* (1861), 1 B. & S. 167; 30 L. J. M. C. 154; 7 Jur. (N.S.) 860; 25 J. P. 645; s.c. *nom. Reg. v. Toxteth Park Overseers*, 4 L. T. 283.
(2) Relying on *Rex v. Beverley Lighting Comrs.* (1837), 6 A. & E. 645.
(3) *Southend-on-Sea Cpn. v. White* (1900), 83 L. T. 408; 65 J. P. 7; followed in *Gage v. Wren* (1903), 87 L. T. 271; 67 J. P. 32. See also *Shepherds Bush Improvements, Ld. v. Hammersmith B.C.* (1910, K. B. D.), 102 L. T. 819; 74 J. P. 280; 8 L. G. R. 646; following *Borwick v. Southwark Cpn., L. R.*

1909, 1 K. B. 78.
(4) 25 & 26 Vict. c. 103.
(5) See Note at commencement of Chap. XXVI., of “ Ryde on Rating,” 4th Ed., at p. 631.
(6) *Sheffield Water Co. v. Sheffield Cpn.* (1885), 55 L. J. M. C. 40; 54 L. T. 179; 50 J. P. 6.
(7) Further as to refunding over-payments, see the *Bispham-with-Norbreck Case*, *post*, p. 668 (24); and the *Hastings Case*, *post*, p. 602 (12).
(8) 31 & 32 Vict. c. 122, s. 38.

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the rate under sect. 221 of the present Act. Under the proviso to the last-mentioned section, however, the amended rate would be considered to have been made at the time when the person assessed first received notice of the amendment of the rate.

A supplemental list increasing by a fixed percentage all properties of a certain class is invalid.⁹

Inspection of list.

Sect. 212 empowers the urban district council to inspect and obtain copies of or extracts from the valuation list.

Discretion of council.*Rating Owners.*

It is entirely within the discretion of the urban district council whether or not they will rate the owner of any premises that come within sub-sect. (1, a) instead of the occupier; and again, if they do rate the owner, whether or not they will rate him in respect of tenements "whether occupied or unoccupied"; but if they do rate the owner in this last-mentioned manner, the word "may" in the second or latter clause of the proviso must be read as meaning "must" or "shall." And therefore in rating an owner in respect of premises whether occupied or unoccupied, it is not discretionary with the council, but compulsory upon them, to assess him on one-half of the rateable value of the premises.¹⁰

A person, who is the rateable occupier as well as the owner of premises, is not entitled to the partial exemption under sub-sect. (1, a) by reason of his ownership.¹¹

The word "may," like the words "shall" and "shall be lawful," and many other words and expressions of that kind, receives at different times and under different circumstances different constructions. The context and all the surrounding circumstances must be looked at in order to see what is the real meaning and proper construction of any particular word or words that are used. *Per* Lord Blackburn: "Enabling words are always compulsory where they are words to effectuate a legal right."¹² *Per* Lord Coleridge, J.¹³: "'Great misconception is caused by saying that in some cases 'may' means 'must.' It never can mean 'must' so long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a judge has a power given him by the word 'may,' it becomes his duty to exercise it.' That only emphasises and repeats the authorities up to that date which decided that where persons have a personal right, which may be extended to a public right, to object to the jurisdiction of a court, then, if the court is empowered by the word 'may' to accede to that right, the word 'may' is compulsory and not discretionary." *Per* Lord Reading, C.J.¹⁴: "In every statute containing the word 'may' we have to look on the general object and subject matter of the Act, to see whether the word is to be interpreted 'may' or 'shall.' *Primâ facie* the word 'may' implies a discretion and 'shall' implies compulsion. . . . I do not think that we ought to construe the Act so as to take away the right of the judge to deal according to his discretion with all the circumstances in the case before him."

Ceasing to rate owners.

The Local Government Board stated that it appeared to them that a council may cease to exercise their powers of rating owners to the general district rate and rescind any resolution in force on the subject, and that they were not aware of any statutory provision requiring the council to give notice in the district of their intention to alter their practice in the matter.

If the rateable value of premises increases beyond the £10 mentioned in the present section, the owner ceases to be rateable unless one of the other two conditions therein specified applies.¹⁵

Recovery of arrears by action.

In 1908 a local authority threatened the owner of five houses, who, as between himself and his tenants, was liable to pay the rates, that if he did not pay the

(9) *Stirk & Sons v. Halifax U.A.C.*, L. R. 1922, 1 K. B. 264; 91 L. J. K. B. 258; 126 L. T. 338; 86 J. P. 9; 20 L. G. R. 43.

(10) *Reg. v. Barclay* (1882, C. A.), L. R. 8 Q. B. D. 486; 51 L. J. M. C. 47; 46 L. T. 335; 46 J. P. 693. But see the *Ross Case*, ante, p. 565.

(11) *Rex (Jones) v. Propert* (K. B. D.), L. R. 1910, 1 K. B. 83; 80 L. J. K. B. 98; 103 L. T. 844; 74 J. P. 474; 9 L. G. R. 38.

(12) *Julius v. Bishop of Oxford* (1880), L. R. 5 A. C. 214; 49 L. J. Q. B. 577; 42 L. T. 546; 44 J. P. 600. Further as to whether enactments are "mandatory" or "directory," see *Le Feuvre's Case*, post, p. 603 (17), and footnote (3), post, Vol. II., p. 1963.

(13) In *Rex v. Mitchell*, L. R. 1913, 1 K. B. at pp. 570, 571, quoting Cotton, L.J., in *Nichols v. Baker* (1890), 44 Ch. D., at p. 270. Held that court of summary jurisdiction "must" give effect to objections to summary trial under Conspiracy and Protection of Property Act, 1875, ante, p. 531.

(14) *Taylor v. Faires* (1920, K. B. D.), 90 L. J. K. B. 391; 124 L. T. 732; 19 L. G. R., at p. 60. Held that county court judge need not vary order under Rent Acts.

(15) See *Norwood Overseers v. Salter*, L. R. 1892, 2 Q. B. 118; 61 L. J. M. C. 193; 67 L. T. 376; 56 J. P. 535. See also, as to amount of rent, *West Ham Overseers v. Iles* (1883), L. R. 8 A. C. 386; 52 L. J. Q. B. 650; 49 L. T. 205; 47 J. P. 708.

rates they would proceed against his tenants. The owner replied : " Please send on particulars and I will remit at once, and in future kindly send the claims direct to me, as I suppose you sent these to my brother." This was construed by Eve, J., to amount to a contract to pay the rates on those five houses, and, as a similar course was adopted with regard to five additional houses purchased two or three years later, the contract was held to apply to those houses also. In an action to recover the arrears of rates on all the houses, judgment was given for the plaintiffs, but Eve, J., doubted whether, but for the contract, an alternative claim, based on " money had and received," would have succeeded.¹⁶

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Partial and Total Exemptions.

In Woolwich the partial exemption from general district rates under sub-sect. (1, b) has been preserved, notwithstanding the repeal of the application of the Act to that district, by the London Government Act, 1899,¹⁷ and the schemes made under that Act.¹⁸

Woolwich.

The word " exempt " does not imply that a tax has once been put on and then taken off again, and that a subject of rating cannot be exempt unless it was once liable to the rate. The word " exempt " is used quite correctly where the subject was never before liable, and is intended not to be so, and it is the most proper word to be used for the purpose.¹⁹

Meaning of exemption.

The question of exemption from a rate must be raised on appeal, and not upon proceedings being taken to enforce payment.²⁰

Procedure.

Where a municipal corporation occupied a yard situate in a parish partly within the district, solely for the purposes of repairing the highways in the district of which they were the surveyors of highways, it was held that they were rateable to the relief of the poor of such parish as occupiers of the yard, their occupation not being for such public purposes as to exempt them from rateability.²¹

Property used for public purposes.

With regard to the rateability of public sewers, see the Note to sect. 13²²; and with regard to that of public parks and recreation grounds, the Note to sect. 164.²³

The Agricultural Rates Act, 1896 (which is at present continued in force to the 31st March, 1924²⁴), under which the occupiers of agricultural land are only liable to pay one-half of the rate in the pound payable in respect of buildings and other hereditaments, applies to all rates and monies raised by precept in the first instance, except (a) rates which the occupier of agricultural land is liable, as compared with the occupier of buildings or other hereditaments, to be assessed to or to pay in the proportion of one-half or less than one-half, or (b) rates which are assessed under any commission of sewers or in respect of any drainage, wall, embankment, or other work for the benefit of the land.²⁵ " Agricultural land " is defined (in terms similar to, but not in all respects the same as in, sub-sect. (1, b) of the present section) thus : " ' Agricultural land ' means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one-quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse," and " the expression ' cottage ' means a house occupied as a dwelling by a person of the labouring classes." ²⁶ It may, therefore, be contended that a cottage garden exceeding one-quarter of an acre, although not entitled to the three-fourths reduction given by sub-sect. (1, b) of the present section, ought to be assessed to the general district rate at one-half the rate only. The first of the above-quoted exceptions, however, seems intended to include rates such as general district rates or sanitary rates under sect. 230, which the occupiers of agricultural land generally are assessed to in a reduced proportion, although certain premises which are included in the definition " agricultural land," and on which the rate may be levied, may not be entitled to be so assessed.

Agricultural land.

(16) *Reigate Cpn. v. Wilkinson* (1919), 122 L. T. 304; 84 J. P. 17; 18 L. G. R. 353.

(17) 62 & 63 Vict. c. 14, s. 10.

(18) *London and India Docks Co. v. Woolwich B.C.*, L. R. 1902, 1 K. B. 750; 71 L. J. K. B. 394; 86 L. T. 619; 66 J. P. 484.

(19) *Reg. v. East London Water Co.* (1860), 24 J. P. 454.

(20) *Reg. v. Shropshire JJ.* (1849), 13 Q. B. 654; *Bletchington Surveyors v. Peyton* (1849), 6 D. & L. 288; s.c. nom. *Reg. v. Oxfordshire JJ.*, 14 Jur. 575; 18 L. J. M. C.

222. *Whaley v. G. N. Ry. Co. of Ireland*, 1913 Ir. K. B. 142; 47 Ir. L. T. 1; 4 Glen's Loc. Gov. Case Law 168.

(21) *Reg. v. Hull JJ.* (1854), 4 E. & B. 29; s.c. nom. *Reg. v. Cooper*, 23 L. J. M. C. 183.

(22) *Ante*, p. 56.

(23) *Ante*, p. 430.

(24) Expiring Laws Act, 1922, s. 3 (3), Sched. VIII.

(25) See s. 1, *post*, Vol. II., p. 2122.

(26) *Ibid.*, s. 9.

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rentcharges.**

Where a landlord paid half the cost of the lime put on the land by the tenant, this was held to reduce the value of the land below the rent actually paid.²⁷

The partial exemption of owners of tithe rentcharges attached to benefices enacted by the Tithe Rentcharges (Rates) Act, 1899, which does not affect general district rates, has been dealt with in the Note to sect. 9 of the above-mentioned Act of 1896.²⁸ The Ecclesiastical Tithe Rentcharge (Rates) Act, 1920,²⁹ which does affect general district rates, provides as follows:—“(1) The owner of the tithe rentcharge attached to an ecclesiastical corporation or benefice shall not be liable to pay, in respect of any rate made on or after the 1st day of April 1920, and before the 1st day of January 1926, which is assessed on him as owner of that tithe rentcharge, an amount in excess of such an amount as would have been payable by him if the rate had been made at such amount in the pound as is equal to the amount in the pound (to be ascertained in accordance with the rules set out in the Schedule to this Act) at which the corresponding rate was made in the year 1918, and the excess shall be deemed to be irrecoverable. (2) Where the owner of tithe rentcharge attached to a benefice, before payment of the amount payable by him in respect of any such rate as aforesaid, produces to the collector of the rate a statutory declaration made by him in a form prescribed by the Minister of Health showing that the total income arising from the benefice for the year ending on the 5th day of April preceding the date at which the rate was made, estimated in accordance with the provisions of the Income Tax Acts, did not exceed £300, or, if it exceeded that sum, did not exceed £500, the owner shall be entitled to such relief or abatement in respect of such rate as follows, that is to say, if the total income arising from the benefice did not exceed £300 the owner shall not be liable to any payment in respect of the rate, and if it exceeded that sum, but did not exceed £500 the owner shall be allowed an abatement of one-half of the amount which would otherwise be payable by him in respect of the rate having regard to the preceding provisions; and the amount of any relief or abatement in respect of a rate given by this section shall be deemed to be irrecoverable. A statutory declaration made for the purpose of this section shall be exempt from stamp duty. (3) Nothing in this Act shall affect the allowance to be made in respect of rates in the assessment of tithe rentcharge for any rate or tax. (4) Any amount paid by the owner of tithe rentcharge in respect of any rate to which this Act applies in excess of the amount which he is by virtue of this Act liable to pay shall be recoverable on demand made within six months after the passing of this Act as a debt due to him by the collector of the rate, and such amount shall be so recoverable notwithstanding that the statutory declaration required by this Act to entitle the owner to exemption or relief was not produced to the collector of the rate before payment of the rate if such declaration is so produced on or before the demand for repayment. (5) In this Act the expression ‘ecclesiastical corporation’ has the same meaning as in the Episcopal and Capitular Estates Act, 1851³⁰; the expressions ‘benefice’ and ‘owner of tithe rentcharge’ and ‘tithe rentcharge’ have the same meanings as in the Tithe Rentcharge (Rates) Act, 1899³¹; and the expression ‘rate’ means a rate the proceeds of which are applicable to public local purposes and which is leviable on the basis of an assessment in respect of the yearly value of property.”

The “Rules for determining amount in the pound of corresponding rate,” in the Schedule above referred to,³² are as follows:—“(1) Where a rate (hereinafter referred to as ‘a current rate’) is made in respect of any yearly, half-yearly, or other period, and a corresponding rate in the year 1918 (hereinafter referred to as ‘the standard rate’) was made in respect of the like period, the amount in the pound of the standard rate shall, for the purposes of this Act, be treated as the amount in the pound at which the corresponding rate was made. (2) Where a current rate is made in respect of any yearly, half yearly, or other period, and the

(27) *Miller's Trustees v. Berwickshire Assessor*, 1911 S. C. (S.) 908; 48 Sc. L. R. 352; 2 Glen's Loc. Gov. Case Law 233.

(28) *Post*, Vol. II., p. 2127. And see *Piggott v. Cuckfield U.A.C.*, L. R. 1921, 2 K. B. 647; 90 L. J. K. B. 921; 125 L. T. 402; 85 J. P. 175; 19 L. G. R. 373, in which it was held that the whole rate is deductible in arriving at rateable value of tithe rentcharge.

(29) 10 & 11 Geo. V. c. 22, s. 1. This Act was passed on the 4th August, 1920, with the title: “An Act to reduce temporarily

the rates payable in respect of ecclesiastical tithe rentcharge.” As to sub-sect. (2), see Act of 1922 quoted *post*, p. 583, and *Rex (Hearn) v. Latchingdon Overseers*, L. R. 1922, 2 K. B. 14; 91 L. J. K. B. 429; 126 L. T. 504; 86 J. P. 43; 20 L. G. R. 114; and *Carpenter v. Laindon Overseers* (1922, K. B. D.), 127 L. T. 555; 86 J. P. 161; 20 L. G. R. 511.

(30) 14 & 15 Vict. c. 104.

(31) *Post*, Vol. II., p. 2128.

(32) 10 & 11 Geo. V. c. 22, Sched.

standard rate was made in respect of a shorter or longer period, then—(a) in the former case, the aggregate of the amounts in the pound of the standard rates made in respect of the periods covered by the period in respect of which the current rate is made shall, for the purposes of this Act, be treated as the rate in the pound at which the corresponding rate was made; (b) in the latter case, such part of the amount in the pound of the standard rate as bears to the whole of that amount the same proportion as the period in respect of which the current rate is made bears to the period in respect of which the standard rate was made shall, for the purposes of this Act, be treated as the rate in the pound at which the corresponding rate was made. (3) If by reason of the constitution or extension of a borough or urban district, the consolidation of rates, or other change of circumstances any question arises as to the rate to which a current rate corresponds, the question shall be determined in accordance with any general or special regulations which the Minister of Health may make for the purpose; and such regulations may provide for the manner in which, in cases to which the regulations apply, the rate in the pound of the corresponding rate is to be calculated, and for a rate being treated as two or more rates according to the purposes for which it was levied, and for making adjustments when the proportion of the rateable value on which tithe rentcharge is assessed to a current rate differs from the proportion on which it was assessed to the standard rate, or when any other circumstances render such adjustment necessary. (4) Where in the year 1918 no rate was made which corresponds to or under regulations made as aforesaid is deemed to correspond to a current rate, the amount in the pound at which the corresponding rate was made in that year shall, for the purposes of this Act, be treated as nil.”

The Ecclesiastical Tithe Rentcharge (Rates) Act, 1922,³³ provides as follows:—“Where the owner of tithe rentcharge attached to a benefice holds more than one benefice (whether united for ecclesiastical purposes or not so united) he shall, in respect of any rate made on or after the 1st day of October, 1922, be entitled under sect. 1 (2) of the Ecclesiastical Tithe Rentcharge (Rates) Act, 1920, to such relief or abatement only as he would have been entitled to if the several benefices were one benefice and any tithe rentcharge attached to any of the several benefices were attached to that one benefice and the total income arising from the several benefices arose from one benefice.”

Before the passing of the last mentioned Act it had been decided that where, under sect. 16 of the Pluralities Act, 1838,³⁴ two benefices were united for ecclesiastical purposes only they were still to be considered two distinct benefices for the purpose of relief or abatement under the Act of 1920.³⁵

As to the effect of the Tithe Act, 1891,³⁶ on the recovery of rates to which tithe rentcharges are subject, see the case cited below.³⁷

As to the redemption of tithe rentcharges, see the Note to sect. 27.^{37a}

“Rights of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land,” were made rateable to the poor rate and all local rates by the Rating Act, 1874.³⁸

The right of shooting over arable meadows and pasture ground and woodlands, is not itself land used as arable ground, etc., so as to entitle a person renting it to the partial exemption conferred by sub-sect. (1, b).³⁹

The Local Government Board stated with reference to the assessment of rights of sporting in cases where land is occupied without buildings, and the landlord reserves the right of sporting, that it seemed to them that the provision in the Rating Act, 1874,⁴⁰ to the effect that where a right of sporting is severed from the occupation of the land, and is not let, and the owner of the right receives a rent for the land, the right shall not be separately valued, must now be read together with sect. 5 (a) of the Agricultural Rates Act, 1896,⁴¹ which requires that in every valuation list the value of agricultural land shall be stated separately from that of any building or other hereditament. The Board considered that the latter enactment renders it necessary that where, in cases of the class referred to, the rateable value of any agricultural land would, under the Rating Act,

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charges—
continued.

Sporting
rights.

(33) 12 & 13 Geo. V. c. 58, s. 1.

(34) 1 & 2 Vict. c. 106, s. 16.

(35) *Keane v. Ashbocking Overseers*, L. R. 1922, 1 K. B. 143; 91 L. J. K. B. 129; 126 L. T. 252; 85 J. P. 270; 19 L. G. R. 759. As to this case and the Act of 1922, see M. H. Circular of Sep. 25, 1922, 20 L. G. R. (Orders) 221.

(36) 54 & 55 Vict. c. 8, s. 6.

(37) *Roberts v. Potts*, L. R. 1894, 1 Q. B.

213; 63 L. J. Q. B. 381; 69 L. T. 849; 58 J. P. 333.

(37a) *Ante*, pp. 95, 96, and “Addendum” to p. 96.

(38) 37 & 38 Vict. c. 54, ss. 3, 10.

(39) *Alton U.D.C. v. Spicer*, L. R. 1904, 1 K. B. 678; 73 L. J. K. B. 280; 90 L. T. 576; 68 J. P. 256; 2 L. G. R. 507.

(40) 37 & 38 Vict. c. 54, s. 6 (1).

(41) *Post*, Vol. II., p. 2124.

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1874, be increased by reason of its being estimated as if the rights of sporting were not severed, the amount of such increase should now be entered in the valuation list as the rateable value of the right of sporting separately from the value of the land over which they are exercised.

Market gardens and nursery grounds.

The premises of a "market gardener and nurseryman," which were almost entirely covered by glass-houses or greenhouses used for growing grapes, vegetables, and flowers on prepared beds, were held to be rateable to the general district rate on the lower scale as a market garden or nursery ground.⁴²

In a subsequent case the House of Lords declined to treat similar structures as coming within the definition of "agricultural land"⁴³ in the Agricultural Rates Act, 1896.⁴⁴

Woodlands.

The Rating Act, 1874, enacts that, "the provisions of the Sanitary Acts, as defined by the Public Health Act, 1872,⁴⁵ with respect to any special assessment of woodlands for the purpose of any rate under those Acts shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable underwood, or for both such purposes, and made rateable by this Act to the poor rate."⁴⁶

Orchards and allotments.

By the Public Health (Rating of Orchards) Act, 1890,⁴⁷ the word "orchards," and by the Allotments Rating Exemption Act, 1891,⁴⁸ the word "allotments" (defined by that Act as meaning "any parcel of land of not more than two acres in extent and let as an allotment, and cultivated as a garden or a farm, or partly as a garden and partly as a farm"⁴⁹), are to be inserted after "woodlands," in sub-sect. (1, b) of the present section.

Land covered with water.

A wet dock was held to be "land covered with water," and therefore rateable at one-fourth of the rate for houses, etc. But the land adjacent, including landing-places, coal-hoists, machinery, etc., not being part of the dock, was held not to be rateable on the lower scale.⁵⁰

In another case, however, where the occupants of docks covering an area of 165 acres, of which 95 formed a wet dock or tidal basin, in the parish in which the provisions of the Lighting and Watching Act had been adopted, were rated as "occupiers of houses, buildings, and property other than land," within sect. 33 of that Act,⁵¹ at a rate three times greater than that at which the occupiers of land were rated, it was held by Lord Campbell, C.J., and Wightman and Crompton, JJ., that the dock or basin was property *ejusdem generis* with houses and buildings, and therefore that the occupiers of the docks were rateable at the higher rate; but Erle, J., considered that they were rateable at the lower rate, as the area of 95 acres was "land."⁵²

A dock company, owning and occupying premises for building and repairing ships, excavated part of their land so that the water of the river Tyne flowed over it at all states of the tide. Floating pontoons for repairing ships were attached to piles driven into the excavated grounds. It was held by the Court of Appeal that the company were rateable to the general district rate in respect of the excavated land as for land covered with water, it being necessary that the water should go upon the land in order that the vessel to be repaired might come up and be moored on to the pontoon and be raised by means of it.⁵³ But graving docks having direct access through gates to adjoining wet docks, of which they formed a part, and used for the examination and repair of ships below the water line, were held by the Court of Appeal not to be land covered with water.⁵⁴

(42) *Purser v. Worthing Loc. Bd.* (1887, C. A.), L. R. 18 Q. B. D. 818; 56 L. J. M. C. 78; 51 J. P. 596; see also *Smith v. Richmond*, *infra*, and *post*, Vol. II., p. 2127.

(43) *Ante*, p. 581, and *post*, Vol. II., p. 2126.

(44) *Smith v. Richmond*, L. R. 1899 A. C. 448; 68 L. J. Q. B. 898; 81 L. T. 269; 63 J. P. 804.

(45) *I.e.*, now, the provisions of the present section: see s. 313, *post*.

(46) 37 & 38 Vict. c. 54, s. 12. See L. G. Bd. Circular of April 10th, 1910, as to assessment of woodlands, set out in 8 L. G. R. (Orders) 168-170; and M. H. Circular of Jan. 5th, 1922, set out in 20 L. G. R. (Orders) 1.

(47) 53 & 54 Vict. c. 17, s. 1. Introductory words and proviso to this section repealed by S. L. R. Act, 1908.

(48) 54 & 55 Vict. c. 33, s. 1. Introductory

words and proviso to this section repealed by S. L. R. Act, 1908. As to "Rating of Allotments," see M. of Ag. Memo., set out in "Loc. Gov., 1922," pp. 428-431.

(49) *Ibid.*, s. 2.

(50) *Newport Dock Co. v. Newport Loc. Bd. of Health* (1862), 2 B. & S. 708; s.c. *nom. Reg. v. Newport Dock Co.*, 31 L. J. M. C. 266; 9 Jur. (N.S.) 73; 6 L. T. 456.

(51) 3 & 4 Will. IV. c. 90, s. 33.

(52) *Peto v. West Ham Overseers* (1859), 2 E. & E. 144; 28 L. J. M. C. 240; 23 J. P. 422; s.c. *nom. Reg. v. Peto*, 5 Jur. (N.S.) 1209.

(53) *Smith's Dock Co. v. Tynemouth Cpn.*, L. R. 1908, 1 K. B. 948; 77 L. J. K. B. 560; 99 L. T. 136; 72 J. P. 201; 6 L. G. R. 486.

(54) *Mersey Docks and Harbour Bd. v. Birkenhead Cpn.*, L. R. 1916, 1 K. B. 695; 85 L. J. K. B. 784; 114 L. T. 493; 80 J. P. 217; 14 L. G. R. 413.

Under the Lighting and Watching Act coal mines, which were not rateable as "land" to the relief of the poor under the Statute of Elizabeth,⁵⁵ were held by the House of Lords to be rateable on the higher scale as "property other than land."⁵⁶ A brickfield, on which were engine houses, engines, washing-mills, and huts, which were accessory to the brickfield and valueless apart from it, and a cottage for the foreman, was held to be rateable as a whole as "land," though the opinion was expressed that the foreman's cottage ought to have been separately assessed and treated as "property other than land."⁵⁷

A local Act provided that "the occupiers of any land covered with water or used only as a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be rated in respect of the same to the rates authorised to be levied by the Act at one-fourth part only of the net annual value," and it was held that a reservoir within a borough, belonging to a waterworks company supplying the borough with water, was rateable to the borough rate at only one-fourth part of its net annual value; but that the pipes and mains of the company within the borough were rateable to the full extent, and not merely to one-fourth part of their net annual value as "land covered with water."⁵⁸

And the House of Lords has now decided that an artificial reservoir is land covered with water within the meaning of sub-sect. (1, b) of the present section.⁵⁹

A canal company were held liable to be rated for part of their canal although it was disused in consequence of the subsidence arising from mining operations: the company's special Act providing that they should be rated for the lands taken for the canal as the lands would be rateable in case they were the property of individuals in their natural capacity.⁶⁰

With regard to the rating of waterworks, see also the Note to sect. 51.⁶¹

With reference to the provision that the occupier of lands "used only as a railway" is to be assessed at one-fourth only of the net annual value, it was held that this partial exemption extends to the line of railway and so much of any platform, etc., as constitutes the side of the railway, and to land used as sidings, turntables, etc.; but that adjuncts, such as stations, offices, and warehouses which are ancillary to the railway property so called, although necessary for the working of traffic, are not part of the railway within the meaning of the proviso; and therefore that land used for those purposes must be assessed at its full annual value. And it was explained by Erle, J., that "the general scheme of the enactment is, that the occupiers of the classes of property most benefited by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefited at the lower rate; and the class of property most benefited is that which is occupied immediately for the purpose of residence; and the kinds of property not so occupied are not to be rated so highly"⁶²

By a borough Improvement Act, authorising a rate to be levied, it was enacted "that the occupiers of any land used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament, should be rated at one-fourth part only of the net annual value." Certain sidings and turntables, occupying about ten acres of land, were used for loading trucks and carriages with goods, and also as a standing-place for laden and unladen carriages, and were found in the special case to be necessary for conducting the traffic of the railway. On appeal against a rate made on the railway in respect of such land, it was held that it was rateable at one-fourth only of the net annual value.⁶³

In assessing a railway and sidings, etc., to a general district rate, the sidings, turntables, and a strip of land adjacent, were all treated as part of the railway, except such part of the strip of land as was not necessary to the use of the railway proper.⁶⁴ So also the portions of the roof which covered the railway itself, the

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Land
covered with
water—cont.

Railways.

(55) 43 Eliz. c. 2, s. 1.

(56) *Thursby v. Briercliffe-with-Extwistle Churchwardens and Overseers*, L. R. 1895 A. C. 32; 64 L. J. M. C. 66; 71 L. T. 849; 59 J. P. 180.

(57) *Crayford Overseers v. Rutter*, L. R. 1897, 1 Q. B. 650; 66 L. J. Q. B. 506; 76 L. T. 392; 61 J. P. 341.

(58) *Reg. v. Birmingham Water Co.* (1861), 1 B. & S. 84; 4 L. T. 242; 25 J. P. 308. See also *East London Water Co. v. Leyton Sewer Authority*, post, p. 610 (10).

(59) *Hampton U.D.C. v. Southwark and*

Vauxhall Water Co., L. R. 1900 A. C. 3; 69 L. J. Q. B. 72; 81 L. T. 547; 64 J. P. 260.

(60) *Glamorganshire Canal Navigation v. Merthyr Tydfil U.A.C.* (1903), 88 L. T. 85; 67 J. P. 52; 1 L. G. R. 34.

(61) *Ante*, p. 135.

(62) *South Wales Ry. Co. v. Swansea Loc. Bd.* (1854), 4 E. & B. 189; 24 L. J. M. C. 30; 1 Jur. (N.S.) 326.

(63) *Midland Ry. Co. v. Birmingham Cpn.* (1865), 13 L. T. 404; 30 J. P. 197.

(64) *North-Eastern Ry. Co. v. Scarborough Loc. Bd.* (1869), 33 J. P. 244.

Sect. 211, n.
Railways—
continued.

platform and the sidings, as well as the platform under the roof and the uncovered part of the platform, at a railway station, being reasonably necessary for the use of the railway, and not merely for the convenience of the passengers and others, were held to be entitled to the partial exemption given by a clause in a local Act similar to sub-sect. (1, b) of the present section; but not the cab-drive, the portions of the roof which covered the station buildings and part of the cab drive, the horse or cattle landings or pens, or the crane in the goods yard.⁶⁵

A goods station, consisting of a building with railway lines, sidings, and platforms in it, connected with the railway company's main line by the railway of the Mersey Docks and Harbour Board and a tramway laid by permission of the Liverpool Corporation, and used for the conveyance of goods sent by the public by rail, was held by the Court of Appeal not to be part of a railway made under an Act of Parliament for public conveyance so as to be entitled to a partial exemption from rates under a local Act.⁶⁶

In 1914 the foregoing cases were considered by the House of Lords, who held that the partial exemption applied to (1) loading ways or roads and land thereunder, (2) loading platforms or mounds and land thereunder, (3) cattle-loading platforms or mounds and land thereunder, (4) sidings and turntables and land thereunder, and (5) hoist houses and land thereunder, hoists, capstans, and their machinery and cranes; but not to (a) roofs over lines directly productive, (b) roofs over loading platforms or mounds, (c) roofs over loading ways or roads, (d) approach roads to loading ways or roads and land thereunder, or (e) buildings and land thereunder and premises other than the above.⁶⁷

A railway company, who received wharfage dues in respect of a piece of land between the actual line of rails and a navigable river, were thereby estopped from saying that the land was not a wharf, but a railway, and from having it rated at one-fourth of the net annual value as land used for a railway.⁶⁸

A railway constructed without parliamentary powers is not within the Act, and is therefore not to be rated at a reduced rate.⁶⁹

A "light railway" constructed under the Act of 1896⁷⁰ was held to be assessable to the general district rate under the present section as a railway at one-fourth.

A tramway, worked in conjunction with a railway, was held not to be "used only as a railway" within sub-sect. (1, b) of the present section⁷¹; but another, established under a local Act which applied to it certain provisions of the Railways Clauses Consolidation Act, 1845, and enacted that it should be deemed to be a railway for the purposes of those provisions, was held by the House of Lords, affirming the Court of Appeal (Buckley, L.J., doubting), reversing the Divisional Court, to be so used.⁷²

A rating authority wrongly rated a railway company at one-fourth, subsequently amended the rate, and demanded the unpaid three-quarters. There having been no appeal against the amended rate, it was held that they could recover.⁷³

Burial-
grounds.

By the Burial Act, 1855, no land purchased or acquired under the Burial Acts for the purpose of a burial-ground (with or without any building erected or to be erected thereon) shall, while used for such purpose, be assessed to any local rate at a higher value or more improved rent than the value or rent at which it was assessed at the time of the purchase or acquisition of the ground.⁷⁴

Telegraphs.

By the Telegraph Act, 1868, all land, property, or undertakings purchased or acquired by the Postmaster-General under that Act, shall be assessable and rateable in respect to local, municipal, and parochial rates, assessments, and

(65) *London and North-Western Ry. Co. v. Llandudno Improvement Comrs.*, L. R. 1897, 1 Q. B. 287; 66 L. J. Q. B. 232; 75 L. T. 659; 61 J. P. 55.

(66) *Williams v. London and North-Western Ry. Co.*, L. R. 1900, 1 Q. B. 760; 69 L. J. Q. B. 531; 82 L. T. 287; 64 J. P. 372.

(67) *Lancs. and Yorks. Ry. Co. v. Liverpool Cpn.*, L. R. 1915 A. C. 152; 83 L. J. K. B. 1273; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771.

(68) *Reg. v. Taff Vale Ry. Co.* (1857), 22 J. P. 21.

(69) *North-Eastern Ry. Co. v. Leadgate Loc. Bd.* (1879), L. R. 5 Q. B. 157; 22 L. T. 62; 39 L. J. M. C. 65.

(70) *Post*, Vol. II., p. 1369. *Wakefield Cpn. v. Wakefield Light Ry. Co.*, L. R. 1908 A. C. 293; 77 L. J. K. B. 692; 99 L. T. 1; 72 J. P. 315; 6 L. G. R. 647. Distinguished

in the *Tottenham Case*, *infra* (71).

(71) *Swansea Improvements and Tramway Co. v. Swansea U.S.A.*, L. R. 1892, 1 Q. B. 357; 61 L. J. M. C. 124; 66 L. T. 119; 56 J. P. 248. Approved in *Tottenham U.D.C. v. Metrop. Electric Trams, Ltd.*, L. R. 1913 A. C. 702; 83 L. J. K. B. 60; 109 L. T. 674; 77 J. P. 413; 11 L. G. R. 1071.

(72) *Thornton U.D.C. v. Blackpool & Fleetwood Tramroad Co.*, L. R. 1909 A. C. 264; 78 L. J. K. B. 517; 100 L. T. 657; 73 J. P. 299; 7 L. G. R. 687. Distinguished in the *Tottenham Case*, *supra* (71).

(73) *Naas U.D.C. v. Great S. and W. Ry. Co.* (1913, C. A., I.), 1915 Ir. K. B. 14, at p. 45; 48 Ir. L. T. 83; 5 Glen's Loc. Gov. Case Law 190. See also *Whaley's Case*, *ante*, p. 581 (20).

(74) 18 & 19 Vict. c. 128, s. 15.

charges at sums not exceeding the rateable value at which such land, property, and undertakings were properly assessed, or assessable at the time of such purchase or acquisition.⁷⁵

A *mandamus* does not lie to the Postmaster-General to pay the rate, for the Treasury alone are to decide what sum is payable under the Act.⁷⁶

Lands vested in the Secretary of State under the Defence Act, 1860, are to continue chargeable to rates and taxes, but are not to be assessed at a higher value than that at which they were assessed at the time of such vesting.⁷⁷

Volunteer storehouses are expressly exempted from all county, parochial, or other local rates and assessments by the Volunteer Act, 1863.⁷⁸ And any premises occupied by a volunteer corps as servants of the Crown are exempt from rates in the same manner as any other premises occupied by servants of the Crown for the purposes of the Crown.⁷⁹ But where such premises were occasionally let for concerts and the like, they were not exempt, and the justices were held to be bound to enforce payment of a general district rate to which they had been assessed.⁸⁰

An ordinary dwelling-house in a town, hired by a county association under Part I. of the Territorial and Reserve Forces Act, 1907, for the occupation of, and occupied by, a sergeant-instructor and his family as his "quarters" in the discharge of his duties with the Territorial Force, was held by the Divisional Court to be occupied for the purposes of the Crown, and not to be rateable. In this case it was held that the exemption could be claimed on an application for a distress warrant for the rate, although the sergeant-instructor had not appealed to quarter sessions against the rate.⁸¹ As no appeal lay against this decision, a case was afterwards stated under Baines' Act and taken to the Court of Appeal by consent, but the appeal was dismissed.⁸²

A portion of certain courts of justice was let to various local authorities at a total rent of £266, and it was held that the Crown exemption from rates did not extend to this portion.⁸³

"No person or persons shall be rated or shall be liable to be rated, or to pay to any church or poor rates or cesses, for or in respect of any churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provisions of any Act or Acts now in force; provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting-houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage."⁸⁴ "Provided always, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting-houses, or other premises, or any vestry-rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor."⁸⁵ As to the exemption of churches, see the cases cited below.⁸⁶

"Land or buildings used exclusively or mainly for the purpose of the school-rooms, offices, or playground of a public elementary school not provided by the local education authority, except to the extent of any profit derived by the managers of the school from the letting thereof," are exempt from general district and other local rates by sect. 167, sub-sect. (1) of the Education Act, 1921.⁸⁷

Although an institution may be so managed that it complies with the conditions necessary to enable it to earn a parliamentary grant as a "public elementary day

Sect. 211, n.

Military
lands.Volunteer
storehouses,
&c.Territorial
Force
premises.Crown
property.

Churches, &c.

Non-provided
schools.

(75) 31 & 32 Vict. c. 110, s. 22.

(76) *St. Marylebone Vestry v. Postmaster-General* (1873), 28 L. T. 337; 21 W. R. 459; 37 J. P. 196. See also the *Nenagh Case*, *post*, Vol. II., p. 1226 (2).

(77) 23 & 24 Vict. c. 112, s. 33.

(78) 26 & 27 Vict. c. 65, s. 26.

(79) *Pearson v. Holborn U.A.C.*, L. R. 1893, 1 Q. B. 389; 62 L. J. M. C. 77; 68 L. T. 351; 57 J. P. 169. See also *Hornsey U.D.C. v. Hennell*, *post*, p. 785 (15).(80) *Rayner v. Drewitt* (1900), 82 L. T. 718; 64 J. P. 567; *Lewis v. Durham U.A.C.* (1904), 90 L. T. 383; 68 J. P. 220; 2 L. G. R. 533.(81) *Wixon v. Thomas* (No. 1), L. R. 1911, 1 K. B. 43; 80 L. J. K. B. 104; 103 L. T. 731; 75 J. P. 58; 8 L. G. R. 1042.(82) *Wixon v. Thomas* (No. 2), L. R. 1912, 1 K. B. 690; 81 L. J. K. B. 686; 106 L. T. 312; 76 J. P. 153; 10 L. G. R. 267; *Reg. v. Foster* (1857), 8 E. & B. 380, followed.(83) *Glasgow Court Houses Comrs. v. Glasgow P.C.*, 1913 S. C. (S.) 194; 50 Sc. L. R. 97; 4 Glen's Loc. Gov. Case Law 161. See also the *Worcester Case*, *ante*, p. 553 (10).

(84) 3 & 4 Will. IV., c. 30, s. 1.

(85) *Ibid.*, s. 2.(86) *Rex (Belfast City Cpn.) v. Belfast Recorder*, 1913 Ir. K. B. 439; 4 Glen's Loc. Gov. Case Law 162, where, however, the Act did not contain the word "exclusively." See also the *Walton-le-Dale Case*, *ante*, p. 351 (6).

(87) 11 & 12 Geo. V. c. 51, s. 167 (1).

- Sect. 211, n.** school," it may not be so "used exclusively or mainly for the purposes of the schoolrooms offices or playground" as to be exempt from rates: as, for instance, a charitable institution in which children are maintained and trained for domestic service.⁸⁸ And an institution in which pauper children were not only educated and given such necessary food as they might require during the time of education and instruction, but were entirely maintained, clothed, and provided with medical treatment, was held not to be "used for the education of the poor exclusively" within the meaning of a provision in a local Act exempting buildings so used from certain rates.⁸⁹
- Charities.** Charitable institutions were,⁹⁰ but are not now,⁹¹ exempt from rates, unless sect. 168 of the Towns Improvement Clauses Act, 1847,⁹² has been put in force by a local Act. As to the exemption of such properties under that Act,⁹³ under local Acts in England,⁹⁴ and under the general law in Ireland,⁹⁵ see the cases cited below.
- Sunday and ragged schools.** Every authority having power to impose or levy any rate upon the occupier of any building or part of a building used exclusively as a Sunday school or ragged school may exempt such building or part of a building from any rate for any purpose whatever which such authority has power to impose or levy. A "Sunday School" means "any school used for giving religious education gratuitously to children and young persons on Sunday, and on week days for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom." A "Ragged School" means "any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed"—see the Sunday and Ragged Schools (Exemption from Rating) Act, 1869.⁹⁶
- Premises used for science, &c.** By the Scientific Societies Act, 1843,⁹⁷ "no person or persons shall be assessed or rated, or liable to be assessed or rated, or liable to pay, to any county, borough, parochial, or other local rates or cesses, in respect of any land, houses, or buildings, or parts of houses or buildings, belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes, provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members, and provided also that such society shall obtain the certificate of the barrister-at-law [now the central office under the Friendly Societies Act, 1896 ^{97a}] . . . as hereinafter mentioned."
- Public library.** A public library established under the Public Libraries Acts was held by the House of Lords to be exempt from property tax as being a "building, the property of a literary or scientific institution and used wholly for the purposes of such institution."⁹⁸
- But when it was contended that a public library was exempt under the above-mentioned Scientific Societies Act, 1843, it was doubted whether the corporation to whom it belonged could be regarded as "a society instituted for purposes of science literature or the fine arts exclusively," and whether the fact that the library was largely used for the perusal of newspapers and other ephemeral literature did not itself prevent the exemption from being claimed; and it was held that, at any rate, the fact that the only contributions in the nature of voluntary contributions were occasional gifts of books, and contributions from the grants made by the Board of Education to the corporation in their capacity of local education authority, prevented the library from being so exempt.⁹⁹

(88) *Royal Patriotic Fund Comrs. v. Wandsworth B.C.* (1903). 88 L. T. 865; 67 J. P. 311; 1 L. G. R. 711.

(89) *Hadfield v. Liverpool Cpn.* (1899), 80 L. T. 566.

(90) *Reg. v. Wilson* (1840), 12 A. & E. 94.

(91) See the *Erith Case*, ante, p. 57 (1).

(92) 10 & 11 Vict. c. 34, s. 168.

(93) *Shaw v. Halifax Cpn.*, L. R. 1915, 2 K. B. 170; 84 L. J. K. B. 761; 112 L. T. 921; 79 J. P. 257; 13 L. G. R. 316.

(94) *Hall v. Derby U.S.A.* (1885), L. R. 16 Q. B. D. 163; 55 L. J. M. C. 21; 54 L. T. 175; 50 J. P. 278.

(95) *Clancy v. Valuation Comr.*, 1911 Ir. K. B. 173; 2 Glen's Loc. Gov. Case Law 220; *O'Neill v. Valuation Comr.*, 1914 Ir. K. B. 447; 5 Glen's Loc. Gov. Case Law 182.

(96) 32 & 33 Vict. c. 40, ss. 1, 2.

(97) 6 & 7 Vict. c. 36, s. 1.

(97a) 59 & 60 Vict. c. 25, ss. 1-4.

(98) *Manchester Cpn. v. McAdam*, L. R. 1896 A. C. 500; 65 L. J. Q. B. 672; 75 L. T. 229; 61 J. P. 100.

(99) *Liverpool Cpn. v. West Derby U.A.C.* (1905, K. B. D.), 92 L. T. 467; 53 W. R. 633; 69 J. P. 277; 3 L. G. R. 647. See also this and other cases cited ante, p. 431.

In a subsequent case, however, the Divisional Court held that contributions paid out of the rates by the local education authority, and grants paid by the Board of Education out of moneys provided by Parliament, towards the support of a school of art, were voluntary contributions enabling the society which established the school to claim the exemption.³

Sect. 211, n.
School of art.

The following are exempted from rates under the Merchant Shipping Act :—
“ All lighthouses, buoys, beacons, and all light dues, and other rates, fees, or payments accruing to or forming part of the Mercantile Marine Fund, and all premises or property belonging to or occupied by any of the general lighthouse authorities or by the Board of Trade, which are used or applied for the purposes of any of the services for which those dues, rates, fees, and payments are received, and all instruments or writings used by or under the direction of any of the general lighthouse authorities or of the Board of Trade in carrying on those services, shall be exempted from all public, parochial, and local taxes, duties, and rates of every kind.”⁴

Lighthouses,
&c.

An attaché to an ambassador of a foreign state is not liable for rates assessed on his private residence.⁵

Ambassador's
house.

Exemptions under Local Acts.

The provision in sub-sect. (1) (c) of the present section that, if any kind of property is “ exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made under ” the present Act, “ the same kind of property shall, in respect of the same purposes, and to the same extent, . . . be exempt from assessment to any general district rates under ” the present Act, applies only to exemptions in respect of the nature of the property, and not to property exempt under a local Act in respect merely of its locality, although the property so locally situate is exempt from poor rate.⁶ Erle, J.,⁷ said that the object of the local Act was to confer benefit on town property, and the burden was therefore laid upon town property, the residue of the borough being by implication exempted. Rateability, therefore, was not imposed upon one fixed area and exemption conferred upon another, but the limits of rateability shifted as the value of the property was changed by the growth of the town. Although, therefore, local bounds were defined for the purpose of ascertaining rateability, the kind of property to be rated within these local bounds was limited, some being rateable, some exempt.

What rates
included.

A limit imposed by a local Act upon a rate is not to apply to a rate levied under the present Act.⁸ Under sect. 303 the Minister of Health may by provisional order wholly or partially repeal, alter, or amend any local Acts (with certain exceptions) dealing with sanitary matters.

A provisional order, repealing altering and extending different portions of a local Act, applied to a borough the provision of the Public Health Act, 1848,⁹ which corresponded to the present section, but excepted so much of that provision as favoured railway and canal property, and ordered that certain property should be rated on two-thirds only of the full net annual value. This portion of the provisional order was held to be invalid, and a rate made in pursuance of it was consequently bad.¹⁰

By an Act of 1767 certain land in the City of London reclaimed from the Thames was vested in the adjoining owners “ free from all taxes and assessments whatsoever.” This exemption was held by the Court of Appeal to apply only to the taxes and assessments existing at the time and to others substituted for them, and not to the consolidated rate made under the City of London Sewers Act, 1848, which was a substantially new rate, although it included some purposes for which rates were made when the exemption was created.¹¹

(3) *Hornsey School of Art v. Edmonton U.A.C.* (1906), 94 L. T. 203; 70 J. P. 121; 4 L. G. R. 178; following *Royal College of Music v. Westminster Vestry*, L. R. 1898, 1 Q. B. 304; 67 L. J. Q. B. 80.

(4) 57 & 58 Vict. c. 60, s. 731.
(5) *Parkinson v. Potter* (1885), L. R. 16 Q. B. D. 152; 55 L. J. Q. B. 153; 53 L. T. 818; 50 J. P. 470.

(6) *Chelmsford Guardians v. Chelmsford Loc. Bd.* (1852), 2 E. & B 500, n.; 18 Jur. (N.S.) 376, n.; *Tait v. Carlisle Loc. Bd. of Health* (1853), 2 E. & B. 492; 18 Jur. 374; *Turner v. Halifax Cpn.* (1868), 9 B. & S.

623, n.; *Luscombe Shortland and Pontey v. Plymouth Loc. Bd. of Health* (1858), E. B. & E. 691; 27 L. J. M. C. 299; 4 Jur. (N.S.) 1234. See also the *Pontefract Case*, ante, p. 431 (49).

(7) In *Luscombe v. Plymouth*, supra.
(8) See s. 227, post, p. 604.
(9) 11 & 12 Vict. c. 63, s. 88.
(10) *North-Eastern Ry. Co. v. Tynemouth Cpn.* (1868), L. R. 3 Q. B. 723; 9 B. & S. 616; 37 L. J. M. C. 183.

(11) *Sion College v. London City Cpn.*, L. R. 1901, 1 Q. B. 617; 70 L. J. K. B. 369; 84 L. T. 133; 65 J. P. 324. Disapproved, see post, p. 590 (13).

Sect. 211, n.

The same exemption was afterwards held by the House of Lords to cover poor rates and assessments levied in pursuance of precepts addressed by the London County Council to the guardians for education, equalisation of rates, or the other purposes of that council.¹² And next year the House of Lords (Lord Sumner dissenting), reversing the Court of Appeal and disapproving of the *Sion College Case*, held that the exemption extended to all local taxes and assessments.¹³

Justices refused to make an order for payment of poor and general district rates on the ground that property vested in the Thames Conservators was exempt under the Thames Conservancy Act, 1894.¹⁴ The Court of Appeal held that, though the local Act did not in itself extend to the general district rate, which was not a parochial rate, yet, inasmuch as, by sub-sect. (1) of the present section, that rate was to be made and levied on the occupier of property for the time being "assessable to any rate for the relief of the poor," the justices were right.¹⁵

A statutory exemption of certain Crown property "from all rates and assessments," though it might become private property, in consideration of a fixed composition for the rates previously paid voluntarily by the Treasury, was held by the House of Lords to apply to future as well as existing rates and assessments, and not to be affected by the City of London Sewers Act, 1848,¹⁶ under which a consolidated rate and a sewer rate are made.¹⁷

A scheme, made in 1894, provided that certain harbour property should not pay to the borough or be assessable for any rates or charges except water rate at a higher rate than 3d. in the £ per annum, exclusive of the rate for the relief of the poor and the other charges at present collected with the poor rate, so long as the roads in the harbour should be maintained and lighted out of harbour revenue. At that time there was no school board for the area comprising the harbour. It was held that the above-mentioned provision did not exempt the harbour property from being rated for the expenses of the borough council as local education authority under the Education Act, 1902.¹⁸

Bank of
England.

The Bank of England was held to be rateable in full, notwithstanding various local Acts under which special privileges were claimed.¹⁹

Serjeants'
Inn.

A special Act of 1833 exempted Serjeants' Inn in the City of London from "all church rates poor rates and other parochial rates assessments or burdens within or for the parish" in consideration of a fixed annual sum to be paid to the overseers. Having regard to subsequent legislation charging a share of the expenses of the London County Council and other expenses upon the poor rates, the Court of Appeal held that the exemption could not now be claimed.²⁰

Oxford
University.

"All public buildings of the University and City of Oxford, and any lands, tenements, and hereditaments within the Oxford District not now assessed or assessable to rates for the relief of the poor, except all such as belong to or are held by the county, and except churches and other public places of religious worship, shall be assessable on a fair valuation thereof by an equal pound rate to the general district rates, to be from time to time made and levied by the [Corporation]."²¹

"With respect to the general district rate from time to time made and levied by the [Corporation]: (a.) All rateable property belonging to the chancellor, masters, and scholars of the University shall be rated in the name of the vice-chancellor of the University. (b.) All rateable property belonging to the mayor, aldermen, and citizens of Oxford shall be rated in the name of the mayor of the city. (c.) All rateable property belonging to the dean and chapter of Christ Church and to the other colleges and the halls in the University shall respectively be rated in the names of the treasurer of Christ Church, and of the senior bursar or treasurer of the several other colleges, and of the principals of the several halls

(12) *London City Cpn. v. Associated Newspapers, Ltd.*, L. R. 1915 A. C. 674; 84 L. J. K. B. 1053; 113 L. T. 1; 79 J. P. 273; 13 L. G. R. 673.

(13) *Associated Newspapers, Ltd. v. London City Cpn.*, L. R. 1916, 2 A. C. 429; 85 L. J. K. B. 1786; 115 L. T. 419; 80 J. P. 393; 14 L. G. R. 1027. Income tax was held covered by a similar exemption in *Pole-Carew v. Craddock* (C. A.), L. R. 1920, 3 K. B. 109; 89 L. J. K. B. 507; 123 L. T. 309.

(14) 57 & 58 Vict. c. clxxxvii., s. 289. Now repealed and re-enacted in 10 & 11 Geo. V. c. clxxiii., s. 311.

(15) *Whenman v. Clark*, L. R. 1916, 1 K. B. 94; 85 L. J. K. B. 424; 114 L. T. 46; 80 J. P. 128; 14 L. G. R. 149.

(16) 11 & 12 Vict. c. clxiii., s. 169.

(17) *London Cpn. v. Netherlands Steamboat Co.*, L. R. 1906 A. C. 263; 75 L. J. K. B. 771; 93 L. T. 566; 69 J. P. 443; 3 L. G. R. 1087. Approved in the second *Associated Newspapers Case*, *supra* (13).

(18) *Whitehaven Harbour Comrs. v. Whitehaven U.A.C.* (1905), 94 L. T. 504; 70 J. P. 89; 4 L. G. R. 128.

(19) *Bank of England v. London City Cpn.* (1915, K. B. D.), 85 L. J. K. B. 47; 112 L. T. 1088; 13 L. G. R. 1369.

(20) *Jonas v. St. Dunstan-in-the-West Overseers* (1908), 98 L. T. 691; 72 J. P. 157; 6 L. G. R. 557.

(21) 28 & 29 Vict. c. 103, s. 8.

respectively. (d.) All rateable property belonging to feoffees or trustees of charities or public buildings shall respectively be rated in the names of the feoffees and trustees respectively." ²² **Sect. 211, n.**

"The general district rate from time to time made by the [Corporation], and payable by the University and Christ Church and the other colleges and the halls respectively, shall be collected and paid to the [Corporation] by the vice-chancellor; provided that this arrangement may at any time be determined by notice in writing in that behalf given by the vice-chancellor to the [Corporation], or by the [Corporation] to the vice-chancellor, and if notice be so given, and be not withdrawn within twelve months after the service thereof, then from and after the expiration of that period the general district rate payable by the University and Christ Church, and the several other colleges and the halls respectively, shall be collected by the [Corporation]." ²³

Change of Occupation.

The period for which a rate is made commences on the date on which the rate is made, although it may be made for raising expenses incurred during a period commencing at an earlier date. ²⁴ **Period of rate.**

And the Local Government Board stated that they considered that, for the purpose of determining the proportion of the rate payable by an outgoing or an incoming occupier, the period for which the rate is made is to be reckoned as beginning from the date of the making of the rate, and as ending on the termination of the period for which it was stated to be made.

In the case of a poor rate the period for which the rate was estimated was held to be sufficiently set forth ²⁵ by a statement that it was estimated to meet all the expenses that would be incurred before a certain date, without specifying the date at which the expenses began. ²⁶

Sub-sect. (2) of the present section, relating to unoccupied premises, applies to cases in which the owners are rated as well as to those in which the occupiers are rated, but it does not override the second or latter portion of the proviso in sub-sect. (1); and therefore an owner rated for premises "whether occupied or unoccupied" cannot, if they should become vacant during the existence of the rate, escape from payment of it under the provisions of sub-sect. (2). ²⁷

A general district rate was assessed on the 20th April for the ensuing six months upon the premises of a company. An order for winding up the company under the supervision of the court was made on the 22nd of the following August, the business being subsequently carried on by the liquidators as a going concern. Upon a motion for an injunction to restrain the local board from enforcing distress warrants for the rate, it was held that there was no power to apportion such rates under the Apportionment Act, 1870, ²⁸ and that there was no change in the occupation under the present Act, since the liquidators were in possession under the direction of the court, and consequently that the whole of the April rate must be provided for in the liquidation. ²⁹

A private improvement rate under the Towns Improvement Clauses Act, 1847, was held not to be recoverable from a person who was not named in the rate, though he came into possession subsequently. ³⁰

The Local Government Board stated that, as sub-sect. (3) recognises the right of the outgoing occupier to pay less than the full amount of the rate, there seems to be sufficient authority for repayment of an excessive levy, where he has paid the full amount before going out of occupation, and that such repayment would not in itself afford a sufficient ground for refusal by the incoming occupier to pay his proportion of the rate. **Refunding over payments.**

Further as to refunding overpayments, see the case cited below. ³¹

(22) 28 & 29 Vict. c. 108, s. 20.

(23) *Ibid.*, s. 21.

(24) *Reg. v. Tempest* (1898), 14 T. L. R. 199; *Davis v. Woodfield* (1900), 81 L. T. 782; 64 J. P. 215.

(25) To satisfy 32 & 33 Vict. c. 41, s. 14, which requires the period of a poor rate to be stated.

(26) *Cheney v. Tallowin*, L. R. 1904, 2 K. B. 763; 73 L. J. K. B. 943; 91 L. T. 552; 68 J. P. 528; 2 L. G. R. 1338.

(27) *Reg. v. Barclay* (1881, 1882), L. R. 8 Q. B. D. 306, 486; 51 L. J. M. C. 27, 47; 46 L. T. 102, 335; 46 J. P. 167, 693.

(28) 33 & 34 Vict. c. 35. See now Bankruptcy Act, 1914, 4 & 5 Geo. V. c. 59, s. 33 (1). and Companies Act, 1908, 8 Edw. VII. c. 69, s. 209 (1), *post*, pp. 671, 672.

(29) *In re Wearmouth Crown Glass Co.* (1882), L. R. 19 Ch. D. 640; 45 L. T. 757; 30 W. R. 316.

(30) *Rochdale Building Soc. v. Rochdale Cpn.* (1886), 51 J. P. 134.

(31) *Hendon Paper Co. v. Sunderland U.A.C.*, L. R. 1915, 1 K. B. 763; 84 L. J. K. B. 476; 112 L. T. 146; 79 J. P. 113; 13 L. G. R. 97, *re* deductions from gross and estoppel. See also *post*, p. 602 (12).

Sect. 211, n.

Division of District.

Object of division.

Although sub-sect. (4) of the present section authorises an urban district council to divide their district or any street in it "for all or any of the purposes of this Act," it is to be noticed that the whole section is governed by the words at the commencement, "with respect to the assessment and levying of general district rates under this Act the following provisions shall have effect." It would therefore seem that the district could not be divided under the sub-section for a purpose unconnected with the general district rate.

Highway expenses.

Where there were no public works of paving, water supply, and sewerage established in a district, so that the district came within the provision,³¹ corresponding to the clause numbered (3) in sect. 216 of the present Act, which required that the repair of highways should be provided for by a highway rate levied over the whole district, it was held that the local authority could not make a separate highway rate for one of the townships comprised in the district.³²

The authority may, it was held, divide the district so as to allow a separate highway rate to be made upon part of the district which was not benefited by works of sewerage, etc. *Per Blackburn, J.*, "the language of the section ³³ is as comprehensive as the English language can make it. The words are, 'for all, or any, or either of the purposes of this Act.' "³⁴

A resolution passed by a local board, whose district contained three townships (one a place of trade and manufacture, and the others agricultural and mining districts, of which one had its highways repairable *ratione tenuræ*), that "the accounts of each township be kept separate," was held to be a valid resolution, and to be a very salutary and competent provision, and to justify each township in having, and to require it to have, its own separate rates. But the local board, having divided their district into three divisions, and having by a bye-law provided that the resolution should not be altered without a month's notice being given, were unable to make a general district rate over the whole district without having previously duly rescinded the resolution.³⁵

Meaning of part of district.

With regard to the meaning of the expression "part of the district," reference may be made to a case decided on the Metropolis Management Act, 1855,³⁶ under which a vestry or district board had power to direct the overseers to levy all or part of the expenses for which they issued their order in a part of their parish or district only, or to exempt a part of it, wholly or partially, where it appeared to the vestry or board that the expenses had not been incurred for the equal benefit of the whole. It was held that this provision authorised a district board to issue an order requiring a rate to be levied in the proportion of one-fourth part only of the net annual value of such parts of the parish as consisted of land used as arable, meadow, or pasture land, market gardens, etc., although these classes of land did not lie together or form any particular division marked out by metes and bounds, but were scattered through the parish.³⁷

The power given to divide the district into parts, and make a separate assessment upon any such part, is a discretionary power, and if the sanitary authority do not divide the district the rate is to be laid on the whole district, even though the premises rated receive no direct or immediate improvement from the works in respect of which the rate is made. It is sufficient that the district, or part of the district within which the premises are situated, and of which they form part, is benefited by the works executed.³⁸ This decision proceeds not only on the ground that the word "may" implies a discretionary power, but also on the ground that the owner and the occupier of the premises may receive both personally and indirectly, in a pecuniary point of view, benefit from the execution of the works; for an estate may be improved in saleable value from the sanitary improvement in the immediate neighbourhood of which it is situated, and the occupier of it may derive benefit from the improved roads along which he passes in his daily avocations, and the reduction of poor rates owing to the general health of the district having been improved, even though the particular premises may not have derived a direct

(31) 21 & 22 Vict. c. 98, s. 37.

(32) *In re Broughton Loc. Bd. of Health* (1865), 12 L. T. 310.

(33) 11 & 12 Vict. c. 63, s. 89.

(34) *Farr v. Boston*, M. S. and *Times*, 26th April, 1864.

(35) *Mayer v. Burslem Loc. Bd.* (1875), 39 J. P. 437.

(36) 18 & 19 Vict. c. 120, s. 159.

(37) *Reg. v. London Brighton and South Coast Ry. Co.*, and *London Brighton and South Coast Ry. Co. v. Lewisham Guardians* (1879), L. R. 5 Q. B. D. 89; 49 L. J. M. C. 32; 41 L. T. 577.

(38) *Dorling v. Epsom Loc. Bd.* (1855), 5 E. & B. 471; 24 L. J. M. C. 152; 1 Jur. (N.S.) 956; 20 J. P. 20.

benefit. The fact, therefore, that a dry dock was a mile and a half from the nearest highway, and three miles from any drainage, lighting, or paving, and received no direct benefit from the general district rate, and that the local board had refused to divide their district under sub-sect. (4) of the present section, so as to exclude the dock from contribution to the expenses of drainage, etc., was held not to constitute "sufficient cause" for non-payment of the rate, and the justices were held to have been wrong in refusing to make an order to pay it.³⁹

Sect. 211, n.

Sect. 23 of the Towns Improvement Clauses Act, 1847,⁴⁰ which is not incorporated with the present Act, authorises the whole district within the limits of a special Act incorporating the section to be divided into separate drainage districts, and other unincorporated sections provide that the cost of making a new sewer shall be defrayed by special sewer rates to be levied within the drainage district in which the sewer is situated,⁴¹ and that other expenses connected with any sewers vested in the local authority shall be defrayed by general sewer rates to be levied in the drainage districts in which such sewers are severally situated,⁴² and that the local authority may make an apportionment in a fair and equitable manner of such expenses when they are incurred in respect of two or more of such drainage districts.⁴³ An urban district council whose local Act incorporated the above-mentioned provisions, after dividing their district into separate drainage districts, made a general rate over the whole urban district, and objection was taken that separate rates ought to have been made for the several sub-divisions; but the Divisional Court considered that such separate rates were not necessary, and upheld the general rate.⁴⁴

Drainage districts.

The principle of classification and proportionate or differential rating, according to the supposed amount of benefit received from drainage works by individual properties in the neighbourhood, is contrary to law; and a sewer rate, made by commissioners of sewers under a local drainage Act and the Sewers Acts, must therefore be an equal rate on all property in the district benefited by the works of improvement executed by the commissioners.⁴⁵

Uniformity of rating.

Differential rating is, however, frequently adopted when areas are extended by local Acts.^{45a}

In the opinion of the Local Government Board, the present section does not authorise the allowance of a discount for prompt payment of general district rates.⁴⁶

Discount.

As to excusing payment of rates on the ground of poverty, see sect. 225.

Poverty.

Sect. 212. For the purpose of assessing general district rates any person appointed by the urban authority may inspect take copies of or make extracts from, any valuation list or rate for the relief of the poor within the district, or any book relating to the same.

Inspection of poor rate books for purposes of assessment.
L.G., s. 56.

Any officer having the custody of any such rate or book who refuses to permit such inspection, or the taking of such copies or extracts, shall be liable to a penalty not exceeding five pounds.

Note.

Under the first part of sect. 211 the general district rate is to be based upon the valuation list in force for the time being.

Valuation list.

The present section does not prevent an urban district council from paying an assistant overseer having charge of the poor rate for supplying a copy of additional assessments to that rate to their officer to enable him to make a general district rate; and the disallowance and surcharge of such a payment by a district auditor was reversed by the Local Government Board, although the officer of the council had been awarded extra remuneration beyond his salary for collecting or making the general district rate.

With regard to the recovery of penalties, see sect. 251.

(39) *Newport Cpn. v. Lang* (1892), 57 J. P. 199.

(40) *Post*, Vol. II., p. 1620.

(41) 10 & 11 Vict. c. 34, s. 28.

(42) *Ibid.*, s. 29.

(43) *Ibid.*, s. 162.

(44) *Surbiton U.D.C. v. Upjohn* (1910), 102 L. T. 736; 74 J. P. 314; 8 L. G. R. 786.

(45) *Knight v. Langport Drainage Bd.*, L. R. 1898, 1 Q. B. 588; 67 L. J. Q. B. 432; 78 L. T. 260; 62 J. P. 245.

(45a) See, e.g., *Broadstairs*, 1913, 3 & 4 Geo. V. c. lxiii., s. 46.

(46) The same applies to water "rates," but not to water "rents," see *ante*, p. 143.

Sect. 213.

PRIVATE IMPROVEMENT RATE.

Power to make private improvement rates.
P.H., s. 90.

Sect. 213. Whenever an urban authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses,¹ such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.

Note.

Borrowing money.

Under sects. 233 and 240 district councils may borrow money for purposes of private improvement, and may grant a yearly rent-charge issuing out of the premises in respect of which any advance has been made to the person who made the advance.

Appeal to Minister of Health.

An appeal to the Minister of Health is given by sect. 268 against the decision of a district council in cases where they are empowered to declare expenses to be private improvement expenses.

Recovery of expenses from owners.

With regard to the recovery of the expenses of works of private improvement from the owner or, where they were made payable by instalments, from the owner or occupier, of the premises, see sect. 257; and with regard to the respective liabilities of owners and tenants, under covenants in leases to pay rates, charges, etc., in respect of the premises, see the Note to that section.

Exercise of option.

Where the district council have this option of recovering expenses summarily or by private improvement rate, they must exercise such option within a reasonable time²; and when they have once exercised it they cannot afterwards alter the mode of recovery. Thus, a local board, after agreeing with the receiver of an estate that certain expenses should be declared private improvement expenses, and that the receiver should advance the amount on mortgage of the private improvement rates to be levied, were held not to be entitled to recover the expenses summarily after the receiver had ceased to have any control over the property or its rents and profits.³ And another authority were unable to recover expenses summarily because they had in the preliminary notice calling upon the owners to do the works expressed their intention to declare the expenses private improvement expenses.⁴ On the other hand, a local board that had demanded the amount of certain expenses from the owner, were held not to be entitled subsequently to declare the expenses to be private improvement expenses.⁵

Private improvement rate.

Rural district councils may make rates under these provisions, in the same manner as an urban district council, by virtue of sect. 232.

(1) See ss. 23, 36, 41, 62, and 150, *ante*, pp. 89, 108, 115, 148, 311; P. H. Am. Act, 1890, s. 19, *post*, Part I., Div. II.; H. W. C. Act, 1890, s. 38 (8), *post*, Part II., Div. III.; and P. S. W. Act, 1892, s. 12, *ante*, p. 348.
(2) *Per* Erle, C.J., in *Eddleston v. Francis*, *infra*.

(3) *Eddleston v. Francis* (1860), 7 C. B. (N.S.) 568; 3 L. T. 270; 25 J. P. 135.
(4) *Gould v. Bacup Loc. Bd.* (1881), 50 L. J. M. C. 44; 44 L. T. 103; 45 J. P. 325.
(5) *Wilson v. Bolton Cpn.* (1871), L. R. 7 Q. B. 105; 41 L. J. M. C. 4; 25 L. T. 597; 36 J. P. 405.

Further provisions relating to making and recovery of private improvement rates are contained in sects. 218-227 and in sect. 256. See also the case cited below.⁶

Sect. 213, n.
Private
improvement
rate—*cont.*

A question arises in connection with these rates which has not been settled by judicial authority, namely, whether the amount depends on the rateable value of the premises where several premises are liable to the same rate, as, for instance, where private street improvements have been effected under sect. 150. Sect. 218 requires the rateable value of the premises to be stated in the estimate for the rate, and also the amount in the £ at which the rate is to be made; and unless the aggregate expenses were to be recovered by one rate based upon the rateable values of the several premises, the ascertainment of the rateable values and amount in the £ would have no practical effect, and the use of the term "rate" (in place of "instalments") would scarcely be appropriate. The council have power under sect. 257 to recover the expenses by "instalments" in a similar manner to that in which they are to recover private improvement rates. From the reference, however, to the "period for which the rate was made" in sects. 213 and 215, it seems that an annual or periodical rate is not to be made, but a single rate for a period not exceeding thirty years, payable by instalments at times fixed under sect. 222. An alteration in the rateable value of the premises during the "period" would therefore have no effect on the rate, unless an amendment could be made under sect. 221, which seems doubtful. Under sect. 150 one alternative for recovery of the expenses is to apportion them according to frontage, and recover the apportioned amounts summarily; under sect. 23, one alternative is to apportion the expenses as the authority deem just, and recover the apportioned amount summarily; and under each section the other alternative is to declare the expenses to be private improvement expenses, the mode of apportioning and recovering private improvement expenses not being dealt with by either of the sections.

By sect. 16, sub-sect. (5) of the Land Drainage Act, 1918,⁷ "Any expenses incurred by the [Minister of Agriculture and Fisheries] under this section in the execution of drainage works to an amount not exceeding the amount declared by the scheme to be the maximum amount of expenses recoverable by [him], or in maintaining any such works, shall be recoverable by the [Minister] in a summary manner from the several owners of the lands to which the scheme relates according to the apportionment of the scheme: Provided that if any owner so requires in writing the sum payable by him shall be recoverable by the [Minister] by means of a rate to be made and levied by the [Minister] in like manner, subject to the like provisions and with the like incidents, as are applicable in the case of a private improvement rate for private improvement expenses incurred by a local authority under the Public Health Act, 1875, with this qualification, that the [Minister] shall, on the application of the owner or occupier of any land subject to the rate, determine the proportion of the rate to be borne by them respectively, having regard to the benefit derived from the works, the contract of tenancy, and all other circumstances of the case, but the local authority may on the application and on behalf of the [Minister] collect the rate and pay over the proceeds to the [Minister] after deducting such reasonable costs of collection as may be agreed with the [Minister], or, in default of agreement, settled by the [Minister of Health]."

Land
drainage
expenses.

Sect. 214. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rackrent, he shall be entitled to deduct three fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of three fourths of the rate as his rent bears to the rackrent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect

Proportion of
private improve-
ment rate may
be deducted
from rent.
P.H., s. 91.

(6) *Rochdale Building Soc. v. Rochdale Cpn.*, ante, p. 591.

(7) 8 & 9 Geo. V. c. 17, s. 16 (5). For other provisions of this Act, see ante, pp. 102-104.

Sect. 214. to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof.

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

Note.

Landlord and tenant. By sect. 226, however, "nothing in this Part [Part VI.] of this Act shall alter or affect any lease, contract or agreement made or entered into between the landlord and tenant of any premises." See also the Note to sect. 257 with regard to agreements between landlord and tenant.

The provisions of the present section and sect. 215 are applicable to annual rent-charges granted by district councils for the repayment of advances made to them for defraying their expenses incurred in works of private improvement: see sect. 240.

Deductions. A lessee was held only entitled to deduct from the rent the land tax and sewers rate payable on the rent reserved, and not that payable upon the annual value.⁸

Production of receipt. In an income-tax case ⁹ it was held that landlords must allow deductions without insisting upon production of tax receipts.

Redemption of private improvement rates. **Sect. 215.** At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same:

P.H., s. 92.

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise.

Note.

Period of rate. The period of an improvement rate may be any period not exceeding thirty years: see sect. 213 and the Note to that section.

Repayment of loans. The last clause of sect. 234 requires the district council to make good money borrowed for private improvement purposes either out of private improvement rates or out of a rate levied in part of the district.

(8) *Smith v. Humble* (1854), 15 C. B. 321; 18 J. P. 760; 3 C. L. R. 225. Followed in *Mansfield v. Relf* (C. A.), L. R. 1908, 1 K. B. 71; 77 L. J. K. B. 145; 97 L. T. 745; 71 J. P. 556; and distinguished in *Salaman v.*

Holford (C. A.), L. R. 1909, 2 Ch. 602; 101 L. T. 505.

(9) *North London Property Co. v. Moy* (C. A.), L. R. 1918, 2 K. B. 439; 87 L. J. K. B. 986; 119 L. T. 230.

Sect. 216.

HIGHWAY RATE.

Sect. 216. In any urban district where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any local Act, the cost of repair of highways shall be defrayed as follows; (that is to say,)

(1.) Where the whole of the district is rated for works of paving water supply and sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate :

(2.) Where parts of the district are not rated for works of paving water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate to be separately assessed and levied in those parts by the urban authority as surveyor of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate :

(3.) Where no public works of paving water supply and sewerage are established in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the urban authority as surveyor of highways :

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act 1858 Amendment Act 1861),* or unless such excluded part has been included in a highway district under the Highways Acts, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district.

Costs of repairs of highways.
L.G., s. 37.

L.G. Am., s. 9
27 & 28 Vict.,
c. 101, s. 5.

* *Sic.*

Provided also, that in the case of an urban district constituted after the passing of this Act a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by Schedule III. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways ; but the requisition for holding any such meeting shall be made within six months after the constitution of the urban district.

The court of quarter sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts.

Note.

The present section relates only to the expenses of urban district councils. The highway expenses of a rural district council are to be defrayed as general expenses under sects. 229 and 230 of the present Act, and sect. 29 (a) of the Local Government Act, 1894.¹

Highway expenses.

The cases in which the expenses of the urban district council are to be defrayed out of the district fund and general district rate are specified in sect. 207.

Where another mode of providing for the repair of highways in part of the district is prescribed by a local Act, the present section may not be applicable to the district.²

Payments in respect of main roads repaired by urban district councils are to be made by the county council under the Local Government Act, 1888 ³; and under the same Act county councils may make voluntary contributions towards the costs of maintenance, repair, enlargement, and improvement of any other highways or any public footpath in their counties.⁴

Main roads.

With regard to the mode of making the highway rate, and the returns to be made of the receipts and expenditure, see sect. 217 and the Note to that section.

Highway rates.

(1) *Post*, Vol. II., p. 2048.
(2) See *Hill v. Crediton U.D.C.* (1899, C. A.),
80 L. T. 861. See also, as to this case, *post*,
Vol. II., p. 1937, and *ante*, p. 564 (15).

(3) See s. 11 (2, 4), *post*, Vol. II., pp. 1894,
1895.
(4) See s. 11 (10), *ibid.*

**Sect. 216, n.
Parishes.**

The urban district council are surveyors of highways for their district as a whole, and not surveyors for each of those parishes or divisions severally, which were, before the constitution of the district, liable to repair their own highways; and they cannot therefore exercise the rating powers of surveyors of highways otherwise than is provided by the present and following sections.⁵

**Division of
district.**

The Local Boards Highway Repair Indemnity Act, 1854,⁶ was passed in order to give validity to those highway rates which had been made under a mistaken view of the effect of the highway provisions of the Public Health Act, 1848.

It will be seen that sect. 211, sub-sect. (4), enables an urban district council to divide their district or any street therein into parts for all or any of the purposes of the Act, and to make a separate assessment upon any such part for all or any of the purposes for which the same is formed. But although the authority may divide the district for the purpose of rating parts of it separately to the general district rate for works of paving, water supply, and sewerage, so as to be able to levy a highway rate in the other parts under clause (2),⁷ they cannot divide the district into separate divisions, and assess and levy a highway rate in each of the divisions separately. The highway rate in such case must be assessed and levied over the whole district.⁸

Public works.

It is a question of fact whether any works existing in the district are such as to amount to public works of paving, water supply, or sewerage established in the district.

Sewerage.

Thus, in one urban district there were some old-fashioned stone drains, which had been constructed by and for the purposes of the previously existing highway authority. Surface water entered these drains through gratings, and some house drains had been connected with them by the owners of houses, so that a certain quantity of sewage was carried by them. The urban authority had not added to the drains or made any new sewerage works themselves. It was held on a case stated by quarter sessions that there was evidence to justify the sessions in finding that there were public works of sewerage established in the district within clause (3), and that, therefore, a highway rate which had been made to defray the expenses of the repair of highways throughout the district was invalid.⁹

Paving.

On the other hand, stone kerbing and channelling laid where the owner or occupier of the adjoining premises was willing to pay half the cost had been held to fall short of a "public work of paving."¹⁰ And, in a more recent case, the laying of a kerbstone 300 yards long to a footway in another urban district was held not to constitute public works of paving, etc., established within the district, and the levying of a highway rate was therefore valid in that case.¹¹

**Excluded part
of parish.**

The provisoes and the last clause of the present section are now obsolete. The Local Government Act, 1894,¹² has constituted all such "excluded parts" of parishes as are here mentioned, separate parishes; and under the same Act,¹³ the rural district councils have taken over the powers and duties of the previously existing highway boards or other highway authorities in their districts.

Upon the rural district council becoming the highway authority for a district in which an "excluded part of a parish" was situate, such part ceased to belong to the urban district for highway purposes, and came under the jurisdiction of the rural district council for highway as well as other purposes.¹⁴

**Rates under
Inclosure
Acts.**

The expenses of repairing, cleansing, and maintaining private or occupation roads to which the General Inclosure Act of 1848 applies may be raised by a rate on the landowners, who are themselves to appoint a rating officer.¹⁵

Certain acts not required to be done in case of highway rate made by urban authority.

L.G., s. 37 (5).

Sect. 217. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them; (that is to say.)

To lay such rate before any justices, or obtain their allowance;

(5) *Moseley v. Ely Loc. Bd. of Health* (1856), 6 E. & B. 518; 26 L. J. M. C. 23; 3 Jur. (N.S.) 42; followed in *Barber v. Jessop* (1857), 1 H. & N. 578; 26 L. J. M. C. 186; and see *Re Broughton Loc. Bd.*, *infra*; see also *Reg. v. Slater* (1852), 21 L. J. M. C. 185; 16 Jur. 992, decided under a local Act and the Towns Improvement Clauses Act, 1847.

(6) 17 & 18 Vict. c. 69.

(7) *Farr v. Boston*, *ante*, p. 592.

(8) *Re Broughton Loc. Bd.* (1865), 12 L. T. 310; see also *Reg. v. Nield*, 1871 W. N. 121.

(9) *Reg. v. Belper Loc. Bd.*, 46 J. P. 166; 1882 Loc. Gov. Chron. 528.

(10) *Birmingham Canal Co. v. Docker* (1860), 24 J. P. 691.

(11) *Oxenhope Loc. Bd. v. Bradford Cpn.* (1882), 47 L. T. 344; 31 W. R. 322; 47 J. P. 21.

(12) See ss. 1 (3), 36 (2), *post*, Vol. II., pp. 1995, 2059.

(13) See s. 25 (1), *ibid.*, p. 2038.

(14) See s. 25 (4), *ibid.*, p. 2039.

(15) 11 & 12 Vict. c. 99, ss. 5-7. See also 3 & 4 Wm. IV. c. 35.

To annex thereto the signature of such urban authority;
To lay the same before the parishioners assembled in vestry;
To verify before any justices any accounts kept by them of such highway rates;
and all such accounts shall be audited in all respects in the same way as the other accounts of the urban authority.

Sect. 217.

Note.

With regard to the cases in which highway rates are to be made by urban district councils, see sect. 216 and the Note thereto.

The Highway Act, 1835, required every highway rate made by a surveyor of highways to be signed by the surveyor, allowed by two justices of the peace, and also published in the same way as poor rates were allowed and published¹; and yearly accounts were required to be laid before the justices at a special sessions for the highways.²

An urban district council, as surveyors of the highways, have all the powers, authorities, duties, and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities, or duties are or may be inconsistent with the provisions of this Act.³ And for levying and recovering the highway rate, the surveyor had the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor.⁴

The question, however, arises whether a highway rate made by an urban district council is not to be deemed to be "a rate made under this Act," so as to be recoverable in the manner provided by sect. 256, and so as to be subject to the general provisions with respect to rates made under the Act, which are contained in sects. 219-227.

A water rate made by an urban district council was held to be "made under this Act" within the meaning of that section.⁵ But in some cases acts done by urban authorities as surveyors of highways have been held not to have been acts done under this Act;⁶ and sect. 217 suggests that, save so far as they are expressly excepted, the provisions of the Highway Act, 1835, apply to a highway rate so made. But, as above mentioned, some provisions of the Act have been held not to apply.⁷

The Highway Rate Assessment and Expenditure Act, 1882,⁸ extends to highway rates the orders made by vestries under the Poor Rate Assessment and Collection Act, 1869,⁹ for rating the owners of small tenements instead of the occupiers, in "highway parishes," which are defined to be places maintaining their own highways.¹⁰

The Highway Act, 1835, limited the amount of the rates to 10d. in the pound for each rate, and to 2s. 6d. in the pound for the year, except in cases where four-fifths of the inhabitants consent to a heavier rate being made.¹¹ This limitation was, however, held not to apply to highway rates made by an urban authority, even where the rate was made upon a portion of a parish which formed part of the urban district for highway purposes only by virtue of the proviso to sect. 216.¹²

The highway rate is to be made, assessed, and levied "upon all property now liable to be rated and assessed to the relief of the poor; provided that the same rate shall also extend to such woods, mines, and quarries of stones, or other hereditaments, as have heretofore been usually rated to the highways."¹³ Plantations, rights of sporting, and mines are, under the Rating Act, 1874,¹⁴ rateable to the highway and other local rates as well as the poor rate.

The exemption from poor-rates of personal property under the Poor Rate (Exemption) Act, 1840,¹⁵ is not expressly extended to highway rates, but in practice personal property is not rated to the highway rate.

Highway rates.

Allowance and publication of rate.

Application of Highway Acts.

Application of present Act.

Limitation of amount.

Assessable property.

Exemptions.

(1) 5 & 6 Wm. IV. c. 50, s. 27.
(2) *Ibid.*, s. 44.
(3) See s. 144, *ante*, p. 270; and *Moseley v. Ely Loc. Bd. of Health*, *ante*, p. 598.
(4) 5 & 6 Wm. IV. c. 50, s. 34.
(5) *Elliott v. Russell*, *post*, Vol. II., p. 1235 (6).
(6) *Burgess v. Northwich Loc. Bd.*, *ante*, p. 303 (7); *Graham v. Newcastle-upon-Tyne Cpn.*, *ante*, p. 275 (75).
(7) *Dyson v. Greetland Loc. Bd.*, *infra*.
(8) 45 & 46 Vict. c. 27, ss. 3, 4.
(9) 32 & 33 Vict. c. 41, s. 4.

(10) 45 & 46 Vict. c. 27, s. 10.
(11) 5 & 6 Wm. IV. c. 50, s. 29; but see now *Agricultural Rates Act*, 1896, s. 8, *post*, Vol. II., p. 2126.
(12) *Dyson v. Greetland Loc. Bd.* (1884, C. A.), L. R. 13 Q. B. D. 946; 53 L. J. M. C. 106; 48 L. T. 636; 48 J. P. 596.
(13) 5 & 6 Wm. IV. c. 50, s. 27.
(14) 37 & 38 Vict. c. 54, s. 10. As to this Act, see *ante*, pp. 583, 584.
(15) Under 3 & 4 Vict. c. 89, made "permanent" by *Expiring Laws Act*, 1922, s. 1, Sched. I.

- Sect. 217, n.** Property which, previously to the 31st of August, 1835, was legally exempt from the performance of statute duty, or from the payment of any composition in lieu thereof, or of highway rate, continues exempt from the payment of highway rate.¹⁶ But where the consideration for an exemption from highway rates, namely, the liability to repair a certain highway *ratione tenuræ*, no longer existed, the exemption was held also to have ceased.¹⁷
- The liability to repair a highway *ratione tenuræ* is not, however, necessarily accompanied by an exemption from highway rates.¹⁸
- Form of rate.** Under the Highway Act, 1835,¹⁹ the rate was to contain the names of the occupiers, the description of the premises or property which they occupy, and the full annual value of such premises or property, and to specify the sum in the pound at which it is made; and the Act²⁰ gave the form of the highway rate with the following headings to the columns:—(1.) Names of occupiers or persons rated; (2.) Description of the premises and property rated; (3.) Annual value; (4.) Sum assessed at —d. in the pound. Some alteration in this form is, however, necessitated by the Agricultural Rates Act, 1896.²¹ In the case of rates made by surveyors of highways and waywardens a more elaborate form was accordingly prescribed by the Local Government Board by an Order dated the 26th April, 1897.
- Errors.** Where there has been any omission or error of or in the name of any person or hereditament, liable to be rated, express power is given, with the consent and approbation of the justices, to cause the name of the person and description of the property to be added or corrected.²²
- Valuation.** By the Union Assessment Committee Act, 1862,²³ where a valuation list has been approved and delivered to the overseers, no rate which by law is required to be based upon the poor rate is of any force unless the hereditaments be rated according to the annual value appearing in the list.
- The Highway Rate Assessment and Expenditure Act, 1882,²⁴ requires highway rates to be assessed according to the rateable values appearing in the valuation lists in force, and requires the assessment committee to give notice of alterations made in the lists under the Union Assessment Committee Amendment Act, 1864,²⁵ to the surveyor or other person authorised to make and levy the highway rate.
- Concurrent rates.** Concurrent rates for repairs of highways were held to be invalid if made for the same period of time;²⁶ but a second rate might be made where a former rate for the same purpose had not been wholly collected. Where, however, rates were merely co-existent, the court refused to presume that they were made for the same period of time, and they were therefore not invalid.²⁷
- A supplemental rate for road works to help the unemployed was held bad because there had been no *bonâ fide* determination by the council as to whether the necessities of the parish required such a rate, and no estimate had been submitted to them by the finance committee.²⁸
- Audit.** The provisions relating to the audit of accounts under the present Act are contained in sects. 245-250, and the statutes mentioned in the Notes to those sections.
- Returns.** By the Highway Accounts Returns Act, 1879,²⁹ “the Local Taxation Returns Acts, 1860 and 1877,³⁰ shall apply to returns of rates, receipts, and expenditure as regards highways in like manner as if they were specifically mentioned in the said Acts, and highway boards and surveyors of highways were mentioned as local authorities in those Acts, and the surveyor of highways were an officer keeping the accounts of the rates, receipts, and expenditure within the meaning of those Acts: Provided that a return under the said Acts may be dispensed with upon the delivery to the auditor of a financial statement of the said receipts and expenditure in like manner as in any other case.”

(16) 5 & 6 Wm. IV. c. 50, s. 33.

(17) *Heath v. Weaverham Overseers*, L. R. 1894, 2 Q. B. 108; 63 L. J. M. C. 187; 70 L. T. 729; 58 J. P. 557.(18) *Ferrand v. Bingley U.D.C.*, L. R. 1903, 2 K. B. 445; 72 L. J. K. B. 734; 89 L. T. 333; 67 J. P. 36, 370; 1 L. G. R. 845.

(19) 5 & 6 Wm. IV. c. 50, s. 29.

(20) *Ibid.*, Sched. 4.(21) *Post*, Vol. II., p. 2122.

(22) 5 & 6 Wm. IV. c. 50, s. 31.

(23) 25 & 26 Vict. c. 103, s. 28.

(24) 45 & 46 Vict. c. 27, s. 4.

(25) 27 & 28 Vict. c. 39, s. 1.

(26) *Reg. v. Fordham Inhabitants* (1839), 11 A. & E. 73. But see *Sandgate Loc. Bd. v. Pledge*, *post*, p. 668 (21).(27) *Reg. v. Best*, or *Reg. v. Surrey JJ.* (1847), 2 N. S. C. 665; 11 Jur. 489; 2 B. C. Rep. 90; 16 L. J. M. C. 102; 5 D. & L. 40.(28) 32 & 33 Vict. c. 41, ss. 14, 20; 62 & 63 Vict. c. 14, s. 8 (3). *Evans v. Battersea B.C.* (1908, London Q. S.), 72 J. P. 189. Further as to this case, see *ante*, p. 568 (5).

(29) 42 & 43 Vict. c. 39, s. 2.

(30) *Post*, Vol. II., p. 1684.

Sect. 218.

GENERAL PROVISIONS AS TO URBAN RATES.

Sect. 218. Every urban authority, before proceeding to make a general district rate or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing—

Estimate to be prepared before making rates.
P.H., s. 98.

- The several sums required for each of such purposes; and
 - The rateable value of the property assessable; and
 - The amount of rate which for those purposes it is necessary to make on each pound of such value;
- and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same.

Note.

Sects. 207 and 208 specify the cases in which urban district councils are to make general district rates, and sects. 210-212 deal with the mode of making such rates. Sects. 219-225 deal with amending and collecting the rate, and other matters subsequent to the making of the rate. Sect. 256 prescribes the mode of recovering it by legal proceedings. As to the illegal application of rates, see the Note to sect. 210.

General district rate.

With regard to private improvement rates, see sects. 213-215.

Private improvement rate.

The estimate required to be made was held ¹ to be analogous to the title or heading of the poor rate, and to be bad if it contained any illegal purposes; that decision was, however, upon the Public Health Act, 1848,² which did not contain the clause with which the present section concludes. It has been held that a poor rate is bad if the heading is omitted,³ and it may be that notwithstanding the last words of the present section general district or private improvement rates may also be bad if no estimate at all be made. The intention, expressed in the estimate, to apply part of the proceeds of the rate to an unauthorised purpose will afford a ground of appeal against the rate.⁴

Estimate.

A payment out of the proceeds of a rate is not necessarily illegal because the item was not included in the estimate for the rate. With reference to an estimate for a poor rate, Patteson, J., said, "Although the rate is founded on an estimate, it is not so exclusively appropriated to the expenses included therein, but that it may be lawfully applied to an unforeseen debt not included therein."⁵

One general district rate may be made to include both past and future expenses,⁶ if the amount of each is distinguished in the estimate; and *per* Cockburn, C.J., "we see no objection to past and future expenses being provided for, so long as they are sufficiently specified in the estimate, in one and the same rate."⁷ The expenditure under each heading should be of the same class, and incongruous items should not be mixed up together in one lump sum.⁷

Sect. 219. Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate made previously thereto, and may take copies of or extracts therefrom without fee or reward; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds.⁸

Rates to be open to inspection.
P.H., s. 100.

(1) In *Reg. v. Worksoy Loc. Bd. of Health* (1857), 21 J. P. 451.
(2) 11 & 12 Vict. c. 63, s. 98.
(3) *Reg. or Moulton Overseers v. Eastern Counties Ry. Co.* (1856), 5 E. & B. 974; 25 L. J. M. C. 49; 2 Jur. (N.S.) 161; 20 J. P. 566; *Reg. v. Wilkinson* (Q. B. D.), 1887 Loc. Gov. Chron. 696.
(4) See *Smith v. Southampton Cpn.*, *ante*, p. 575.

(5) *Reg. v. Read* (1849), 13 Q. B. 535; 18 L. J. M. C. 164; 13 Jur. 789.
(6) See s. 210, second paragraph, *ante*.
(7) *Reg. v. Worksoy Loc. Bd. of Health* (1865), 5 B. & S. 951; 34 L. J. M. C. 220; 11 Jur. (N.S.) 1015; 10 L. T. 297; 29 J. P. 759.
(8) As to the recovery of penalties, see s. 251. The person to whom inspection is refused may prosecute: see s. 253.

Sect. 220.

Description of
owner or
occupier in
rates.

P.H., s. 101.

Sect. 220. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description.⁹

Rates may be
amended.

P.H., s. 102.

Sect. 221. An urban authority may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated, or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made, and with respect to him an amended rate shall be considered to have been made at the time when he first received notice of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted until seven days after such notice has been given to him.

Note.

**Amendment
of rates.**

General district rates are, by sect. 211, to be assessed on the full net annual value "ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act"; and it appears that if the assessment committee alter the valuation list on objection made by the ratepayer, after the general district rate is made, it will be necessary for the urban authority to amend their rate in accordance with such alteration, for otherwise they will be unable to recover it.¹⁰

**Improper
alteration of
rate-book.**

The remedy of a person who complains of an improper addition of names to a rate book after the rate has been made is not *mandamus*, but resistance to the issue of a distress warrant.¹¹

**Refunding
over-
payments.**

Certain urban rates under a local Act were made in accordance with the valuation list then in force, and were payable by four equal quarterly instalments. After payment of the first instalment a company gave notice of objection to the valuation of their premises, and afterwards paid the second instalment. The valuation was subsequently reduced by the assessment committee, and the local authority on receiving notice of such reduction made a corresponding reduction in the rates before mentioned, but refused to deduct from the third instalment the full amount overpaid on the two first instalments (that is, the difference between the original amounts of those instalments and the amounts to which they were reduced by the reduction of the valuation). The court held that, as the instalments were not separate rates, the company were entitled to deduct the full amount.¹²

**Assessment of
new houses.**

The Local Government Board stated that they were disposed to consider that where a supplemental valuation list has been approved by the union assessment committee with reference to a new house or building under sect. 38 of the Poor Law Amendment Act, 1868,¹³ an urban district council may at any time before the end of the period for which a general district rate was made assess the occupier or owner of the premises to the rate under the present section. Under the proviso to the present section, however, the amended rate would be considered to have been made at the time when the person assessed first received notice of the amendment of the rate.

With regard to appeals to quarter sessions against rates, see sect. 269; and with regard to the service of notices, see sect. 267.

(9) See also s. 267, under which notices and other documents may be addressed to the "owner" or "occupier" without further name or description.

(10) *Sheffield Water Co. v. Sheffield Cpn.* (1885), 55 L. J. M. C. 40; 54 L. T. 179; 50 J. P. 6. See also the *Naas Case*, ante, p. 586.

(11) See *Harnett's Case*, post, p. 671 (47).

(12) *Hastings Cpn. v. Queen's Hotel Co.* (1907, K. B. D.), 97 L. T. 310; 71 J. P. 369; 5 L. G. R. 1158. See full comment on this case in 5 L. G. R. at pp. 1165-1167. And also *McDermott v. McMorrow* (1904, K. B. D., L.), 33 Ir. L. T. 200; and ante, pp. 579, 591.

(13) 31 & 32 Vict. c. 122, s. 38.

Sect. 222. All rates made or collected under this Act shall be published in the same manner as poor rates, and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the urban authority may from time to time appoint : Provided that no publication shall be required of any private improvement rate.

Sect. 222.
Publication and collection of rates.
P.H., s. 103.

Note.

All rates “ made or collected ” under the present Act are to be published in the same manner as poor rates ; that is to say, by affixing on the Sunday next after making the rate a notice, either in writing or print, or partly in writing and partly in print, previously to the commencement of Divine service, on or near to the doors of all the churches and chapels within the district.¹⁴ A publication on the principal or most usual doors of all the churches and chapels of the Church of England in the district will suffice.¹⁵

Publication of rates.

Poor rates are declared by express enactment ¹⁶ to be invalid unless published, but no such declaration is contained in the present Act. It was accordingly held that non-publication did not render a rate made by a local board void : that on a summons to enforce a rate which had not been published, but had not been appealed against, the justices were right in disregarding the fact of non-publication, and that their warrant was a protection to the officer distraining under it. *Per* Coleridge, J. : “ Where, in such a matter as a rate, the Legislature requires a thing to be done not in itself essential to the validity of it, and does not in terms specify what shall be the consequence of non-compliance, the court will not make that consequence to be an avoidance of the whole.” ¹⁷

Where, however, a local Act enabled a corporation to make an order for the levy of a general district rate in like manner as the borough rate, and provided that in such case the general district rate should be made, assessed, and levied under the same provisions as the poor rate (but subject to the exemptions applicable to general district rates), and either as a separate rate or together with the poor rate, and that if such an order was made the poor rate should be recoverable as general district rates are recoverable under the Public Health Act, 1875, the foregoing case was distinguished, and it was held to be a good defence to proceedings for enforcing a rate, which comprised both poor and general district rate, that the rate had not been duly published.¹⁸

The allowance of the rate by justices is not necessary in the case of a rate made by an urban district council, as it is in the case of a poor rate.

Allowance.

If no date at which a general district rate is to be payable is fixed by the urban district council, the rate is payable on demand as soon as it is made, and on default of payment for fourteen days after demand a summons for its recovery may be applied for under sect. 256.

Time for payment of rate.

As to the recovery of rates made under the present Act, see sect. 256.

Sect. 223. The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as *primâ facie* evidence of the making and validity of the rates mentioned therein.

Evidence of rates.
P.H., s. 106.

Note.

The present section merely throws the onus of proving the invalidity of the rate on the person disputing it.

Validity of rate.

No rate made under the present Act is to be quashed for want of form : see sect. 262. See also sect. 260 with regard to certain technical objections.

In an action for trespass to a several fishery, entries of the names of tenants in parish rate-books were admitted in evidence in proof of ownership of the fishery by the plaintiff’s predecessors in title.¹⁹

Rate-books as evidence.

(14) 17 Geo. II. c. 3, s. 1; 7 Wm. IV. & 1 Vict. c. 45, s. 2.
(15) See *Ormerod’s Case*, and others cited in Note to Sched. V., Part I., Rule 36, *post*.
(16) 17 Geo. II. c. 3, s. 1.
(17) *Le Feuvre v. Miller* (1857), 8 E. & B. 321; 26 L. J. M. C. 175; 3 Jur. (N.S.) 1255.
(18) *Beeson v. Derby Overseers* (1903), 89 L. T. 47; 67 J. P. 282; 1 L. G. R. 624.
(19) *Smith v. Andrews*, L. R. 1891, 2 Ch. 678; 65 L. T. 175.

Sect. 224.

Power to make deduction from rate in certain cases.

L.G., s. 29.

Power to reduce or remit rates.

P.H., s. 96.

Sect. 224. Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid down by them, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just.

Sect. 225. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Note.**Excusal of rate.**

The excusal of the payment of the rate cannot be considered as relief, so as to subject the person excused to any disqualification on the ground of the receipt of "parochial relief or other alms"; for it has been held that an excusal of poor rates²⁰ is not parochial relief disqualifying a person on the list of freemen of a borough from being registered as a parliamentary voter,²¹ though it will no doubt disqualify him for a franchise for which *payment* of the rate is essential.

Discount.

Discount for prompt payment is not allowed.²²

Saving for existing agreements.

P.H., s. 97.

Sect. 226. Nothing in this part of this Act shall alter or affect any lease contract or agreement made or entered into between the landlord and tenant of any premises.

Note.**Covenants in leases.**

On the construction of covenants in leases to pay future rates and taxes and other charges, see the Note to sect. 257. With regard to deductions from the rent in cases of expenses of abating nuisances, see sect. 104, and in cases of private improvement expenses, sects. 214 and 257.

Effect of subsequent Act.

With regard to the effect upon a covenant of a subsequent Act of Parliament, it is laid down that, "where the question is whether a covenant be repealed by Act of Parliament, this is the difference, viz., where H. covenants not to do an act or thing which was lawful to do, and an Act of Parliament comes after and compels him to do it, the statute repeals the covenant; so if H. covenants to do a thing which is lawful, and an Act of Parliament comes in and hinders him from doing it, the covenant is repealed. But if a man covenants not to do a thing which was then unlawful, and an Act comes in and makes it lawful to do it, such Act of Parliament does not repeal the covenant."²³

Limit in local Act not to apply to rate for purposes of this Act.

P.H. 1872, s. 43.

Sect. 227. Any limit imposed on or in respect of any rate by any local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act.

Note.**Meaning of limit.**

An exemption of certain kinds of property from rating under a local Act is not a "limit imposed on or in respect of a rate."²⁴

On the other hand, an Improvement Act provided that no borough rate levied thereunder should exceed in any year the sum of 1s. in the £, but that, with the consent of a majority of the persons liable to be rated thereto, the corporation might increase such rate above the amount by the Act limited. The Act further provided that no such increase should be leviable upon the owner or occupier of any coal mine in respect thereof, or upon any person assessable in the proportion of one-fourth only of any rate, other than the highway rate, in respect of his property or of premises occupied by him. It was held that this was not an exemption of property from rateability, but a limit imposed upon the borough rate leviable upon collieries and certain other property; and that, though the limit still existed, so far as any rate leviable by the corporation for borough purposes was concerned, the present section prevented it from applying to rates leviable

(20) Under 54 Geo. III. c. 170, s. 11.

(21) *Mashiter v. Dunn* (1848), 6 C. B. (o.s.) 30; 18 L. J. C. P. 13; 13 Jur. 194.

(22) See *ante*, p. 593.

(23) *Brewster v. Kitchell or Kitchin* (1697), 1 Salk. 198; 1 Ld. Raym. 317, quoted by Malins, V.-C., in *Newington Loc. Bd. v*

Cottingham Loc. Bd., L. R. 12 Ch. D. 731; 48 L. J. Ch. 226; 40 L. T. 58; see also *post*, pp. 685-692.

(24) *Walton Imp. Comrs. v. Walford* (1875), L. R. 10 Q. B. 180; 44 L. J. Q. B. 74; 31 L. T. 825.

by the corporation for the purposes of the present Act; and that the corporation were unrestricted in the amount of any rate leviable by them as urban sanitary authority.²⁵

Notwithstanding the statutory limitation of the amount of rate leviable under a local Act, the commissioners acting in execution of such Act were held to be authorised to levy the rate in order to provide for a liability arising through their negligence in the execution of the works authorised by the Act.²⁶

But where the consent of two-thirds of the ratepayers was required for a rate exceeding 2s. in the £, a rate of 2s. 6d. made without such consent was held to be bad.²⁷

A clause in a local Act imposing a limit on the rates made under that Act was followed by a proviso that in respect of so much of any such rate as might exceed a certain lower limit the occupier of a canal or railway should be assessed on one-fourth of the net annual value. The present section was held not to affect this proviso, which remained applicable to rates made for the purposes of the local Act and the present Act by virtue of sect. 207.²⁸

Sect. 227, n.
Meaning of
limit—cont.

Sect. 228. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching repairing lighting and cleansing under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act.

All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities halls and colleges in the same manner in all respects as rates contributions and sums of money may now be recovered from them by virtue of any such local Act.

Quota of rates
to be paid by the
Universities, &c.
P.H., s. 105.
L.G., s. 82.

Note.

The Oxford commissioners are superseded by the corporation of the city: see the Note to sect. 342. With regard to the contributions to be paid by the University, see the Note to sect. 211.

In the municipal borough of Cambridge, the commissioners under the local Improvement Act are also superseded by the corporation.²⁹

The provisions relating to the settlement of differences by arbitration are contained in sects. 179-181.

Oxford.

Cambridge.

Arbitration.

(25) *St. Helens Cpn. v. St. Helens Colliery Co.* (1883), 48 J. P. 39.

(26) *Reg. v. Selby Dam Drainage Comrs.*, L. R. 1892, 1 Q. B. 348; 61 L. J. Q. B. 372; 66 L. T. 17; 56 J. P. 356. See also *Reg. v. Wexford Cpn.* (1886), 18 L. R. Ir. 119.

(27) *Manly v. Young* (C. A., I.), 1896 Ir. Q. B. 126.

(28) *Bingley U.D.C. v. Midland Ry. Co.* (1899), 80 L. T. 725. See also the *Crediton and Ross Cases*, ante, pp. 564, 565.

(29) See ante, p. 45 (10).

Sect. 229.

EXPENSES OF RURAL AUTHORITY.

Expenses of
rural authority.
P.H. 1872, s. 17.
P.H. 1874, s. 10.

Sect. 229. The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act or by order of the [Minister of Health] to be special expenses.

Special expenses shall be the expenses of the construction maintenance and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the [Minister of Health] to be special expenses.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such apportionment, may, within twenty-one days after notice has been given to them of the apportionment, send or deliver a memorial to the [Minister of Health] stating their grounds of complaint, and the said [Minister] may make such order in the matter as to [him] may seem equitable, and the order so made shall be binding and conclusive on all parties concerned.

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place in manner in this Act mentioned.

Special expenses shall be a separate charge on each contributory place.

The following areas situated in a rural district shall be contributory places for the purposes of this Act; that is to say,

(1.) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an urban district; and

(2.) Every such special drainage district as aforesaid; and

(3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and

(4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

Note.

Expenses of
rural district
councils.

The expenses of a rural district council are, subject to the provisions of the Local Government Act, 1894,¹ to be defrayed in the manner directed by the present Act, with respect to the expenses of a rural sanitary authority: see sect. 230.

The Local Government Act, 1894,² provides that payments by the rural district council to existing officers are to be general expenses, and that they are to defray

(1) See s. 29, *post*, Vol. II., p. 2048.

(2) See s. 81 (7), *ibid.*, p. 2110.

their highway expenses as general expenses; though it allows them under exceptional circumstances to charge a contributory place with the cost of maintaining its own highways, subject, however, to the approval of the county council,³ and in certain cases, without such approval, to charge a particular parish or other area with the cost of putting the highways in it into a proper state of repair in the first instance before charging the cost of maintaining them on the district.⁴

The appointment of officers is provided for by sect. 190; disinfection, by sects. 120 *et seq.*, by the Infectious Disease Prevention Act, 1890,⁵ and by the Public Health Acts Amendment Act, 1907⁶; conveyance of infected persons, by sect. 123; making, etc., of sewers, by sect. 15; and water supply, by sects. 51 *et seq.*

In the corresponding Irish Act the expression "expenses incurred" was held to mean "actual or estimated" expenses.⁷

The Local Government Board pointed out that the present section is so worded as to show clearly that the water rents or rates levied in a contributory place are to be applied in defraying the cost of providing the water supply for such place.

Any expenses incurred by a rural district council in relation to unhealthy dwelling-houses, or to working-class lodging-houses, under Part II. or Part III. of the Housing of the Working Classes Act, 1890, are to be defrayed as special expenses.⁸

So also are their expenses under the Open Spaces Act, 1906.⁹

As to postal facilities, see the Note to sect. 175 of the present Act.¹⁰

The costs incurred by a rural sanitary authority in defending an action for an injunction to restrain them from fouling a stream were general expenses.¹¹

A rate made for the purpose of paying certain sewerage expenses incurred under the Public Health Act, 1872, was held to be bad on the grounds that it was retrospective, and that a balance carried forward from year to year did not come within the definition of special expenses in the present section.¹²

This case was subsequently distinguished in one in which the contribution order of the guardians was made for poor law purposes only, and was therefore valid by virtue of sect. 6 of the Poor Law (Payment of Debts) Act, 1859¹³; the provisions of that Act as to the limitation of time for payment of debts incurred by the guardians not having been applied to debts incurred by them as rural sanitary authority by the last clause (now repealed) of sect. 9 of the present Act.¹⁴

The present section only allows the Minister of Health to order expenses incurred or payable by the rural district council "in or in respect of any contributory place within the district," to be treated as special expenses; but under the Public Health Acts Amendment Act, 1890,¹⁵ he may order any expenses incurred by the council to be so treated.

By sect. 295 all orders of the Minister in pursuance of the present Act are to be binding and conclusive in respect of the matters to which they relate.

It was held that the Local Government Board for Ireland could, in exercising the power to determine the "contributory place" to be charged with "special expenses," determine that the area of charge shall be the whole district; and further that the Board had power to consider the circumstance that the area in fact benefited by the expenditure would not be able to bear the expenses alone.¹⁶

It was contrary to the practice of the Local Government Board to make an order declaring the engineering expenses of a sewerage scheme to be special expenses while the scheme was still under consideration. If the scheme is abandoned, special reasons must be shown before such an order will be made. Thus, the cost of constructing experimental bacteria beds was held by the Board not to be an expense in respect of construction, maintenance, or cleansing of sewers in a contributory place, and they accordingly reversed the action of a district auditor who had transferred the cost of such bacteria beds from general to special expenses in the accounts of a rural district council.

Sect. 229, n.

Meaning of "incurred."

Water supply.

Working-class dwellings.

Open spaces.

Postal facilities.

Costs.

Floating balance.

Special expenses orders.

(3) See s. 29, *post*, Vol. II., p. 2048.
(4) See s. 82, *ibid.*, p. 2111.
(5) See s. 6, *post*, Part II., Div. I.
(6) See ss. 55, 56, *post*, Part I., Div. III.
(7) *Rex (Potts) v. L. G. Bd. for Ireland*, 1906 Ir. K. B. 206.
(8) H. W. C. Act, 1890, ss. 42, 65, *post*, Part II., Div. III.
(9) See s. 17, *post*, Vol. II., p. 1484.
(10) *Ante*, p. 465.
(11) *Earl Jersey v. Uxbridge R.S.A.*, L. R. 1891, 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T.

858; 55 J. P. 165.
(12) *Saul v. Wigton R.S.A.* (1886), 56 L. T. 438; 35 W. R. 252; 51 J. P. 406. See also the cases in the Note to s. 210, *ante*, p. 574.
(13) 22 & 23 Vict. c. 49, s. 6; *Caistor Guardians v. North Kelsey Overseers* (1890), 59 L. J. M. C. 102; 62 L. T. 731.
(14) *Dearle v. Petersfield Guardians*, *ante*, p. 48 (10).
(15) See s. 49, *post*, Part I., Div. II.
(16) *Rex (Ballyvaughan R.D.C.) v. Loc. Gov. Bd. for Ireland*, 1915 Ir. K. B. 55.

Sect. 229, n.
Special
expenses
orders—cont.

So also the expenses of providing a supply of water to a contributory place did not in the opinion of the Board include the cost of an unsuccessful attempt to supply water to certain premises in the place, but only expenses incurred in successfully carrying out works of water supply. Where the supply has not been provided the expenses are to be charged as general expenses, unless determined to be special by an order of the Minister. But if the works are successful, and result in the provision of a supply of water to the contributory place, the cost will be chargeable as special expenses without the issue of such an order.

It was contrary to the practice of the Board to make a special expenses order to cover the prospective costs of contemplated legal actions. And when a parish council had incurred expenses in opposing a Bill in Parliament, the Board stated that they had no authority enabling them to comply with an application by the rural district council to declare the expenses to be special expenses.

Special
drainage
districts.

A "special drainage district" is an area formed under sect. 277 by a rural district council with the approval of the Minister of Health for the purpose of charging upon such district, apart from the remainder of the rural district or of the parishes in which they are situate, the special expenses of works of sewerage or water supply or of other works.

Where such a district comprised parts of more than one parish, the Board stated that the amount required by the council for special expenses should be apportioned among those parts according to their respective assessable values for the purposes of the separate rate, and that a separate precept should be addressed to each set of overseers.

The legal and other expenses incurred in connection with, but prior to, the formation of a special drainage district were held by the House of Lords to be expenses incurred for the purposes of the special drainage district so as to be chargeable on that district under the Public Health Scotland Act, 1897.¹⁷

Orders for
goods.

The Local Government Board expressed the opinion that orders for materials and other articles required by a district council should not, in the ordinary course, be given by an officer of the council on his own authority; but that on the officer's report directions should be given by the council at a meeting for ordering what is required; that the orders, signed by the clerk, should be issued from the order check book, which should not be kept by the officer who would have to account for the consumption of the materials, etc.; that small payments for highway materials for instance made by the surveyor should be charged in his accounts, which, with the vouchers, should be submitted for examination before the council meetings; and that the duty of making such examination may be assigned to the clerk, and the result reported by him to the council.

Cheques.

The Board considered that the council should pay all debts exceeding £2 by cheques drawn upon their treasurer in favour of the several creditors, and that such cheques should be handed to the creditors at a meeting of the council or forwarded to them by the clerk; and further, that these transactions should be recorded in the ledger, and not in the surveyor's accounts.¹⁸

The practice of certain rural district councils to draw cheques annually in favour of individual councillors to enable them to purchase the materials was disapproved of by the Board.

Vouchers.

The Board also objected to a rural district council obtaining from the labourers on the highways receipts for payment of their wages on loose slips of paper, subsequently pasted in the wages book, instead of having the signatures of the labourers made in the wages book itself. The Board intimated that the receipts given on the slips could not be regarded as satisfactory for the purposes of audit.

Mandamus.

In the case cited below,¹⁹ a rural district council were ordered to raise funds to satisfy a judgment.

Mode of raising
 contributions in
 rural district.
 P.H. 1872, s. 18.
 S.U. 1867, s. 17.

Sect. 230. For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount

(17) 60 & 61 Vict. c. 38, s. 133. *Inverarity v. Forfarshire C.C.*, L. R. 1906 A. C. 354; 70 J. P. 509.

(18) As to cheques, see also *ante*, p. 562.

(19) See the *Leigh Case*, *ante*, p. 575 (61).

specified in such precept to the rural authority or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses. Sect. 230.

Where a contributory place is part of a parish as defined by this Act, the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception; (namely,)

That the owner of any tithes, or of any tithe commutation rentcharge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands [, orchards,¹ allotments,²] market gardens or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one fourth part only of the rate in the pound payable in respect of houses and other property :

Provided that where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses. P.H. 1874, s. 11.

A separate rate under this section shall, as respects the powers of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof except the purposes to which it is applicable, and such exemption as aforesaid, and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish.

When a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed made allowed published collected and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority.

(1) Added by Act of 1890, s. 1, *ante*, p. 584.

(2) Added by Act of 1891, s. 1, *ibid*.

Sect. 230, n.

Note.

Definitions.

The term "contributory place" is defined by the last clause of sect. 229. As to the meaning of "parish," see the Note to sect. 4.³

Port sanitary district.

An island within the district of a port sanitary authority must, if it is also within a rural district, contribute to the general expenses of the rural district council, although all the powers of a sanitary authority are exercised by the officers of the port sanitary authority.⁴

General expenses.

On a summons against overseers to enforce a precept for general expenses, it was held that the overseers were entitled to show that two years' litigation between themselves and the principal ratepayer in the parish had resulted in a reduction in the valuation of their parish, and were consequently entitled to have credit for the overpayments which they had made to the rural sanitary authority on the old valuation in the meantime.⁵

It must be noticed that, though the separate rate to be made under the third clause of the present section for *special expenses* does not require the allowance of justices, and in certain cases is to be assessed on one-fourth of the value rateable to the poor rate, the separate rate to be made under the last clause but one for *general expenses* is to be allowed and assessed in the same manner as the poor rate.

When the Minister of Health determines any expenses under the Local Government Act, 1894, to be special expenses, he may further direct them to be raised in the same manner as general expenses, that is, out of the poor rate or a similar rate, and not by a separate rate to which certain classes of property are rateable at one-fourth only.⁶

Separate sanitary rate.

The "woodlands," which are to be rated at the separate rate on one-fourth of their value, include land used for a plantation or a wood, or for the growth of saleable underwood, or for both such purposes.⁷

With regard to "agricultural land," see the Note to sect. 211.⁸

It was held that land occupied by a canal, and also land occupied by filter beds of a water company, ought to have been assessed under sect. 17 of the Sewage Utilization Act, 1867,⁹ which was similar to the third clause of the present section, at one-fourth of the amount imposed on houses, but land used for the purpose of preparing sand for filter beds, and land occupied by iron pipes, mains, and sewer pipes, at its ordinary rateable value.¹⁰

Rate for small amount.

When the amount required by a precept for special expenses was less than £10, or was so small that a rate less than 1d. in the £ would have been required to raise it, and was therefore payable as if it were required for general expenses in pursuance of the proviso to the present section, the Local Government Board confirmed the disallowance by the auditor of the cost of collecting a separate rate, which the overseers had made to raise the amount.

Where the amount is paid in the same manner as general expenses, the classes of property generally entitled to the partial exemption of one-fourth, lose the benefit of such partial exemption.¹¹

Application of poor rate provisions.

Since the incidents of the poor rate are to apply to the separate rate to be levied by the overseers, it would appear that, under the Poor Rate Assessment and Collection Act, 1869,¹² the overseers may enter into agreements with the owners of rateable tenements where the rateable value does not exceed the amount limited by that section, and may, subject to the control of the [parish council or parish meeting], allow the commission therein specified. And the Local Government Board considered that, where an order under sect. 4 of the same Act, directing the rating of owners of small tenements to the poor rate instead of the occupiers, is in force in a parish, such order applies to a separate rate for special expenses of the rural district council so as to enable the overseers to rate the owners of small hereditaments, and to allow deductions in like manner as in the case of a poor rate.¹³

(3) *Ante*, p. 10.

(4) *Clark v. Rochford R.D.C.* (1897, Q. B. D.), 13 T. L. R. 371.

(5) *Tynemouth R.S.A. v. Backworth Overseers* (1888), 57 L. J. M. C. 53; 59 L. T. 178; 52 J. P. 357.

(6) See L. G. Act, 1894, s. 29 (b), *post*, Vol. II., p. 2048.

(7) Rating Act, 1874, s. 12, *ante*, p. 584.

(8) *Ante*, p. 581.

(9) 30 & 31 Vict. c. 113, s. 17.

(10) *East London Water Co. v. Leyton*

Sewer Authority (1871), L. R. 6 Q. B. 669; 40 L. J. M. C. 190; 20 W. R. 95; see also the Note to s. 211, *ante*, p. 584.

(11) *Sheffield Cpn. v. Bradfield U.A.C.* (1891, Q. B. D.), 7 T. L. R. 571; 35 Sol. J. 530; 1892 Loc. Gov. Chron. 291.

(12) 32 & 33 Vict. c. 41, s. 3.

(13) *Ibid.*, s. 4. See *Reg. v. Lambert or Oxfordshire JJ.* (1854) 2 C. L. R. 883; 22 L. T. (o.s.) 219, in which the old Small Tenements Act was held applicable to a rate under the Lighting and Watching Act.

It is the duty of the overseers under the Poor Law Amendment Act, 1868,¹⁴ to enter in the rate book any new house or other building (in a parish where the poor rate is not made under a local Act) which was incomplete or not fit for occupation or was not entered as such in the valuation list in force when the rate was made, and require the occupier to pay a proper proportion of the rate; and where this had not been done in the case of a separate sanitary rate, the amount which would otherwise have been recoverable from the occupier of a new house was surcharged by the district auditor on the overseers, and the Local Government Board upheld the surcharge.

The Local Government Board required accounts relating to separate rates for special expenses to be kept distinct from those relating to the poor rate, but the overseers need not have separate banking accounts for them unless they think proper to do so.

The poor-rate collector may be required to give security for the special rates which he is required to collect; but such security is to be given to the guardians of the union, who are to decide upon its sufficiency.

Sect. 1 of the Poor Law (Payment of Debts) Act, 1859,¹⁵ does not apply to a rural district council.^{15a}

Apart from any question which may be raised as to the effect of the Statute of Limitations, there is no enactment which expressly limits the time during which a debt may lawfully be discharged by a rural district council.¹⁶

With regard to retrospective rates generally, see the Note to sect. 210.

Sect. 230, n.
Application
of poor-rate
provisions—
continued.

Sect. 231. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof.

Remedy for
non-payment
by overseers of
amount required
by precept of
rural authority.
P.H. 1872, s. 19.

Note.

The following are the enactments relating to the recovery of contributions from overseers by the guardians :—“ In every case in which any contribution by overseers or other officers of any parish of moneys required by the board of guardians or persons acting as guardians for such parish, or for any union which shall include such parish for the performance of their duties, shall be in arrear, it shall be lawful for any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman or acting chairman of such board, to summon the said overseer* or other officers to show cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and after hearing the complaint preferred under the authority of such chairman or acting chairman, and on behalf of such board, if the justices at such sessions shall think fit, by warrant under their hands and seals to cause the amount of the contribution so in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or other officers, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs as aforesaid, when levied and recovered, to be paid to the said board : Provided always, that no distress made under any such warrant of justices shall be replevisible.”¹⁷ If the order for payment is served on one of the overseers only, it may be enforced against him¹⁸; and if the treasurer of the guardians has his place of business or resides in a different jurisdiction from that in which the overseer resides, any justice or justices of either jurisdiction may hear and determine the complaint.¹⁹

Recovery of
contributions.

* *Sic.*

Sect. 27 of the Poor Law Amendment Act, 1867,²⁰ enacts that “ where a union extends into several distinct jurisdictions, every matter, act, charge, or complaint, by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout

(14) 31 & 32 Vict. c. 122, s. 38.

(15) 22 & 23 Vict. c. 49.

(15a) See *Dearle's Case*, ante, p. 48 (10).

(16) *Reg. v. Leigh R.D.C.*, ante, p. 575;
Saul v. Wigton R.S.A., ante, p. 607.

(17) 1839, 2 & 3 Vict. c. 84 (Poor Rate), s. 1.

(18) 1849, 12 & 13 Vict. c. 103 (Poor Law Am.), s. 7.

(19) 1851, 14 & 15 Vict. c. 105 (Poor Law Am.), s. 9; see also 1867, 30 & 31 Vict. c. 106 (Poor Law Am.), s. 27.

(20) 30 & 31 Vict. c. 106, s. 27.

Sect. 231, n.

the union." And one effect of the present section is to apply that enactment to proceedings by a rural district council for enforcing their precepts, so that, for the purposes of the jurisdiction of justices in relation thereto, the cause of complaint in the case of such proceedings is to be deemed to arise equally throughout their district, although such district extends into several petty sessional divisions.²¹

The existence of a legal obligation to pay the contribution is a necessary preliminary condition to the justices having any authority to enforce payment; and if no such obligation existed, the justices would act without jurisdiction, and be liable in trespass.²²

The justices could not refuse to issue their warrant merely because they thought it unjust that a place formerly extra-parochial should be compelled to contribute to the common fund of the union.²³

Mandamus.

A *mandamus* to the overseers to pay the amount of the precept of a rural district council, and, if necessary, to make and levy a rate for the purpose, would no doubt be refused on the ground that the statute provides the proper remedy for enforcing the precept.²⁴

Per Lord Alverstone, C.J.: "In ordinary circumstances no question can be raised [*i.e.* before the justices] as to the amount of the precept, or the manner in which the money has been spent, or as to a particular payment being such as ought not to have been made." But the court refused a *mandamus* to compel justices to hear and determine an application for a distress warrant against the overseers of a contributory place to levy the amounts of precepts issued by a rural district council in respect of certain expenses incurred by them for the common benefit of the above-mentioned contributory place and of two other such places, when the overseers had appealed to the Local Government Board under sect. 229 against the apportionment of the expenses, and the justices had adjourned the application for the distress warrant pending the decision of the Board on the appeal.²⁵ The appeal was shortly afterwards dismissed by the Local Government Board; but the overseers, against whom the application for a distress warrant had been made, had in the meantime gone out of office, and one of them had been re-appointed, together with two other persons. On an adjourned hearing the application was dismissed (subject to a special case) on the grounds (1) that it was premature, having been made before the apportionment was finally settled by the Local Government Board; and (2) that the distress warrant could not be issued against persons who had been overseers, but had gone out of office. The Divisional Court upheld the decision of the justices on the second ground, but Lord Alverstone, C.J., suggested that the rural district council might have either issued a new precept to the new overseers or directed them to obey the original precept.²⁶

A refusal of justices to enforce by distress payment of money under a contribution order of the guardians was held a ground of appeal by special case to the High Court.²⁷

As to private improvement expenses.

San. 1868, s. 6.

Sect. 232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority.²⁸

(21) *Caistor R.D.C. v. Taylor* (1907, K. B. D.), 97 L. T. 281; 71 J. P. 310; 5 L. G. R. 767.

(22) *Newbould v. Coltman* (1851), 6 Ex. 189; 20 L. J. M. C. 149; 15 J. P. 372.

(23) *Reg. (Bridgend and Cowbridge Guardians) v. Boteler* (1864) 4 B. & S. 959; 33 L. J. M. C. 101; 9 L. T. 720.

(24) See *Rex (Bermondsey Guardians) v. Bermondsey B.C.* (1908, K. B. D.), 99 L. T. 14; 72 J. P. 330; 6 L. G. R. 852. In this case there was nothing to show that summary proceedings under Poor Rate Act, 1839 (*ante*, p. 611 (17)), would not be effective and convenient. But see the *Poplar Case*, *ante*,

p. 577, and, as to the metropolis, *post*, p. 622 (33).

(25) *Rex (Plympton St. Mary R.D.C.) v. Fox* (1908, K. B. D.), 99 L. T. 90; 72 J. P. 331; 6 L. G. R. 1068.

(26) *Plympton St. Mary R.D.C. v. Reynolds*, L. R. 1909, 1 K. B. 768; 78 L. J. K. B. 417; 100 L. T. 394; 73 J. P. 156; 7 L. G. R. 509.

(27) *City of London Guardians v. Acocks* (1860), 8 C. B. (N.S.) 760; 8 W. R. 608.

(28) As to the making and levying of private improvement rates by urban district councils, see ss. 213-215 and the last clause of s. 234.

BORROWING POWERS.

Sect. 233. Any local authority may, with the sanction of the [Minister of Health], for the purpose of defraying any costs charges and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs charges and expenses, or for discharging any such loans as aforesaid.

Power to borrow on credit of rates.
P.H. 1872, s. 40.
L.G., s. 57.
P.H. 1874, s. 36.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund rate or rates.

Note.

The Local Government Act, 1894,¹ applies the present section and also sects. 234 and 236-239, with certain modifications, to the borrowing of money by parish councils on the credit of the poor rate and revenues of those councils.

Application of section to parish councils.

The mode of sanctioning loans was simplified temporarily during the recent war.² The Local Government Board pointed out the importance of applying for sanction to the loan before the expenditure is incurred; for if this is not done, and the sanction is for any reason refused, the expenditure would fall on current revenue.

Sanction of Minister of Health.

When a rural district council applied for sanction to a loan for the execution of works for the common benefit of more than one contributory place, the Local Government Board required the estimated cost of the works to be apportioned under sect. 229, before their sanction was given. Notices of the apportionment should be served on the overseers of the parishes, and copies, endorsed with the date of service, should be forwarded to the Minister, with a statement of the cost of such of the works (if any) as will be for the exclusive benefit of only one contributory place.

It was the practice of the Local Government Board, when a local Act gave express power to execute works and conferred on the local authority power to borrow to defray the cost of such works, to refuse to sanction loans under the present Act for the purpose of carrying out the works.

The Board accordingly refused to sanction a loan for enlarging a public park which had been provided under a local Act. But they intimated that if the land proposed to be added to the park were separated from it by a public road, and the council would undertake to treat it as a separate and distinct pleasure ground provided under sect. 164, they would be willing to sanction the loan.

A local authority may pay a commission for procuring a loan, if they thereby obtain better terms than they would otherwise obtain.³

Procurator's fees.
Limitation of loans.

Although the first clause of the present section purports to give an unlimited power to borrow any amount, with the sanction of the Minister of Health, for any expenses incurred under the Acts, both the purposes and the amounts of the loans, and also the times within which they are to be repaid, are limited by sect. 234.

An arrangement for deferred payment, such as payment by instalments or the hire-purchase system, is equivalent to borrowing the amount required from the

Deferred payments.

(1) See s. 12 (1), *post*, Vol. II., p. 2011.

(2) See Act of 1916, s. 12, *post*, Vol. II.,

p. 2266.

(3) *Reg. v. Haslehurst* (1887), 51 J. P. 645.

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vendor, and repaying it by instalments of principal and interest ⁴; and the Local Government Board accordingly upheld the disallowance by an auditor of a payment made by a district council in respect of a steam-roller, which had been purchased under an arrangement by which the purchase money was to be paid by instalments, subject to a proviso that the outstanding balance might be paid off at any time less a certain discount.

Borrowing
from bankers.

It was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that a school board had no power to borrow money from their bankers for the purpose of meeting their current expenses, nor for any purpose except those specified in the Elementary Education Acts, nor to charge the ratepayers with interest paid for money so borrowed. But the court said that it must be remembered that power is given ⁵ to the Local Government Board to remit any sum properly disallowed or surcharged by the auditor, if in their opinion it is fair and equitable that such disallowance or surcharge should be remitted; and that this would obviate any injustice or difficulty in the event of the school board, in consequence of some unforeseen emergency, finding it necessary to borrow.⁶ But see, now, sect. 3 of the Act of 1921.⁷

Necessity for
mortgage.

The Local Government Board held that the present Act did not authorise an urban district council to obtain a temporary advance from their bankers upon depositing with them the Board's sanction to a loan covering the amount advanced, and that loans sanctioned by them must be borrowed upon properly executed mortgages. But in 1922 the Minister of Health decided that, when a bank overdraft is sanctioned, no mortgage is necessary—see sect. 3 of the Act of 1921.⁷

Transfer of
mortgage.

In a case in which an arrangement had been made by a local authority for a loan from certain bankers, secured by mortgage of rates under the present Act, to be paid off by other bankers, the Divisional Court had affirmed the disallowance by the district auditor of interest paid to the latter bankers, on the ground that there had been no transfer of the mortgage to them, the sanction of the Local Government Board not merely involving consent to a loan being raised, but including their approval of the way in which the loan was to be raised; and had also suggested that, in order to justify the payment of interest on a loan obtained temporarily until the money agreed to be advanced on proper security should in fact be advanced, it might not be necessary for the local authority to give security.⁸ The Court of Appeal, however, on an agreed statement of further facts, and without deciding whether the power to borrow was confined to borrowing on mortgage, reversed the decision, on the ground that there had been a transfer of the old debt, although the transferees had not taken an assignment of the mortgage, and that the arrangement had not amounted to paying off the old loan and raising a new one.⁹

Overdrafts.

In *Sir Charles Reed's Case*, *supra*, the overdraft or advance in question was made on terms previously agreed upon between the board and the bankers, and the court, in deciding that that constituted an unauthorised borrowing of money, left open the question whether a mere payment by the bankers of cheques drawn by the board for purposes authorised by statute, when there was no balance in the hands of the bankers or treasurer to meet the cheques, would have been "borrowing." But in a subsequent case in the House of Lords, which decided that overdrafts on their bankers made by a building society without being authorised by the rules of the society were *ultra vires*, and that the bankers were therefore not to be treated as creditors of the society for the amount of the overdrafts, Lord Blackburn said: "In all banking accounts the bankers, so long as the balance of the account is in favour of the customer, are bound to pay cheques properly drawn, and are justified, without any inquiry as to the purpose for which those cheques were drawn, in paying them. But they are under no obligation to honour cheques which exceed the amount of the balance, or, in other words, to allow the customer to overdraw. Bankers generally do accommodate their customers by allowing such overdrafts to some extent; when they do so the legal effect is that they lend the surplus to the customer, and if the person drawing the cheque is authorised to borrow in this way on account of the customers, the bankers can charge the amount against those customers and their principals, and can make

(4) See *Reg. v. St. Michael's, Southampton, Churchwardens* (1856), 6 E. & B. 807; 25 L. J. Q. B. 379; *Heitzmann v. Gowenlock* (1891), 7 T. L. R. 611.

(5) By 11 & 12 Vict. c. 91, s. 4.

(6) *Reg. v. Sir Charles Reed* (1880), L. R. 5 Q. B. D. 483; 49 L. J. Q. B. 600; 42 L. T. 835; 44 J. P. 633.

(7) *Post*, p. 622.

(8) *Rex (Bridge) v. Locke* (K. B. D.), L. R. 1910, 2 K. B. 201; 79 L. J. K. B. 659; 102 L. T. 598; 74 J. P. 238; 8 L. G. R. 588.

(9) *Ibid.* (C. A.), L. R. 1911, 1 K. B. 680; 80 L. J. K. B. 358; 103 L. T. 790; 75 J. P. 145; 9 L. G. R. 103.

available any securities which, either from the general custom of bankers or from a special bargain, they have to secure their account. . . . I cannot see that borrowing is the less borrowing because it is from the bankers." And Lord Watson added : " I must confess my inability to understand the proposition that an advance made by a banker to a customer whose account is overdrawn does not constitute a borrowing and lending in the strictest sense of the word." ¹⁰

Borrowing by the trustees of a parochial charity by overdraft on their bankers would be a " charge " on the charity estate within sect. 29 of the Charitable Trusts Act of 1855,¹¹ which requires the consent of the Charity Commissioners.¹²

In an action in the name of the Attorney General against a borough treasurer for a declaration that payments of interest on overdrafts granted by the bankers of the borough council were illegal, and for an injunction to restrain him from making further similar payments, it was held by Farwell, J., that the charges for interest could not be retained by the treasurer by way of remuneration under sect. 20 of the Municipal Corporations Act, 1882,¹³ no remuneration in fact having been voted to him by the council.¹⁴

The Local Government Board reversed the decision of an auditor who had disallowed a payment, in accordance with the terms of a contract, of interest on money which was not paid over to the contractor as soon as it became due, on account of a dispute, the arbitrator to whom the matter had been referred under the contract having found the interest in question to be due.

The power to reborrow would not enable the district council, before maturity of the loan, to pay off a creditor who was not willing to be paid off.¹⁵

The Public Works Loans Act, 1875,¹⁶ consolidates with amendments the law relating to loans by the Public Works Loan Commissioners. It required ¹⁷ that every intending borrower should send to the commissioners on or before the 31st of December in every year a statement of the loans likely to be required during the ensuing financial year; but this enactment was repealed by the Public Works Loans Act, 1882.¹⁸

Under sect. 36 of the Act of 1875,¹⁹ when any loan is advanced by the commissioners on the security of a rate, the Minister of Health is required to satisfy himself that the loan is applied to the purposes for which it has been advanced. The Minister is empowered to make, with this object, such examination as he may think necessary, and to appoint an officer to conduct the examination. Further, with regard to loans by the Public Works Loan Commissioners, see sect. 243 and the Note to that section.

The Local Loans Act, 1875,²⁰ enables district councils, on whom borrowing powers are conferred by any previous or (according to the opinion of the Local Government Board) any subsequent Act, to borrow money upon debentures or annuity certificates, or, if specially authorised to do so, by creating debenture stock. It empowers them, when they propose to raise a loan by the issue of securities under the Act, to apply to the Minister of Health to authorise the issue of such securities under official sanction, and this sanction will be conclusive evidence that the district council had power to issue the securities, and that the same are in conformity with the Act.²¹ It also enables district councils to reborrow in the manner prescribed by it any sums required for the purpose of discharging existing loans.²²

The Public Health Acts Amendment Act, 1890, Part V.,²³ authorises the raising of loans by stock.

In 1922 the Minister of Health advised a county council that they could not borrow money and lend it to an urban district council for a road scheme, but suggested an agreement, under the Highways and Bridges Act, 1891,²⁴ that the county council should borrow the money and that the district council should repay it by annual instalments.

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Overdrafts—
continued.

Interest.

Reborrowing.

Borrowing
from Public
Works Loan
Commission-
ers.

Borrowing
under Local
Loans Act.

Creation of
stock.

Borrowing
from county
council.

(10) *Brooks & Co. v. Blackburn Benefit Building Soc.* (1884), L. R. 9 A. C. 857; 54 L. J. Ch. 376; 52 L. T. 225. See also *Smith v. Southampton Cpn.*, ante, p. 575 (58); *A.G. v. De Winton*, *infra*; *A.G. v. Tottenham U.D.C.* (1909, Ch. D.), 73 J. P. 437; 8 L. G. R. 95; and *A.G. v. West Ham Cpn.*, *post*, p. 623 (44).

(11) 18 & 19 Vict. c. 124, s. 29.

(12) *Fell v. Official Trustee of Charity Lands* (1898), 78 L. T. 474; 62 J. P. 804.

(13) 45 & 46 Vict. c. 50, s. 20.

(14) *A.G. v. De Winton*, L. R. 1906, 2 Ch. 106; 75 L. J. Ch. 612; 70 J. P. 368; 4 L. G. R.

549. See also *post*, p. 634.

(15) *West Derby Guardians v. Metropolitan Life Assurance Co.*, L. R. 1897 A. C. 647; 66 L. J. Ch. 726; 77 L. T. 284; 61 J. P. 820.

(16) *Post*, Vol. II., p. 1725.

(17) 38 & 39 Vict. c. 89, s. 13.

(18) 45 & 46 Vict. c. 62, s. 9.

(19) *Post*, Vol. II., p. 1733.

(20) *Post*, Vol. II., p. 1711.

(21) See s. 26, *post*, Vol. II., p. 1721.

(22) See s. 31, *post*, Vol. II., p. 1722.

(23) See s. 52, *post*, Part I., Div. II.

(24) *Post*, Vol. II., p. 1898.

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Defaulting
local
authorities.
Loans Act of
1916.

Under sects. 301 and 302, loans may be raised by the Minister of Health for defraying expenses incurred or estimated as about to be incurred in performing the duty of a district council who have made default in carrying out certain provisions of this Act; and such loans may be charged on the local rates.

The Public Authorities and Bodies (Loans) Act, 1916,²⁴ of which the title is "An Act to make further provision with respect to the borrowing powers of councils of counties and of municipal boroughs, and of other public authorities and bodies," provides as follows:—

"1.—(1) The council of any county or of any municipal borough or of any urban district may, during the continuance of the present war and a period of six months thereafter,²³ borrow, with the consent of the appropriate Government Department, on the security of all or any of the funds, property, or revenues of the council for the purpose of discharging any outstanding loan of the council, or for the purpose of replacing any sinking fund money or other sums which have been used for purposes for which they had power to borrow, or for the purpose of raising any further sums which the appropriate Government Department authorise them to raise with a view to prospective capital expenditure. The application and use of any sums borrowed under this provision shall be subject to such conditions as may be imposed by the appropriate Government Department whose consent is given to the borrowing."

"(2) [During the continuance of the present war, and a period of six months thereafter,²⁵] the council of any county or municipal borough or of any urban district may, with the consent of the Treasury and subject to such conditions as the Treasury may impose, borrow any sums which they have power to borrow for the time being by means of the issue of bearer bonds or other securities to bearer, whether within or without the United Kingdom, and, if thought fit, in any foreign currency. Any such bonds or securities shall rank, as respects other securities issued by the council, in the same manner as if the sum borrowed by means of those bonds or other securities had been borrowed by means of the issue of stock."

"(3) The council of any county or of any municipal borough or of any urban district may re-borrow under the powers given by this Act for the purpose of paying off any money borrowed under those powers; and the limitation on the exercise of those powers to the continuance of the present war and a period of six months thereafter shall not apply to any such re-borrowing."

"(4) Any power given by this section shall not derogate from any other power of borrowing, and may be exercised notwithstanding anything in any Act."

By sect. 2 of the same Act, ²⁶ "(1) This Act may be applied to any local authority (other than the council of a county or of a municipal borough or of any urban district), and to any other public body on the application of that authority or body, by the appropriate Government Department; and if so applied, shall be construed, with any necessary modification, as if the authority or body to whom it is applied were substituted for the council of the county or of the municipal borough or urban district."

"(2) In this Act, unless the context otherwise requires,—The expression 'appropriate Government Department' means, in the case of the London County Council the Treasury, in the case of other authorities or bodies in England and Wales the [Minister of Health], in . . . [Scotland and Ireland]; The expression 'sinking fund money' means money for the time being standing to the credit of any sinking fund, redemption fund, depreciation fund, or fund of a like nature; and . . . [Scotland, and short title]."

By sect. 20 of the Local Government and Other Officers Superannuation Act, 1922,²⁷ provision is made for the "use for the purpose of any statutory borrowing power" of "moneys forming part of the superannuation fund and not for the time being required."

Borrowing
from super-
annuation
fund.

Regulations as
to exercise of
borrowing
powers.

L.G., s. 57.
P.H. 1872, s. 40.
P.H. 1874, s. 36.
S.U. 1865, s. 6.

Sect. 234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations; (namely,)

(1.) Money shall not be borrowed except for permanent works, (including under this expression any works of which the cost ought in the opinion of the [Minister of Health] to be spread over a term of years):

(23) See *post*, Vol. II., p. 2103 (5).

(24) 6 & 7 Geo. V. c. 69, s. 1. Act passed 22nd Dec., 1916.

(25) Repealed by Housing (Additional

Powers) Act, 1919, s. 8, *post*, Part II., Div. III.

(26) 6 & 7 Geo. V. c. 69, s. 2.

(27) *Ante*, p. 524 (41).

Sect. 234.

(4.) The money may be borrowed for such time, not exceeding [sixty²⁸] years, as the local authority, with the sanction of the [Minister of Health], determine in each case; and, subject as aforesaid, the local authority shall either pay off the money so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned :

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the [Minister of Health], and shall in no case be extended beyond the period of [sixty²⁸] years from the date of the original loan.

Note.

	PAGE		PAGE
Purposes of loans	617	Repayment of money borrowed	621
Limitation of amount of loans	619	Sinking fund	623
Duty on loan capital	620	Creation of stock	624
Application of money borrowed	621		

The Local Government Board held a steam roller, a steam pumping engine, a steam fire engine, a stone-crushing machine, and closet tubs for the use of the poorer classes, to be "permanent works." And they sanctioned a loan for a contribution by an urban district council to the cost of removing telegraph poles of the Postmaster-General and placing the wires underground, as for street improvements. But they declined to sanction loans for the provision of iron hospitals.

Permanent works.

In connection with an application by a rural district council for authority to borrow money for works of water supply, the Local Government Board stated that it would be contrary to their practice to sanction a loan in respect of water mains of less than three inches in diameter, except in cases where the mains are only required to carry the supply to one or two isolated houses.

If the Minister of Health follows the practice of the Local Government Board, he will, when a district council propose to obtain a supply of water by sinking a well, be willing to consider an application for sanction to a loan to defray the cost of making a boring to ascertain the yield and quality of the water; and will not regard it as essential that a local inquiry should be held before sanctioning a loan for such preliminary works. He will, however, require to be furnished with (1) a copy of the resolution of the council, (2) an estimate showing how the amount proposed to be borrowed for the preliminary works is made up, (3) a plan

Experimental works.

(28) Extended to eighty for housing loans; see footnote (32), *post*, p. 622.

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of the site of the proposed well, and a geological section of the strata, and (4) a copy of any reports made to the council by their expert advisers. If he sanctions a loan for the preliminary works, it will be made repayable within a period of five years, on the understanding that if the works prove successful he will be prepared to authorise the borrowing of the amount, for an extended period, of so much of the loan as may then be properly outstanding.

Permanent workmen.

The Local Government Board did not approve of the payment of workmen in the permanent employment of a local authority, and engaged on particular works, out of moneys borrowed for those works.¹

Financial difficulties.

The Minister of Health is willing in special circumstances to help local authorities in financial difficulties by sanctioning a loan for a short period.²

Enfranchisement of copyhold land.

In the case of the purchase of copyhold land by a district council for the execution of works, the Local Government Board allowed the cost of the enfranchisement of the land to be included in the amount of the loan.

Redemption of tithe rentcharge.

An urban district council who had under consideration the question of the redemption of the tithe rentcharges on certain property belonging to them communicated with the Local Government Board with reference thereto, and the Board inquired whether the necessary order had been made by the Board of Agriculture and Fisheries under the Tithe Commutation Act, 1878,³ and whether agreements in accordance with sect. 4 of that Act or otherwise had been entered into with the owners. The Board at the same time intimated that they would be prepared to consider the question of sanctioning a loan for the redemption of the charges upon receipt of (1) a copy of a resolution of the district council authorising application for sanction; (2) a copy of the order of the Board of Agriculture and Fisheries; (3) a statement showing precisely how the sum proposed to be borrowed is made up; and (4) financial particulars in a form supplied for the purpose. Further as to the redemption of such rentcharges, see the Note to sect. 27.⁴

Map of district.

They also sanctioned a loan for the cost of a map of an urban district which was intended to be prepared by the surveyor to the district council, the period for repayment of the loan being limited to seven years.

Highways in rural districts.

The Board stated that, having regard to the fact that rural district councils are, subject to the provisions of the Local Government Act, 1894, to defray their expenses in the manner directed by the present Act, and that this Act is to apply accordingly,⁵ any loans required by such a council for highway purposes must be raised under the provisions of the present Act with the sanction of the Board.

Private improvement expenses.

To secure the repayment of advances made for defraying the expenses of private improvements, an urban or rural district council may issue a rentcharge on the premises in respect of which they were incurred under sect. 240.

With regard to private improvement rates, see sects. 213-215 and sect. 232. By sect. 232 "all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority"; and this appears to extend the last clause of the present section to rural district councils.

Financial adjustments.

A district council may borrow money for raising any capital sum required to be paid by them for the purposes of an adjustment of property, liabilities, etc., under the Local Government Act, 1888,⁶ or the Local Government Act, 1894.⁷

Where in connection with a street improvement intended to be carried out by means of borrowed moneys it was proposed that the money in respect of the purchase of the land for widening should be paid by one committee of the council to another, the Local Government Board pointed out that it would not accord with their practice to sanction a loan for a payment from one committee of a local authority to another. They considered in such a case that any adjustment of accounts that may be necessary should be effected by an annual payment from one account to the other.

Electric lighting works.

District councils may borrow money, in accordance with the provisions as to borrowing contained in the present Act, under sect. 8 of the Electric Lighting Act, 1882,⁸ and sect. 5, sub-sect. (2) of the Electricity (Supply) Act, 1922,⁹ for the purposes of those Acts.

(1) 1912 Loc. Gov. Chron. 145, col. ii., top.
 (2) M.C. Assoc. Circular, 15th Jan., 1923, p. 1.
 (3) 41 & 42 Vict. c. 42, s. 5.
 (4) *Ante*, p. 95.

(5) See s. 29, *post*, Vol. II., p. 2048.
 (6) See s. 62, *post*, Vol. II., p. 1938.
 (7) See s. 68 (4), *post*, Vol. II., p. 2100.
 (8) *Post*, Vol. II., p. 1281.
 (9) *Post*, Vol. II., p. 2365.

As to borrowing under the Housing Acts, see the enactments referred to below.¹⁰ The Local Government Board declined to entertain an application by a rural district council for the sanction of the Board to a loan under the Housing of the Working Classes Act, 1890, for the purpose of providing dwellings for their own workmen employed upon the roads and at their sewage farm. They also considered that the council had no general power to provide dwelling accommodation for their own workmen, and would not entertain any application in the case of the road men. In the case of the sewage farm men they required the council to shew that the provision of the dwellings was reasonably necessary for the management of the farm before they would entertain an application to sanction a loan under the present Act.

As to borrowing for public library purposes, see sect. 19 of the Act of 1892.¹¹ Municipal and district councils may borrow, for the purposes of the Open Spaces Act, 1906,¹² in the same manner as for the purposes of the present Act.

Under sect. 7 of the Public Works Loans Act, 1882,¹³ where a provisional order has been or is being issued under the General Pier and Harbour Act, 1861,¹⁴ the Minister of Transport may, by the same or any other order, authorise an urban district council to charge any fund or rate under their control for the purpose of aiding public bodies to raise loans from the Public Works Loan Commissioners for the construction of works under that Act.

Urban and rural district councils may borrow money for the speedy interment of the dead, for house-to-house visitation, for the provision of medical aid and accommodation, or for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease, when any part of the country appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease, when the Minister of Health makes regulations relating to those matters under sect. 134 of the present Act: see sect. 2 of the Epidemic and Other Diseases Prevention Act, 1883.¹⁵

With regard to loans for costs incurred under the Railway and Canal Traffic Acts, see sect. 54, sub-sect. (3) of the Railway and Canal Traffic Act, 1888.¹⁶

With regard to loans for establishing a system of telephonic communication, see the Note to sect. 149.¹⁷

As to loans for postal facilities, see the Note to sect. 175.¹⁸

As to loan adjustments under the Education Act, 1921, where land is appropriated for a purpose different to that for which it was acquired, see sect. 113 (4) of that Act.¹⁹

Limitation of Amount of Loans.

The total amount of the loans outstanding is not at any time to exceed the " assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed." If, for instance, a rural authority mortgage a separate rate leviable under sect. 230, they cannot borrow more than an amount equal to twice the assessable value of the contributory place for the benefit of which the expenses have been incurred.

The " assessable value " for the purposes of a general district rate is not the full net annual value; and if a loan is to be charged on that rate, the proper deduction for land, etc., referred to in sect. 211 (1, b) must be reckoned on the reduced estimate of one-fourth; but the Local Government Board considered that, as the reduction of assessments under the proviso to sect. 211 (1, a), where owners are rated instead of occupiers, is at the option of the council, the council are not under any legal obligation to take this reduction into account in arriving at the assessable value.

It was the practice of the Local Government Board, when sanctioning loans to district councils, to make deductions in respect of outstanding debt on works which were to be superseded, in order to ensure that an amount corresponding to the outstanding debt should be provided out of revenue; and they refused to

Sect. 234, n.
Housing and town planning.

Public libraries.
Open spaces.
Harbours, piers, &c.

Prevention of disease.

Railway and canal traffic.
Telephones and postal facilities.
Loan adjustments.

Assessable value.

Superseded works.

(10) Act of 1890, ss. 25, as to unhealthy areas, 43, as to unhealthy dwellings, 66, as to working class lodging houses; Acts of 1903, s. 1, and 1909, s. 3, as to limitations on borrowing; Act of 1909, s. 65, as to town planning; Act of 1919 (H. & T. P.), ss. 18 (3), as to assisting public utility societies, 22 (3), as to improving houses; Act of 1919 (Additional Powers), s. 7, as to local bonds; Act of 1921, s. 3, as to housing schemes outside district—all set out *post*, Part II., Div. III.

(11) *Post*, Vol. II., p. 1410. As to parish councils, see L. G. Act, 1894, ss. 7, 11, 12, *post*, Vol. II., pp. 2002, 2010, 2011.

(12) See s. 18, *post*, Vol. II., p. 1484.

(13) *Post*, Vol. II., p. 1741.

(14) 24 & 25 Vict. c. 45.

(15) *Ante*, p. 259.

(16) *Post*, Vol. II., p. 1707.

(17) *Ante*, pp. 307, 308.

(18) *Ante*, p. 466.

(19) *Ante*, p. 468.

Sect. 234, n.

sanction a loan for replacing an appliance in respect of which there was an outstanding debt exceeding the amount of such loan.

Costs.

The Local Government Board regarded the fee paid to a financial agent for introducing the tender to the district council as part of the cost of obtaining the loan, and therefore as being properly chargeable to the loan account. But they excluded from the amount of the loan any items representing payments to officers for services in connection with the loan which were within their duties and were therefore paid for by their salaries.

Exceptions from limitation.

Under the Acts cited below,¹⁸ money borrowed thereunder is not to be reckoned in connection with the limitation imposed by sub-sects. (2) and (3) of the present section; and under sect. 6, sub-sect. (1) of the Local Authorities (Financial Provisions) Act, 1921,¹⁹ "Any money borrowed by a local authority before the 1st April, 1923, if certified by the Minister of Health to have been borrowed for the purpose of any work undertaken by the authority with a view to the provision of employment for unemployed persons,²⁰ and any money borrowed under the provisions of this Act for the purpose of providing temporarily for current expenses,²¹ shall not be reckoned as part of the debt of the local authority for the purposes of any enactment limiting the powers of borrowing by that authority."

Local Acts.

The amount which may be borrowed is not affected by the amount of outstanding loans borrowed under local Acts.

Mortgage of sewage land.

Sect. 235 extends, to a certain extent, the limit of the loans where money is borrowed on the credit of sewage land and plant.

Local inquiries.

With regard to the costs of local inquiries, the powers of the inspectors, etc., see sects. 293-296. Sub-sect. (3) of the present section was suspended from the 10th November, 1921, until the 1st April, 1923.²²

Duty on Loan Capital.

Stamp duty.

Sect. 8 of the Finance Act, 1899,²³ provides as follows:—“(1) Where any local authority, corporation, company, or body of persons formed or established in the United Kingdom propose to issue any loan capital, they shall, before the issue thereof, deliver to the [Inland Revenue] Commissioners a statement of the amount proposed to be secured by the issue. (2) Subject to the provisions of this section every such statement shall be charged with an *ad valorem* stamp duty of 2s. 6d. for every £100 and any fraction of £100 over any multiple of £100 of the amount proposed to be secured by the issue, and the amount of the duty shall be a debt due to [His] Majesty. (3) The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the Commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued. (4) If any local authority, corporation, company, or body of persons neglect to deliver a statement, or fail to pay the duty in compliance with this section, that local authority, corporation, company, or body of persons shall be liable to pay to [His] Majesty, in addition to the duty, a sum equal to ten per cent. upon the amount of the duty, and a like sum for every month during which the neglect or failure continues. (5) In this section the expression ‘loan capital’ means any debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, or any capital raised by any local authority, corporation, company, or body of persons formed or established in the United Kingdom, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any county council or municipal corporation bills repayable not later than twelve months from their date or any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months, and the expression ‘local authority’ includes any county council, municipal corporation, district council, dock trustees, harbour trustees, or other local body by whatever name called.”

And by the Finance Act, 1907,²⁴ it is enacted that “(1) Where it is shown to

(18) Small Dwellings Acquisition Act, 1899, s. 9 (6), *post*, Part II., Div. III.; H. W. C. Act, 1903, s. 1 (2), *ibid.*; Electric Lighting Act, 1909, s. 21, *post*, Vol. II., p. 1329; Allotments Act, 1922, s. 18 (2), *post*, Vol. II., p. 2380.

(19) 11 & 12 Geo. V. c. 67, s. 6 (1). “Local authority” for the purposes of this Act “means the council of any borough and any authority whose accounts are subject to audit by district auditors,” *ibid.*, s. 7.

(20) See Act of 1920 set out *post*, Vol. II., p. 2350.

(21) See Act of 1921, s. 3, *post*, p. 622.

(22) 11 & 12 Geo. V. c. 67, s. 6 (2).

(23) 62 & 63 Vict. c. 9, s. 8. Part II. of this Act, including this section, is to be construed as one with the Stamp Act, 1891 (54 & 55 Vict. c. 39), see s. 14 of Act of 1899.

(24) 7 Edw. VII. c. 13, s. 10. Part II. of this Act also is to be construed as one with the Act of 1891, see s. 30 (2) of Act of 1907.

the satisfaction of the Commissioners that the loan capital issued by any local authority, corporation, company, or body of persons, in respect of which a statement has, after the commencement of this Act, been delivered to the Commissioners under sect. 8 of the Finance Act, 1899, has been wholly or partly applied for the purpose of the conversion or consolidation of then existing loan capital, that authority, corporation, company, body of persons, as the case may be, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of two shillings for every hundred pounds of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued. (2) If it is represented to the Commissioners by any such local authority, corporation, company, or body of persons, that loan capital about to be issued by them is to be applied, in whole or in part for the purpose of the conversion or consolidation of existing loan capital, the Commissioners may postpone the time for the delivery of the statement and the payment of duty under sect. 8 of the Finance Act, 1899, until the capital has been issued or until such other time as the Commissioners think fit for the purpose of enabling the payment and repayment of the duty to take place as one transaction."

Application of Money borrowed.

When the loan is obtained from the Public Works Loan Commissioners, the commissioners may take security by bond or otherwise for the application of the money to the purposes for which it has been borrowed.²⁵

It is, moreover, the duty of the Minister of Health to satisfy himself that money borrowed from the commissioners is duly applied, and for that purpose he may appoint an officer, with the power of an inspector,²⁶ to conduct an examination.²⁷

It was the practice of the Local Government Board, when sanctioning the borrowing of money for works to be executed by a local authority, to make it a condition that no part of the sum borrowed be applied in paying salaries or wages to persons permanently employed by the authority, but salaries and wages to persons specially employed on the particular works may be so paid. The Board objected to the payment of regular wages out of borrowed money.²⁸

The Board were advised by the Inland Revenue Commissioners that a statutory declaration verifying a return as to the expenditure of the money borrowed is not exempt from stamp duty, as such a declaration is not "required by law."

An urban district council, on inquiring whether they were authorised to place on deposit with a banking company sums in their hands on loan or other accounts, were informed by the Board that the responsibility for the adoption of this course in any particular case must rest with the council, and that the Board were not empowered to give any directions in the matter.

In the case of a loan advanced by the Public Works Loan Commissioners, any balance not expended for the purposes for which the loan was raised may, with the consent of the Commissioners and the Minister of Health, be applied to other purposes for which the district council may borrow money²⁹; or the Minister may order the balance to be repaid to the Commissioners.³⁰ In other cases the Local Government Board stated that the balances should be returned to the lenders, if those persons could be required or were willing to receive them; and if not they should be invested and treated as a sinking fund, from which proportionate parts should be applied each year in meeting the instalments of principal and interest due on the loans of which they form part.

In 1922, however, the Minister of Health raised no objection to a district council applying a balance from a loan sanctioned for a particular work towards the cost of a similar work; but in the same year he declined to allow money raised by housing bonds to be spent on a road scheme, though he suggested that the bond holders should be asked to accept mortgages on the rates instead of the bonds.

Repayment of Money borrowed.

It was the practice of the Local Government Board under ordinary circumstances to allow a period not exceeding fifty years for the repayment of a loan raised for

Sect. 234, n.
Stamp duty—
continued.

Security.

Duty of
Minister of
Health.

Salaries and
wages.

Return as to
expenditure.

Deposit
at bank.

Unexpended
balances.

Period of
loans.

(25) P. W. Loans Act, 1875, s. 35, *post*, Vol. II., p. 1733.
(26) See Note to s. 296, *post*.
(27) P. W. Loans Act, 1875, s. 36, *post*, Vol. II., p. 1733.
(28) See Circular of February 4th, 1907,

5 L. G. R. (Orders) 7, 8.
(29) P. W. Loans Act, 1881, s. 9, *post*, Vol. II., p. 1734.
(30) P. W. Loans Act, 1878, s. 4, *post*, Vol. II., p. 1734.

Sect. 234, n.

the purchase of land, and a period not exceeding thirty years for the repayment of a loan for buildings.³¹

Where land is taken on lease, for the purpose, for instance, of laying out sewage works on it, it was not the practice of the Board to sanction a loan for a longer period than that of the lease.

The Local Government Board stated that in their opinion it was not desirable that the period for repayment of a loan for works of private street improvement should in ordinary cases exceed seven years.

Where a scheme comprises several items for which varying periods for repayment would be prescribed, such as land and works, it was the practice of the Board, unless the council otherwise desired, to equalise the periods and issue one sanction.

The maximum period for which loans may be raised for the purposes of the Housing Acts,³² and the Allotment Acts,^{32a} is eighty years.

Short term loans.

Under sect. 3 of the Local Authorities (Financial Provisions) Act, 1921,³³ “(1) A local authority may from time to time, for the purpose of providing temporarily for any current expenses that may be incurred by them in the execution or performance of any of their powers and duties (including the payment of sums due by them to meet the expenses of other authorities), with the consent of the Minister of Health, borrow by way of temporary loan or overdraft from any bank or otherwise, such sums as they may from time to time resolve, not exceeding in the aggregate at any time such amount as may be sanctioned by the Minister of Health. (2) Any amount borrowed under this section shall be charged on the funds, properties, rates and revenues of the local authority *pari passu* with all other mortgages, stock, and other securities affecting the same. (3) All sums borrowed by a local authority under this section together with the interest thereon shall be repaid out of the revenue of the local authority received in respect of the financial year in which the expenses were incurred: Provided that, as respects money borrowed under this section before the 1st day of April, 1923, the Minister may, if satisfied that the particular circumstances of the case justify such a course, extend the term within which such repayment is to be made for a period not exceeding ten years from the date on which the money is borrowed. (4) [Metropolitan Common Poor Fund]. (5) The powers conferred by this section on any local authority shall be in addition to and not in derogation of any other powers of borrowing exercisable by the authority.” For the meaning of “local authority” in this Act, see the definition already quoted.³⁴

Variation of period, &c.

Under sect. 5 of the same Act,³⁵ “(1) Where any local authority owing to circumstances arising out of the war have been unable to make the required provision by means of a sinking fund or otherwise for the due discharge of any loan, the authority may submit to the Minister of Health a scheme varying any statutory provision requiring the loan to be discharged within any particular time or in any particular manner, and the Minister may, if he thinks fit, approve any such scheme either with or without modifications. (2) Any scheme approved by the Minister under this section shall have effect as if enacted in this Act. (3) Provided that nothing in any scheme shall in any manner prejudice or affect the security, rights, or remedies of any mortgagee or other person from whom the loan was raised.” For the meaning of “local authority” in this Act, see the definition already quoted.³⁴

Arrears.

The loan must be repaid within the period limited for that purpose, and if the lender allows the capital, or the instalments as they become due, to get into arrear for any length of time, he will be unable to recover the money. Thus, a certain loan was in part repayable by the overseers of a parish to a local board and by the local board to the lenders. The board had repaid the whole loan to the lenders, but had not enforced payment from the overseers of the last three annual instalments. On the board proceeding to enforce payment of these instalments by applying for a *mandamus* requiring the overseers to pay the money, and, if necessary, make and levy a rate for the purpose, it was held that, as it was not suggested that the overseers had funds out of which they could pay the amount,

(31) See Circular, Oct. 29, 1897.

(32) See Act of 1903, s. 1 (1), and Act of 1909, s. 3 (b), *post*, Part II., Div. III.

(32a) See Act of 1922, s. 18 (1), *post*, Vol. II., p. 2380.

(33) 11 & 12 Geo. V. c. 67, s. 3. This Act also provided, by s. 1, for a “temporary extension of charges on the metropolitan

poor fund,” and by s. 2 for “power to appoint receiver where metropolitan borough council fails to meet precept.” For s. 4, see next page. Short title given by s. 9. Scotland and Ireland are dealt with in s. 8.

(34) *Ante*, p. 620 (19).

(35) 11 & 12 Geo. V. c. 67, s. 5.

but would have to raise rates retrospectively for the purpose, the *mandamus* ought not to be issued.³⁷ Sect. 234, n.

In another case, certain churchwardens had borrowed money in 1849 from the Public Works Loan Commissioners,³⁸ to be repaid by rates in the nature of church rates. Four annual instalments of the loan were paid up to 1853, but nothing more was done for its repayment until a *mandamus* to compel the churchwardens to levy a rate for the purpose was applied for in 1871. The House of Lords gave judgment for the defendants on the ground that, after this lapse of time, there was no power to levy the rate.³⁹

In the case, however, of loans obtained from the Public Works Loan Commissioners, the Treasury may, on the recommendation of the commissioners, postpone for a time not exceeding five years the repayment of instalments of principal and interest.⁴⁰

On the 26th June, 1922, the Treasury issued a minute giving the terms on which repayment of loans made from the local loans fund would be accepted.^{40a}

The Local Government Board stated that they were advised that sect. 210, making provision for the levying of general district rates, did not prevent an urban district council from raising by such a rate the sum necessary to repay in full the amount outstanding on account of a loan instead of continuing to repay the loan by instalments.

Sinking Fund.

The Local Government Board refused to assent to the establishment of a sinking fund being deferred for a few years until the works for which the loan was raised were completed and in working order. But under sect. 4 of the Local Authorities (Financial Provisions) Act, 1921,⁴¹ "Where money is borrowed by a local authority for the purpose of the construction of new or extension or alteration of existing works forming or to form part of an undertaking of a revenue-producing character, then, notwithstanding anything to the contrary contained in any Act, it shall be lawful for the annual provision required to be made by the local authority for the repayment of the money so borrowed to be suspended while the expenditure out of that money remains unremunerative for such period and subject to such conditions as the Minister of Health or other authority by whom the borrowing is sanctioned may determine. Provided that such suspension shall not be for a longer period than five years from the commencement of the financial year next after that in which such expenditure commences to be incurred." For the meaning of "local authority" in this Act, see the definition already quoted.⁴²

Where an urban district council intimated to the Board that the sinking fund established by them for the repayment of borrowed moneys was kept in a separate account with the treasurer of the council, the Board pointed out that it was obligatory on the council to comply with the provisions of sub-sect. (4) of the present section as regards investment of the fund, and, as depositing the money with the treasurer was not a compliance with those provisions, they required the council to invest the money properly.⁴³ And it was held that a local authority could not apply the amount standing to the credit of a "loans fund" established under a local Act in reduction of an overdraft at their bank.⁴⁴ As to the trustee securities in which such funds may be invested, see the enactments referred to below.⁴⁵

If the money is raised by the issue of securities under the Local Loans Act, 1875, and a sinking fund is established, the rules as to sinking funds contained in that Act will apply.⁴⁶ A sinking fund may now be provided for any loan raised under that Act, although the special Act authorising the loan may not prescribe a sinking fund.⁴⁷

Corporaton duty must be paid on the income of such funds.⁴⁸

Terms of repayment.

Rate for paying off outstanding loan.

Suspension of payments into fund.

Investment of fund.

Local Loans Act.

Corporation duty.

(37) *Reg. v. Bedlington Overseers* (1884), 48 J. P. 486. See also *ante*, p. 575 (59).

(38) Under 5 Geo. IV. c. 36.

(39) *Reg. v. Wigan Churchwardens* (1876), L. R. 1 A. C. 611; 35 L. T. 381; 25 W. R. 128.

(40) P. W. Loans Act, 1875, s. 37, *post*, Vol. II., p. 1734.

(40a) Set out in "Loc. Gov. 1922," pp. 358-360.

(41) 11 & 12 Geo. V. c. 67, s. 4. Marginal note: "Power to suspend sinking fund payments, &c., in case of money borrowed for revenue-producing works."

(42) *Ante*, p. 620 (19).

(43) And see *A.G. v. Belfast Cpn.* (1855), 4 Ir. Ch. 119.

(44) *A.G. v. West Ham Cpn.*, L. R. 1910, 2 Ch. 560; 80 L. J. Ch. 105; 103 L. T. 394; 74 J. P. 406; 9 L. G. R. 433.

(45) Trust Investment Act, 1889, 52 & 53 Vict. c. 32, s. 7; Trustee Act, 1893, 56 & 57 Vict. c. 53, ss. 1, 2; Colonial Stock Act, 1900, 63 & 64 Vict. c. 62, s. 2; Housing (Additional Powers) Act, 1919, s. 9, *post*, Part II., Div. III.

(46) See s. 15, *post*, Vol. II., p. 1717.

(47) See Act of 1885, s. 4, quoted *post*, Vol. II., p. 1718.

(48) *A.G. v. London City Cpn.*, *post*, Vol. II., p. 1712.

Sect. 234, n.

Creation of Stock.

Stock.

After adopting Part V. of the Public Health Acts Amendment Act, 1890, an urban authority (or a rural authority having the requisite urban powers conferred on them) may with the consent of the Minister of Health exercise their borrowing powers by creating stock to be created, issued, transferred, dealt with, and redeemed, in accordance with the regulations under that Act.⁴⁹

On the district of a local board becoming a municipal borough, a sum invested in consols by the board in pursuance of sub-sect. (4) was held to have become vested in the council under sect. 319 without any transfer being executed, and the Bank of England were held to be bound to register the stock in the name of the corporation, and to pay the dividends to them.⁵⁰

Power to borrow
on credit of
sewage land
and plant.
P.H. 1872, s. 41.

Sect. 235. Where any local authority are possessed of any land works or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands works or other property, and may mortgage such lands works or other property to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands works or other property so mortgaged. The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under this Act; but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three fourths of the purchase money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section.

Note.

Mortgage
of sewage
land.

Local authorities have no general power to mortgage any land other than sewage land. The money when borrowed need not be used for sewerage purposes. No limit on the period of the loan is imposed.

Ultra vires
mortgage.

Joint boards, port sanitary authorities, and joint sewerage boards may also borrow on the credit of their sewage land and plant: see sect. 244.

Certain turnpike trustees, who had power to mortgage their tolls but not their toll-houses, mortgaged both tolls and toll-houses by deed. They were held to be entitled to recover the toll-houses from their mortgagees, the doctrine of estoppel not being applicable where they had acted *ultra vires*.¹

Fraudulent
mortgage.

A local authority were held not liable to repay money obtained by one of their officers on a mortgage to which he had fraudulently affixed their seal and on a forged authority to receive the money.²

Mortmain
Acts.

A general charge on all the revenues or fruits of an undertaking does not confer an interest in land within the meaning of the Mortmain Acts,³ although the general revenue may be wholly or partially derived from the beneficial use of land. But where there is a charge on some specific and particular property, whether rents, tolls, or other property, then if any of such specific property savours of realty, there is such an interest in land.⁴

Swinfen Eady, J., therefore held that a bequest of certain bonds of the Tyne Improvement Commissioners to the Macclesfield Infirmary was not void, the bonds being charged not on specific property, but on the improvement fund, which comprised dues on ballast and other goods, export dues on coal, etc., tonnage rates on vessels entering or leaving the port or plying on the river, mooring rates, bridge dues, and rates in respect of the use of docks and timber ponds.⁵

(49) See s. 52, *post*, Part I., Div. II.

(50) *Hyde Cpn. v. Bank of England* (1882). L. R. 21 Ch. D. 176; 51 L. J. Ch. 747; 46 L. T. 910. See also *Oldham Cpn. v. Bank of England*, L. R. 1904, 2 Ch. 716; 73 L. J. Ch. 785; 91 L. T. 582; 68 J. P. 584; 2 L. G. R. 1324.

(1) *Fairtitle v. Gilbert* (1787), 2 T. R. 169; followed in *Islington Vestry v. Hornsey U.D.C.*, *ante*, p. 99.

(2) *Crapp v. East Stonehouse Loc. Bd.*

(1889), 5 T. L. R. 501.

(3) 9 Geo. II., c. 36, s. 3; 51 & 52 Vict. c. 42, ss. 4-10. Further as to these Acts, see Note to Public Libraries Act, 1892, s. 13, *post*, Vol. II., p. 1407.

(4) *In re Pickard, Elmsley v. Mitchell*, L. R. 1894, 3 Ch. 704, 64 L. J. Ch. 92; 71 L. T. 558.

(5) *Re Deane; Goodwin v. Brocklehurst* (1902), 19 T. L. R. 26.

Sect. 236. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date consideration and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

Sect. 236.
Form of mortgage.
P.H., s. 111.

Note.

The present section and sect. 237 are applied to county council mortgages by the Local Government Act, 1888.⁶ The form of mortgage in Sched. IV. is Form H, *post*.

The mortgage must be registered under sect. 237, and may be transferred under sect. 238.

Under the Stamp Act, 1891,⁷ an *ad valorem* duty is chargeable on mortgages, amounting in the case of mortgages for sums exceeding £300, to 2s. 6d. for every £100 or fractional part of £100 of the amount secured. In the case of amounts below £300, the scale is graduated.

Form.

Registration and transfer.

Stamp duty.

Sect. 237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

Register of mortgages.
P.P., s. 111.

Note.

A register of transfers of mortgages must also be kept under sect. 238; but while that section imposes a penalty of £20 on the clerk for not registering a transfer, there is no penalty for not registering the original mortgage.

The object of the present section and sect. 238 "is that intending lenders and ratepayers may be able to ascertain what is the existing position of the local authority in the matter of moneys they have borrowed."⁸

Registers.

Object of registration.

Sect. 238. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in Sched. IV. to this Act, or to the like effect.

Transfer of mortgages.
P.H., s. 112.

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer, and until such entry is made the local authority shall not be in any manner responsible to the transferee.

On the registration of any transfer the transferee his executors or administrators shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee his executors or administrators shall be entitled to release or discharge any such mortgage or any money secured thereby.

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds.

(6) See s. 69 (8), *post*, Vol. II., p. 1946.

(7) 54 & 55 Vict. c. 39, sched. *Mortgage*.

(8) *Per* Lord Alverstone, C.J., in *Locke's Case*, *ante*, p. 614. See 74 J. P., at p. 240, col. i., top.

Sect. 238, n.

Note.

Transfer of mortgages.

The form of transfer in Sched. IV. is Form I., *post*. The transfer may be made either by a separate deed, or by endorsement on the original mortgage.

Repudiation of debentures.

With regard to the recovery of penalties, see sects. 251-253.

Debentures issued by commissioners under a local Act, it was held, could not be repudiated when in the hands of *bonâ fide* holders for value, although they had been issued in payment of an improper contract between the commissioners and one of their number.⁹

Stamp duty.

Under the Stamp Act, 1891,¹⁰ a transfer of a mortgage (not being a "marketable security," capable of being sold in any stock market in the United Kingdom¹¹) is chargeable with the duty of sixpence for every £100, or fractional part of £100, of the amount transferred, exclusive of any interest which is not in arrear.

Compensation on forgery of transfers.

Sect. 1 of the Forged Transfers Act, 1891,¹² as amended by the Forged Transfers Act, 1892,¹³ provides as follows (the words in square brackets having been added by the Act of 1892):—

"1 (1.) Where a company or local authority issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney [whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid]. (2.) Any company or local authority may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred [with a minimum charge equal to that for twenty-five pounds], to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation. (3.) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connection with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged. (4.) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery. (5.) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had."

With regard to the transfer of rentcharges, see sect. 241. With regard to the transfer of securities issued under the Local Loans Act, 1875, see sects. 5, 6, 7, 30, and the Schedule of that Act.¹⁴

Stock may be issued by local authorities that have adopted Part V. of the Public Health Acts Amendment Act, 1890.¹⁵

If a person *bonâ fide* presents for registration a transfer of stock, which is in fact forged, he is liable to indemnify the local authority whose duty it is to register the transfers of such stock.¹⁶

(9) *Webb v. Herne Bay Comrs.* (1870), L. R. 5 Q. B. 642; 39 L. J. Q. B. 221; 22 L. T. 745.

(10) 54 & 55 Vict. c. 39, Sched. *Mortgage*.

(11) *Ibid.*, s. 122.

(12) 54 & 55 Vict. c. 43, s. 1. For ss. 2 to 4, see *post*, p. 627.

(13) 55 & 56 Vict. c. 36, ss. 2, 3. For s. 4,

see *post*, p. 627. The above short title was given by s. 1.

(14) *Post*, Vol. II., p. 1711.

(15) See s. 52, *post*, Part I., Div. II.

(16) See *Sheffield Cpn. v. Barclay*, cited in Note to P. H. Act, 1890, s. 52, *post*, Part I., Div. II.

The Forged Transfers Act, 1892,¹⁷ provides that “where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued.”

For the purposes of the Forged Transfers Acts, “the expression ‘company’ shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter” and “the expression ‘local authority’ shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to public local purposes.”¹⁸

The Acts are to apply to “any industrial, provident, friendly benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company,”¹⁹ and to “any harbour authority or conservancy authority as if the authority were a company,” and “the expression ‘harbour authority’ includes all persons, being proprietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company,” and “the expression ‘conservancy authority’ includes all persons entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.”²⁰

Sect. 239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and, after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction;²¹ and such court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid.

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.

Sect. 240. Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be private improvement expenses, the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in Schedule IV. to this Act to such person of a yearly rentcharge issuable out of the premises, in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rentcharge shall be personal estate, and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding thirty years, in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum, on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates, and with respect to redemption of private improve-

Sect. 238, n.
Compensation on forgery of transfers—
continued.

Receiver may be appointed in certain cases.
P.H., s. 114.

Rentcharge may be granted in respect of advances made for private improvements.
L.G., s. 58.

(17) 55 & 56 Vict. c. 36, s. 4.

(18) 54 & 55 Vict. c. 43, s. 2.

(19) *Ibid.*, s. 3.

(20) *Ibid.*, s. 4.

(21) For definition of “court of summary jurisdiction,” see s. 4 and footnote (2), *ante*, p. 9, and Note to s. 251, *post*.

Sect. 240. ment rates, shall, mutatis mutandis, apply to rentcharges granted under this section.

Note.

Form of rentcharge. The form of grant in Sched. IV. is Form K, *post*.
Private improvements. With regard to private improvement expenses and rates, see sects. 213-215. See also the last clause of sect. 234 with regard to charging the repayment of money borrowed for private improvements to the proper persons.

Rentcharges to be registered. L.G., s. 59. **Sect. 241.** Rentcharges issued in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act.

Note.

Registers. As to the registration of mortgages and transfers, see sects. 237 and 238.
Transfer of rentcharge. The present section assumes that a rentcharge may be transferred, though no express provision is made for the transfer as in the case of a mortgage. The transfer should be made by separate deed or endorsement in a similar form to that given for the transfer of a mortgage by Sched. IV., Form I., *post*.
As to the power to impose restrictions to prevent forgery of transfers and to pay compensation in the event of transfers being forged, see the Note to sect. 238.

Power of Public Works Loan Commissioners to lend to local authority. P.H., s. 108. S.U. 1865, s. 12. **Sect. 242.** The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.¹

Power of Public Works Loan Commissioners to lend to local authority on recommendation of [Minister of Health]. P.H. 1872, s. 44. P.H. 1874, s. 36. **Sect. 243.** The Public Works Loan Commissioners may, on the application of any local authority and on the recommendation of the [Minister of Health], make any loan to such authority in pursuance of any powers of borrowing conferred by this Act, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest . . . :² Provided,—(1.) That in determining the time when a loan under this section shall be repayable, the [Minister of Health] shall have regard to the probable duration and continuing utility of the works in respect of which the same is required : (2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the [Minister of Health] in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872.
In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

Note.

Public Works Loans Acts. The Public Works Loans Act, 1875,³ repeals all former Acts relating to loans by the Public Works Loan Commissioners for the execution of public works, and that and the amending Acts make other provisions with regard to such loans.
Regulations. Regulations issued by the commissioners and confirmed by the Treasury will be found in the Note to sect. 41 of the Act of 1875.⁴
Purposes of loans. Various purposes for which the commissioners may lend are enumerated in a Schedule to the same Act.⁵ Other specific purposes were added from time to time by subsequent Acts; and by the Public Works Loan Act, 1896,⁶ they may lend

(1) As to loans by Public Works Loan Commissioners, see s. 243 and Note. p. 1740.
(2) See footnote (12), *post*, p. 629. (4) *Post*, Vol. II., p. 1735.
(3) See s. 57, Sched. III., *post*, Vol. II., (5) *Post*, Vol. II., p. 1740.
(6) See s. 2, *post*, Vol. II., p. 1742.

for any work for which the council of a county, borough, district, or parish are authorised to borrow. **Sect. 243, n.**

As to the application of the present section and sect. 242 to loans for the purposes of small holdings and allotments, see sect. 53 (5) of the Act of 1908.⁷

When a certificate has been signed by the Public Works Loan Commissioners for the advance of a loan to a district council, it is the duty of the Minister of Health, in pursuance of sect. 36 of the Public Works Loans Act, 1875,⁸ to ascertain whether the advance has been applied to the purposes for which it was granted; and the Local Government Board required to be furnished with a return showing precisely the items upon which it had been expended. At the same time, they drew attention to the requirements of the Public Works Loans Act, 1882,⁹ with reference to the account to be kept by the treasurer of each borrowing authority of all advances made by the commissioners on the security of a rate, and to the orders directing payments out of such account. **Application of money borrowed.**

Doubts having arisen whether the Public Works Loans Act, 1875, prevented the reduction of interest on loans by the commissioners to sanitary authorities in accordance with the present section, it was provided by the Public Works Loans (Money) Act, 1876,¹⁰ that the commissioners might, on or before the 31st of July, 1876, if they thought expedient, with the consent of the Treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than four per cent. per annum, with the proviso that nothing in that Act should be deemed to take away or abridge the power of the commissioners, under the present section, to reduce, if they should think fit, any interest payable on any loan to a local authority, as in that section is mentioned. **Scale of interest.**

Formerly the commissioners could not lend for the purposes mentioned in the present section at less than three and a half per cent., nor for other purposes, in the absence of special provisions in that behalf, at less than four per cent.¹¹ Now, however, the Public Works Loans Act, 1897,¹² repeals the omitted portion of the present section, and provides that "the rates of interest at which loans may be made out of the Local Loans Fund on the security of local rates may be fixed by the Treasury from time to time, having regard to the duration of the loans, and shall be such rates not less than two and three-quarters per cent. per annum as in the opinion of the Treasury are sufficient to enable such loans to be made without loss to the Local Loans Fund."¹³ The Act of 1897 defines the expression "local rate" as meaning "any rate levied or assessed, the proceeds of which are applicable to public local purposes, and which is levied on the basis of a valuation of property, and includes any sum which though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined"; and the expression "security of a local rate" as including "a security guaranteed by any such local rate."

The rates chargeable are according to a scale which varies from time to time.¹⁴

With regard to the deduction of income tax on the interest of loans secured on the rates under the present Act, it is provided by the Income Tax Act, 1918,¹⁵ that "Where any creditor on any rates or assessments not chargeable as profits is entitled to any interest of money, the proper officer having the management of the accounts may be charged with the tax payable thereon, and shall be answerable for all matters necessary to enable the tax to be duly charged and for payment thereof, as if the rates or assessments were profits chargeable to tax, and shall be, in like manner, indemnified in respect of all such matters as if the said rates or assessments were chargeable." In cases, however, in which, without any such charge having been made, the lender of the money on receiving payment of his annual interest has allowed a deduction on account of income tax, the local authority would be considered as having received the money on behalf of the Crown, **Income tax on interest.**

(7) *Post*, Vol. II., p. 1522.

(8) *Post*, Vol. II., p. 1733.

(9) See s. 8, *post*, Vol. II., p. 1727.

(10) See s. 6, *post*, Vol. II., p. 1733.

(11) See Act of 1875, s. 9, *post*, Vol. II., p. 1727; and P. W. L. Act, 1892; 55 & 56 Vict. c. 61, s. 2.

(12) 60 & 61 Vict. c. 51, s. 12 and Sched. II.

(13) *Ibid.*, s. 1.

(14) For a scale laid down in 1914, see Treasury Minute, Sep. 10, 1914, *London Gazette*, 7214, col. ii. For that laid down in 1922, see "Loc. Gov., 1922," pp. 360-362.

(15) 8 & 9 Geo. V. c. 40, Sched. I. (Sched. D, Miscellaneous Rules, Rule 6).

Sect. 243, n.
Income tax
on interest—
continued.

and would accordingly be bound to pay it over to the Receiver-General of Inland Revenue.

The interest payable by the London County Council on their capital stock, which stock and interest were charged on all their property, exceeded the income derived by them from interest on loans and rents added to the annual value of land which they occupied. In these circumstances the Court of Appeal, affirming the judgment of Channell, J., held that the council had no taxable income, and that in paying the interest to their stock-holders they were entitled to deduct and retain for their own use so much of the income tax on that interest as was sufficient to recoup them the income tax paid by them under Sched. D of the Income Tax Act on their income from loans and rents and under Sched. A on the land occupied by them.¹⁶

Overseers were allowed half yearly by the bank, into which they paid the amounts collected by them as poor rate, interest calculated on the daily balances standing to their credit, without deduction of income tax. They were refused exemption under sect. 105 of the Income Tax Act, 1842,¹⁷ as the interest was not "yearly interest."¹⁸

Further as to the income tax payable by local authorities, see the case cited below.¹⁹

Defaulting
local
authority.

Under sect. 301, the Minister of Health may obtain loans from the Public Works Loan Commissioners on the credit of the local rates for defraying expenses incurred in the execution of the duties of local authorities who have made default in executing such duties.

Borrowing
powers of joint
boards and
certain other
authorities.

Sect. 244. Joint boards and port sanitary authorities under this Act, and the local board of health of any main sewerage district and any joint sewerage board constituted under any of the Sanitary Acts and existing at the time of the passing of this Act shall, for the purposes of their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act or on the credit of sewage land and plant as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they may make to a local authority under this Act.

Note.

Joint boards,
&c.

With regard to joint boards, see sects. 279-284; port sanitary authorities, sects. 287-291; main sewerage districts, and joint sewerage boards, sect. 323. With regard to the borrowing of money on the credit of the rates, see sect. 233; on the credit of sewage land and plant, sect. 235; and with regard to loans by the Public Works Loan Commissioners, see sect. 243, and the Note to that section.

(16) *A.G. v. London C.C.*, ante, p. 567.

(17) 5 & 6 Vict. c. 35, s. 105.

(18) *Garston Overseers v. Carlisle*, L. R.

1915, 3 K. B. 381; 84 L. J. K. B. 2016; 113 L. T. 879; 13 L. G. R. 969.

(19) *Sugden v. Leeds Cpn.*, ante, p. 567.

AUDIT.

AUDIT OF ACCOUNTS OF LOCAL AUTHORITIES.

Sect. 245. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the [Minister of Health] may appoint.

Accounts of local authorities.
P.H. 1872, s. 49.

Note.

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Accounts of District Councils.

By the joint effect of sect. 58 of the Local Government Act, 1894,¹ and the Audit (Local Authorities, etc.) Act, 1922, quoted in the Note to sect. 247, the accounts of the receipts and payments of district councils (including the councils of boroughs whose accounts are audited by district auditors) and their committees and officers are to be made up yearly to the 31st of March in each year, in such form as the Minister of Health prescribes. Other borough councils are still governed by sect. 26 of the Municipal Corporations Act, 1882.² The 31st of March is the end of the financial year for county councils under the Local Government Act, 1888.³ In non-municipal districts persons interested may inspect the accounts while they are deposited during the week before the audit under sect. 247 (4); and in rural districts the parochial electors also have the right of inspecting the accounts at any time.⁴ In a borough the treasurer's accounts are only open to the inspection of members of the council, but the ratepayers of the borough may inspect the abstract of his accounts.⁵

Financial year.

Inspection of accounts.

The Local Government Board issued orders under the present section and the District Auditors Act, 1879, regulating the mode of keeping accounts by various kinds of local authorities, and making provisions for auditing them.⁶

Orders for accounts.

In cases in which the attention of the Local Government Board was drawn to the omission by urban district councils to keep the highways repairs expenditure account prescribed by Art. 4 (2) of the Local Boards Accounts Order of the 22nd March, 1880, the Board expressed their willingness to assent to such a departure from the requirements of the Order as would enable a council to dispense with the keeping of the account, on being informed that accounts were kept in the ledger fully representing, under the divisions of "Main Roads" and "Other Roads," the several heads of account indicated in the account so prescribed, namely: (1) Manual labour; (2) Team labour; (3) Materials; (4) Tradesmen's bills and miscellaneous, and were so entered up that the information which such account was intended to supply might be readily extracted from them at any time.

With regard to setting off the balances on different accounts against each other, see the Note to sect. 189.⁷

As to the payment of money into banks, see the Accounts (Payment into Banks) Order, 1922, made by the Minister of Health on the 28th December, 1922.^{7a}

Payment into bank.

With regard to accounts of officers of district councils, see sect. 250.

Officers.

With regard to the annual returns of rates, etc., to be made to the Minister of Health and laid before Parliament, see the Note to sect. 206.

Annual returns.

Accounts under other Acts.

Where a district council borrow money from the Public Works Loan Commissioners, they must keep a separate account of the loan, which must be entitled "Public Works Loan Commissioners' Account,"⁸ unless the Minister of Health approves of a different title, which, however, the Local Government Board considered it undesirable to do.

Public Works Loans Act.

(1) *Post*, Vol. II., p. 2092.
(2) *Post*, Vol. II., p. 1809.
(3) See s. 73, *post*, Vol. II., p. 1947.
(4) L. G. Act, 1894, s. 58 (2, 5), *post*, Vol. II., p. 2092.
(5) M. C. Act, 1882, s. 233 (3, 4), *post*, Vol. II., p. 1839.

(6) A list of these will be found in Note to District Auditors Act, 1879, s. 3, *post*, Vol. II., p. 1798.
(7) *Pedder v. Preston Cpn.*, *ante*, p. 529.
(7a) 21 L. G. R. (Orders) 15.
(8) P. W. Loans Act, 1882, s. 8, *post*, Vol. II., p. 1727.

**Sect. 245, n.
Burial Acts.**

By the Burial Act, 1860,⁹ a non-municipal urban district council, who have been constituted a burial board, "shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by moneys raised under the provisions of this Act,¹⁰ such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such [authority], and any surplus of the moneys raised by any rate made under this Act, and of the income of any burial ground provided by means of moneys raised or paid under the provisions of this Act, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act."

Small Holdings and Allotments Act.

By the Small Holdings and Allotments Act, 1908,¹¹ separate accounts are required to be kept of the receipts and expenditure of a council under that Act, and for audit purposes persons appointed to exercise and perform duties as to the management of allotments are to be deemed to be officers of the council. Expenses as to small holdings in the case of a county borough are charged to the borough fund or rate, and expenses as to allotments in the case of a borough or urban district council to the general district fund or rate as expenditure under the present Act.

Baths and Wash-houses Acts.

By the Baths and Washhouses Act, 1846,¹² municipal councils were required to keep distinct accounts of their receipts and expenses under that Act. In the general orders for accounts of non-municipal urban authorities these receipts and expenses are treated in the same manner as receipts and expenses under the present Act.

Housing of the Working Classes Act.

Under Part I. of the Housing of the Working Classes Act, 1890,¹³ relating to unhealthy areas, a separate "Dwelling-house Improvement Fund" is to be formed; and "in settling any accounts of the local authority in respect of any transactions under this Part of this Act, care shall be taken that as far as may be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this Part of this Act; and any balances of profit made by the local authority under this Part of this Act shall be applicable to any purposes to which the local rate is for the time being applicable."

Under Part II. of the last-mentioned Act,¹⁴ relating to unhealthy dwelling-houses, "every local authority shall every year present to the [Minister of Health], in such form as [he] may direct, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this Part of this Act."

The receipts and expenses of a local authority under Part III. of the same Act,¹⁵ relating to working class lodging-houses, will be treated as receipts and expenses under the present Act.

Public Libraries Act.

By the Public Libraries Act, 1892,¹⁶ "separate accounts shall be kept of the receipts and expenditure under this Act of every library authority and their officers, and those accounts shall be audited in like manner and with the like incidents and consequences, in the case of a library authority being an urban authority, and of their officers, as the accounts of the receipts and expenditure of that authority and their officers under the Public Health Acts." The joint library committee of neighbouring authorities that have combined for the purposes of the Public Libraries Acts are subject to the same provisions as to accounts and audit.¹⁷

Isolation Hospitals Act.

The Isolation Hospitals Act, 1893,¹⁸ applies sects. 245, 247, 249, and 250, as amended by the District Auditors Act, 1879, to the accounts of hospital committees under the Act and their officers.

Fraudulent Accounts.

A "director, public officer, or manager of any body corporate or public company," keeping fraudulent accounts, wilfully destroying books, etc., or

(9) 23 & 24 Vict. c. 64, s. 3, and see the prescribed form of financial statement.

(10) See *ibid.*, ss. 1, 2.

(11) See ss. 52-54, *post*, Vol. II., p. 1522.

(12) See s. 4, *post*, Vol. II., p. 1382.

(13) See s. 24, *post*, Part II., Div. III.

(14) See s. 44, *ibid.*

(15) See s. 65, *ibid.*

(16) See s. 20, *post*, Vol. II., p. 1410.

(17) See P. L. Am. Act, 1893, s. 4 (3), *post*, Vol. II., p. 1415.

(18) See s. 25, *post*, Part II., Div. I.

publishing fraudulent statements with intent to deceive or defraud, may be punished under the Larceny Act, 1861.¹⁹ **Sect. 245, n.**

By the Falsification of Accounts Act, 1875,²⁰ “ If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor, and be liable to be kept in penal servitude for a term not exceeding seven years.”²¹ **Falsification of accounts.**

Notwithstanding the words “ or any ” which precede “ document or account ” in the above-quoted enactment, a document or account which is falsified must belong to, or be in the actual or constructive possession of, the employer, in order that there may be an offence under the latter part of the enactment.²²

A person may be guilty of making a false entry under this Act, though he does not make it with his own hands, but by an innocent agent.²³

A poor-rate collector, who had showed in the Overseers’ Receipt and Payment Book a balance due from the overseers to the inhabitants as “ balance in hand,” when he had in fact appropriated the balance and there was nothing in hand, could not, it was held, be convicted of falsification of the account.²⁴

Falsification of accounts may also amount to forgery.²⁵ **Forgery.**

The law of forgery was consolidated by an Act of 1913.^{25a}

Sect. 246. Where an urban authority are the council of a borough the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts. **Audit where urban authority are a town council. L.G. s. 60.**

Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint. Any order of such authority for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under [*sect. 44 of the Municipal Corporations Amendment Act, 1837*], with respect to orders of the council of a borough for payments out of the borough fund.

Note.

In municipal boroughs generally, the burgesses elect annually two persons qualified to be councillors, and the mayor appoints a member of the council, to audit the accounts of the corporation²⁶; and the Court of Appeal have held that the duty of such auditors extends to investigating whether the payments are authorised, or are without authority, or otherwise illegal or improper : also that the elective auditors are not entitled to remuneration for auditing the accounts which are kept under the Municipal Corporations Act.²⁷ But the accounts of numerous boroughs are audited by the district auditors in pursuance of local Acts. **Municipal auditors and accounts.**

The accounts of receipts and expenditure by borough councils under the Education Act, 1921, are required to be made up and audited in the same manner as those of a county council.²⁸ These accounts are therefore to be audited by the district auditors in the same manner as the accounts of other urban district councils are audited under sect. 247 of the present Act.³⁰

(19) 24 & 25 Vict. c. 96, ss. 82-84. The Act of 1916, 6 & 7 Geo. V. c. 50, s. 48, Sched., repealed s. 81, *re* misappropriation of property of corporations, as to which see s. 1 of Act of 1916.

(20) 38 Vict. c. 24, s. 1.

(21) Remainder of section, *re* imprisonment, repealed by S. L. R. (No. 2) Act, 1893. The Indictments Act, 1915, 5 & 6 Geo. V. c. 90, s. 9, Sched. II., repealed 38 Vict. c. 24, s. 2, *re* form of indictment, as to which see Act of 1915, Sched. I. (25).

(22) *Rex v. Palin*, L. R. 1906, 1 K. B. 7; 75 L. J. K. B. 15; 93 L. T. 673; 69 J. P. 423.

(23) *Reg. v. Butt* (1884), 15 Cox C. C. 564.

(24) *Reg. v. Williams* (1899), 79 L. T. 739; 63 J. P. 103; 19 Cox C. C. 239.

(25) See *Re Aston* (No. 2), L. R. 1896, 1 Q. B. 509, at p. 517; 65 L. J. M. C. 50.

(25a) 3 & 4 Geo. V. c. 27.

(26) M. C. Act, 1882, s. 25, *post*, Vol. II., p. 1809.

(27) *Thomas v. Devonport Cpn.*, L. R. 1900, 1 Q. B. 16; 69 L. J. Q. B. 51; 81 L. T. 427; 63 J. P. 740.

(28) 11 & 12 Geo. V. c. 51, s. 123 (2).

(30) L. G. Act, 1888 (51 & 52 Vict. c. 41), s. 71.

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The treasurer of a borough council is required to make up his accounts half-yearly³¹; and members of the council may inspect them, and take copies of or extracts from them.³² Within one month afterwards the treasurer must submit them to the auditors for audit. He is also required to print an abstract of his accounts annually,³³ which is to be open to the inspection of the ratepayers; and copies of it are to be supplied on payment of a reasonable price.³⁴ The town clerk is required to make a return of the receipts and expenditure annually to the Minister of Health, and that Minister lays an abstract of the returns before Parliament.³⁵

Certiorari.

The fact that the borough auditors have passed an illegal payment appearing in the accounts is no bar to an action in the name of the Attorney General claiming a declaration of the illegality of the payment.³⁶

The Act of 1837,³⁷ referred to at the end of the present section, was repealed by sect. 5 and Sched. I. of the Municipal Corporations Act, 1882, sect. 141 of which ³⁸ enacts that "an order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk. Any such order may be removed into the [King's] Bench Division of the High Court by writ of *certiorari*, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court." This writ is only granted for the removal of judicial as distinguished from administrative orders, and only at the instance of a party aggrieved.³⁹

An order of a town council, which was quashed on *certiorari*, had directed payment out of the borough fund of the chief constable's costs of defending an action brought against him for malicious prosecution.⁴⁰ So also the court quashed orders made by a town council for paying the costs of defending an action brought against their surveyor for penalties for being interested in certain contracts made with the council, and also quashed orders which had been made for paying the surveyor the commission which he was to have received in pursuance of those contracts.⁴¹

The existence of the above-mentioned procedure by writ of *certiorari* does not deprive the Attorney General, at the relation of a party interested, of the power of obtaining an injunction to restrain the payment of money being made under an order of the council where there is no legal warrant for such order.⁴² The corporation of the borough need not be parties to an action for such an injunction brought against the borough treasurer, who is not merely the servant of the council, and cannot plead their orders in justification for an unlawful payment.⁴³

The Divisional Court made absolute a rule for a writ of *certiorari* to quash an order for the payment by a borough council of the cost of paving a road with "tarmac" for the purposes of an automobile competition when the road did not require repair for other purposes, but the Court of Appeal reversed this decision on the ground that the council had *bonâ fide* arrived at the conclusion that the work would improve the highway for use by the inhabitants of the borough and visitors thereto.⁴⁴

Audit where urban authority are not a town council.
L.G., s. 60.

Sect. 247. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; (namely,)

(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor. . . .⁴⁵

(2.) . . .⁴⁵

P.H. 1874, s. 38.

(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at

(31) M. C. Act, 1882, s. 26; L. G. Act, 1894, s. 58 (1), *post*, Vol. II., pp. 1809, 2092.
(32) M. C. Act, 1882, s. 233 (3), *post*, Vol. II., p. 1839.
(33) *Ibid.*, s. 27, *post*, Vol. II., p. 1809.
(34) *Ibid.*, s. 233 (4), *post*, Vol. II., p. 1839.
(35) *Ibid.*, s. 28, *post*, Vol. II., p. 1810.
(36) A.G. v. De Winton, *ante*, p. 615 (14).
(37) 7 Wm. IV. & 1 Vict. c. 78, s. 44. Short title authorised by 45 & 46 Vict. c. 50, s. 243, Sched. I.
(38) *Post*, Vol. II., p. 1830.
(39) See *Reg. v. Company of Watermen*

and *Lightermen* (1897), 61 J. P. 388.
(40) *Reg. v. Exeter Cpn.* (1880), L. R. 6 Q. B. D. 135; 44 L. T. 101; 45 J. P. 158.
(41) *Reg. v. Ramsgate Cpn.*, *ante*, p. 548.
(42) *Tynemouth Cpn. v. A.G.*, *ante*, p. 572. See also *A.G. v. De Winton*, *ante*, p. 615 (14).
(43) *A.G. v. De Winton*, *ante*, p. 615 (14).
(44) *Rex (Shoemith) v. Brighton Cpn.* (1907), 96 L. T. 762; 71 J. P. 265; 5 L. G. R. 584.
(45) Repealed by Act of 1879: see footnote (7), *post*, p. 636.

which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever :

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(4.) A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds :

L.G. Am., s. 15.

(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books deeds contracts accounts vouchers receipts documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books deeds contracts accounts vouchers receipts documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury :

L.G., s. 60 (3).

(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances :

L.G. Am., s. 15.

(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made :

(8.) Any person aggrieved by disallowance made may apply to the Court of [King's] Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances disallowances and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the [Minister of Health], which [Minister] shall have the same powers in the case of the appeal as [he] possesses in the case of appeals against allowances disallowances and surcharges by the said poor law auditors :

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person :

(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

L.G. Am., s. 3,

Sect. 247. Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act.

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Audit of Accounts of District Councils.

Extra-ordinary audit. Sect. 2 of the Audit (Local Authorities, &c.) Act, 1922,¹ provides as follows:—
“(1) The Minister of Health may at any time direct a district auditor to hold an extraordinary audit of any accounts which are subject to audit by district auditors. (2) An extraordinary audit held under this section shall be deemed to be an audit within the meaning of the enactments relating to audit by district auditors, and may be held after three days’ notice in writing given to the authority or persons whose accounts are to be audited : Provided that sect. 3 of the District Auditors Act, 1879 (which requires the submission to the district auditor of a financial statement in the prescribed form),² shall not apply in the case of an extraordinary audit held under this section.”

Yearly accounts. Sect. 1 of the same Act ³ provides as follows :—“(1) Where it is provided by any enactment (whether contained in a general or in any other Act) that any accounts subject to audit by district auditors are to be made up and audited half-yearly, those accounts shall, notwithstanding the said enactment, be made up yearly to the thirty-first day of March, or such other date as the Minister of Health may by general or special order direct, and audited once in every year. (2) This section shall not apply to the accounts of boards of guardians in the metropolitan area or of the managers of any school district or sick asylum district in that area other than the managers of the Metropolitan Asylums District.”

Application of section. The present section is applied by the Local Government Act, 1894,⁴ to the audit of the accounts of district councils, other than municipal corporations, both urban and rural; of parish councils; of parish meetings of parishes not having parish councils; and of committees of these bodies, including committees appointed jointly by a borough council and a non-municipal council. They are also applied to county council accounts.⁵ With regard to the audit of accounts kept by a district council under other Acts than the present Act, see the Note to sect. 245; and with regard to the audit of the accounts of borough councils, see sect. 246 and the Note to that section.

Sub-sect. (10) overrides any provisions of earlier local Acts with respect to the audit of the accounts of non-municipal urban district councils, and is in accordance with a previous decision of the Court of Queen’s Bench.⁶

District auditors. The latter part of sub-sect. (1), which made it the duty, except in certain cases, of the auditor for the union to audit the accounts referred to, and sub-sect. (2), which provided for his remuneration, are repealed by the District Auditors Act, 1879,⁷ which makes provision for the appointment of the auditors, the assignment of districts and duties to them, and for their remuneration.

Modification by Local Government Board. The Minister of Health is empowered by the Local Government Act, 1894,⁸ to modify sub-sects. (3) and (10) of the present section, relating to the auditor’s report on the accounts, with respect to any accounts to which the section applies, and under that power the Local Government Board issued the following orders modifying the sub-section for the purposes of the accounts of rural district councils and also of parish councils and parish meetings, and of joint committees of district councils (including those partly appointed by borough councils), parish councils, and parish meetings :—

In the application of sub-sect. (3) of the present section “to the audit of the

(1) 12 & 13 Geo. V. c. 14, s. 2. For explanatory speech of M. of H. on introducing Bill, see “Loc. Gov., 1922,” p. 2.	and is set out in 20 L. G. R. (Orders) 175, 176.
(2) <i>Post</i> , Vol. II., p. 1797.	(4) See s. 58, <i>post</i> , Vol. II., p. 2092.
(3) 12 & 13 Geo. V. c. 14, s. 1. For M. H. Circulars on Act, see 20 L. G. R. (Orders) 173-175. The Accounts (Annual Audit) Order, 1922 (S. R. O. No. 899), was made on Aug. 11,	(5) 51 & 52 Vict. c. 41, s. 71 (3).
	(6) <i>Gibson v. Bell</i> (1875), 39 J. P. 421.
	(7) See s. 11, and Sched. II., <i>post</i> , Vol. II., p. 1800.
	(8) See s. 58 (2) (3), <i>post</i> , Vol. II., p. 2092.

accounts of any joint committee as defined by this Order, such sub-section shall be modified so as to read as follows :—(3.) Before each audit of the accounts of a joint committee of district councils, or of a joint committee of a district council or district councils and a parish council or parish meeting or parish councils or parish meetings (including the accounts of a joint committee appointed by a borough council with another council not being a borough council), the clerk of the joint committee shall, after receiving from the auditor the requisite notice of the appointment, give at least fourteen days' notice of the time and place at which the audit will be commenced, and of the deposit of the accounts required by this section, either by causing notices in the prescribed form to be posted in the prescribed manner, or by advertisement in some one or more of the local newspapers circulated in the district for which the joint committee is appointed. He shall, immediately after such notice is posted or such advertisement is published, as the case may be, forward to the auditor a certificate thereof in the prescribed form, and the production of such certificate or of the newspaper containing the advertisement shall be deemed to be sufficient proof in any proceeding whatsoever of the notice required by this section having been given. The term 'prescribed' in this section means prescribed by the Local Government Board [now Minister of Health]."⁹

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Modification
by Local
Government
Board—cont.

The Local Government Board did not issue any permanent Order prescribing the several matters to be prescribed under this article, but issued a series of temporary Orders containing provisions on the subject, each applicable to the particular year only.

The same Order also provides that in the application of sub-sect. (10) of the present section "to the audit of the accounts of any joint committee as defined by this Order, such sub-section shall be modified so as to read as follows :—(10.) Within fourteen days after the completion of the audit, the auditor shall send to the [Minister of Health] a report on the accounts audited and examined by him. Every joint committee shall, on the completion of the audit, submit to the several authorities by whom they have been appointed at the meeting of such authorities respectively held next after the completion of the audit a copy of the financial statement of the accounts of the joint committee as certified by the district auditor."

The Order further provides that in it "the expression 'joint committee' means a joint committee of district councils or of any district council and parish council or parish meeting, inclusive of a joint committee appointed by a borough council with another council not being a borough council."

In the application of sub-section (10) of the present section "to the audit of the accounts of rural district councils, parish councils, and parish meetings, such sub-section shall be modified so as to read as follows :—(10.) Within fourteen days after the completion of the audit, the auditor shall send to the [Minister of Health] a report on the accounts audited and examined by him. Every rural district council shall, on the completion of the audit, publish an abstract of their accounts in some one or more of the local newspapers circulated in their district, and every parish council shall submit to the parish meeting held in the parish next after the completion of the audit a copy of the financial statement of the accounts of such council as certified by the district auditor."¹⁰

The same Order also provides that "the Rules in this Order shall, with any necessary modifications, apply to any joint committee of parish councils, or parish meetings, or of parish councils and parish meetings as if the committee were a parish council."

As to the taxation by taxing masters of costs incurred by local authorities, see sect. 249 and Note, *post*.

Taxation.

Notice of Audit.

There must be not less than fourteen clear days between the day on which the notice is published and the day on which the audit is held, for it is settled that an interval of a certain number of days *at least* must be reckoned exclusively of both of the days between which the interval is to elapse.¹¹

The Minister of Health is empowered, with respect to the audit of the accounts

(9) Order of 26th July, 1895. Modification of 1916 rescinded: see footnote (10), *infra*.

(10) Order of 20th May, 1895. The modification of this Order by an Order of 1916

was rescinded by the Audit (Reports) Order, 1919, S. R. O., No. 602.

(11) See *post*, Vol. II., p. 2104.

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of any of the bodies to whom the present section applies, to make rules modifying the enactments of the section as to publication of notice of the audit.¹²

General orders of the Local Government Board made under this power modified sub-sect. (3) of the present section as applied to parish councils and parish meetings and joint committees of those bodies,¹³ and also as applied to joint committees of non-municipal district councils, and joint committees partly appointed by a borough council.¹⁴

Inspection of Accounts.

Inspection
by auditor.

Where a local authority had directed their clerk not to produce certain documents to the auditor, whom they accused of misconduct at previous audits, *mandamus* was granted.¹⁵

Inspection
by electors.

Except so far as the accounts and books of an urban district council are required to be open to inspection at and for seven days before the audit, under the present section and the General Order for Accounts of the 22nd March, 1880, there is no provision for inspection of such books or accounts by owners, ratepayers, or other persons interested in them. But in the case of a rural district council any local government elector of a parish in their district may at all reasonable times inspect and take copies of or extracts from any of the books, accounts, or documents belonging to the council or under their control.¹⁶

The question having arisen whether it was necessary that the minute-book of the council should be deposited with the rate-books, etc., for inspection by all persons interested prior to the audit, the Local Government Board pointed out that Art. 13 of the Local Boards Accounts Order of the 22nd March, 1880, requires the production of the council's minute-book to the district auditor, and that under the latter part of that article the book should, to the extent indicated therein, be open to the inspection of the owners and ratepayers.

The Local Government Board intimated that they considered it generally advisable that district councils should accede to an application by a ratepayer for permission to inspect such documents and the reports of the district auditor which by statute are required to be deposited in the office of the council, unless they are satisfied that public inconvenience might result from the production of the documents.

Inspection
by bankrupt.

A person who had ceased to be a member of an urban district council by being adjudicated bankrupt might, it was held, be entitled to inspect the council's accounts as a "person interested" within sub-sect. (4) of the present section, inasmuch as he had signed many of the cheques which were then under audit, and any amounts which might be surcharged upon him would be proveable in the bankruptcy against his estate, and might affect the dividend which he had to pay.¹⁷ But after the audit had been closed, the court refused to grant a *mandamus* to allow an inspection of the books.¹⁸

Financial
statements.

The District Auditors Act, 1879,¹⁹ requires the district council to prepare and submit to the auditor at every audit a financial statement in the form prescribed by the Minister of Health. Where this statement is sent in, returns need not be made in pursuance of the Local Taxation Returns Acts, unless the Minister requires them to be made.²⁰

The Local Government Board prescribed forms for the financial statements to be submitted by the bodies enumerated in the Note to sect. 3 of the District Auditors Act, 1879.²¹

Local Authorities (Expenses) Act, 1887.

Allowances of
expenditure.

By sect. 3 of the Local Authorities (Expenses) Act, 1887,²² "expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the" Minister

(12) See L. G. Act, 1894, s. 58 (3), *post*, Vol. II., p. 2092; Order of 1895 quoted *supra*; Order of 26th April, 1900 (S. R. O., No. 305); and Circular of 16th March, 1914, set out in 12 L. G. R. (Orders) 535.

(13) Order 20th May, 1895, *ante*, p. 637 (10).

(14) Order (1900, No. 305), dated 26th April, 1900.

(15) *Rex (Drury) v. Dublin City Cpn.* (1906, K. B. D., I.), 41 Ir. L. T. 97.

(16) L. G. Act, 1894, s. 58 (5), *post*, Vol. II.,

p. 2092.

(17) *Marginson v. Tildsley* (1903), 67 J. P. 226; 1 L. G. R. 333.

(18) *Rex v. Fleetwood U.D.C.*, 68 J. P. 314; 2 L. G. R. 1209.

(19) See s. 3, *post*, Vol. II., p. 1797.

(20) See *ante*, p. 560.

(21) *Post*, Vol. II., p. 1798.

(22) 50 & 51 Vict. c. 72, s. 3. Royal Assent, 16th September, 1887. Above short title given by s. 1.

of Health. "In this Act,²³ the expression 'local authority' has the same meaning as in the Local Loans Act, 1875," but the definition in that Act²⁴ is limited by sect. 3 of the Act of 1887 confining the operation of that Act to those local authorities "whose accounts are subject to audit by a district auditor," *i.e.*, so far as this work is concerned, metropolitan borough councils,²⁵ urban and rural district councils, and parish councils.

Sect. 2 of the Act of 1887 also enacts that "the expression 'district auditor' has the same meaning as in the District Auditors Act, 1879."²⁶

Before the passing of the Act of 1887 the Local Government Board had power, after confirming an auditor's disallowance or surcharge of expenditure, to remit it if they found that the expenditure was incurred under such circumstances as made it fair and equitable that it should be remitted.²⁷ The Act of 1887 allows the Minister of Health to determine beforehand that the expenditure shall not be disallowed, but the Local Government Board did not appear anxious to exercise this power. They said, in answer to a request for their sanction under this Act: "The Board direct me to state that, if the expenses can legally be incurred, their sanction is not required. They think that any expenditure incurred by the . . . in connection with the . . . should come before the district auditor in the usual course. It will rest with him, in the first instance, to consider the questions of the legality and reasonableness of any payment in the matter charged in the accounts before him. Should he object to any item on legal grounds, but consider that it might equitably be allowed, it would be open to him to adjourn the audit so as to enable a further application to be made for the Board's sanction." This practice of refusing to sanction beforehand expenditure on a particular object of doubtful legality, even on an undertaking that the amount spent on that object shall be such as will be considered reasonable by the auditor, appears to be a neglect of a useful provision.

The Board also stated that the Act does not contemplate that they should sanction recurring expenditure.

The Board have, however, issued general instructions authorising expenditure on particular matters.²⁸ Thus, on the 16th June, 1884, they issued the following "memorandum as to the legality of expenses incurred by local authorities in purchasing periodical publications":—"The Local Government Board have recently had under consideration the question of the legality of the purchase by local authorities, at the cost of the funds under their control, of periodical publications which contain reports of decisions of the courts of law, or other information connected with matters subject to their jurisdiction. Hitherto the Board have generally considered that the local rates could not legally be expended in the purchase of the publications referred to. Recently, however, they have seen reason to doubt whether this view could be supported, and they have therefore consulted the Law Officers of the Crown upon the point. The effect of the opinion given by the Law Officers is, that if the publications referred to contain information so immediately connected with the discharge of their duties by the local authorities as to be likely to enable them to discharge those duties more efficiently than they could without such publications, the local authorities may legally make the purchase at the cost of the rates. The Board think it desirable to communicate this opinion to the auditors for their future guidance. It will, of course, be for the auditor, subject to appeal to the Board, to decide, in regard to any particular publication, whether it does or does not contain information of the character described; and he should satisfy himself, with reference to the special circumstances of each case, that not more copies of any periodical are purchased than are reasonably necessary." The Board declined to express an opinion beforehand whether any particular periodical could be purchased by a local authority.

And on the 18th April, 1911, the Board issued a general order reciting the fixing of the coronation of His Majesty King George V. for 22nd June, 1911, and sanctioning "any reasonable expenses in connection with any loyal address to His Majesty on the occasion of the said solemnity, or otherwise in connection with any public local celebration of that occasion . . . in so far as such expenses are charged in accounts subject to audit by a district auditor."²⁹

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Allowances of expenditure—
*continued.*Periodical
publications.Coronation
expenses.

(23) 50 & 51 Vict. c. 72, s. 2.

(24) See s. 34, *post*, Vol. II., p. 1722.

(25) 62 & 63 Vict. c. 14, s. 14.

(26) See the preamble to that Act, *post*, Vol. II., p. 1797.(27) 11 & 12 Vict. c. 91, s. 4, *post*, p. 643.(28) See, in addition to matters noted in text, Note to s. 189, *ante*, p. 515, on "gratuities" and "war bonuses."

(29) 9 L. G. R. (Orders) 27, 28.

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An interlocutory injunction to restrain payment of a sum resolved to be paid to a mayor by way of remuneration, with a request that he should take steps for the due celebration of Queen Victoria's Jubilee, was refused.³⁰ But with reference to a sum alleged to have been voted to a mayor for the purpose of celebrating the marriage of the Duke of York, Romer, J., said that the corporation were entitled to make a reasonable addition to the mayor's salary, if it was anticipated that in his year of office, by reason of the occurrence of some event of national importance, his expenditure as mayor in festivities and so forth might be increased; but that if payments were to be made, not really as an increase of salary to the mayor, and to be actually so applied, but for other purposes, they should be appropriated directly to the purposes to which they were really to be applied, so that the propriety of the payments might be challenged; and a payment for such other purposes should not be made indirectly as an increase of salary which was not intended to be actually received as such.³¹

Peace celebrations.

A similar order was issued on the 24th June, 1919, with regard to expenses in connection with public local celebrations of peace.³²

Industrial councils.

The Minister of Health issued a circular expressing his willingness to sanction under the Act of 1887 the payment of contributions to industrial councils.³³

National conference.

Contributions towards the expenses of the National Conference of Assessment Committees, on the rating of railways after decontrol and amalgamations, were similarly sanctioned.^{33a}

*Local Conferences Act of 1885.***Local conferences.**

Expenditure on attendances at local conferences has been expressly dealt with by the Legislature in the Public Health and Local Government Conferences Act, 1885, and orders thereunder. Circulars on the orders were also issued.³⁴

In this Act,³⁵ the expressions used "have the same respective meanings as they have in the Public Health Act, 1875, save and except that in England the term 'local authority' shall not mean or include the urban authority of any borough."

The Local Government Board considered that port sanitary authorities are not local authorities authorised by the Act to pay expenses of members or of their clerks attending conferences or meetings of local authorities.

By sect. 2,³⁶ "any local authority may, when empowered by and subject to any regulations made by the [Minister of Health] in that behalf (which regulations the said [Minister] is hereby authorised from time to time to make, vary, or rescind), pay the reasonable expenses of any member or members or clerk to the local authority attending any conference or meeting of members of local authorities held for the purpose of discussing any matter which is connected with the duties which devolve on them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such meeting or conference, and may charge the amount to any rates applicable to the general purposes of the "present Act" within their district."

The Local Government Board considered that there is no authority for charging on the rates such expenses as the following, namely, the expenses of a member of the district council or their clerk or inspector of nuisances in attending a congress of the Royal Institute of Public Health, of the vice-chairman or inspector of nuisances in attending a conference of the Sanitary Institute held in Paris, of the clerk in attending to represent the council on the executive committee of the Urban District Councils Association, of the surveyor in attending the annual meeting of the Association of Municipal and County Engineers, of the engineer of the gasworks belonging to the district council in attending a conference of the Gas Engineers' Institute, or of the librarian in attending a conference of the Library Association. The Board also considered that conferences of the Incorporated Municipal Electrical Association, and the annual congress of the Royal Sanitary Institute, were not "conferences" within the Act of 1885. They further considered that a district council are not authorised to pay subscriptions on behalf of their surveyor to the Association of Municipal and County Engineers.

General Orders of the Local Government Board, dated the 13th May, 1891, for urban authorities, and dated the 28th of December, 1896, for rural authorities, prescribe regulations under this Act.

(30) *A.G. v. Blackburn Cpn.* (1887), 57 L. T. 385.

(31) *A.G. v. Cardiff Cpn.*, L. R. 1894, 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. 591.

(32) 17 L. G. R. (Orders) 132, 133.

(33a) 20 L. G. R. (Orders) 23, 24; 21

L. G. R. (Orders) 20, 21.

(33) 19 L. G. R. (Orders) 31.

(34) 1897 Loc. Gov. Chron. 29.

(35) 48 & 49 Vict. c. 22, s. 3.

(36) *Ibid.*, s. 2.

The two orders are in identical terms (except with regard to the description of the authorities) and “empower [urban and rural district councils] for the time being in England and Wales, to pay the reasonable expenses incurred by any member or members or by the clerk in attending any such conference or meeting as is mentioned in [sect. 2], and any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting, subject to the following regulations :—(1.) The expenses incurred in attending a conference or meeting shall only be paid in respect of attendance at a central conference or meeting open to representatives of all [such councils], or at a conference or meeting convened for an area including the district from which the persons attending as representatives are sent and held at a place distant not more than one hundred miles from such district. (2.) The attendance at any conference or meeting of a member or members of, or of the clerk to, the [council] of any such district shall be expressly authorised by a resolution passed at a meeting of the [council] of such district, a written or printed notice that the proposal is to be considered at that meeting having been sent, by post or otherwise, to each member not less than four days prior to the date of the meeting of the [council]; and where the attendance of more than one member is authorised, the number of members authorised to attend shall be specified in the resolution. (3.) The maximum number of members authorised to attend any conference or meeting shall be two, and in the case of a central conference or meeting only one member shall be authorised to attend from any district which is at a distance of more than fifty miles from the place of meeting. (4.) The number of copies which may be purchased by the [council] of any district of the report of a central conference or meeting, or of any conference or meeting for an area including the district, shall be such as the local authority of the district may, by resolution, determine.”

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Local
conferences—
continued.

Disallowances by Auditor.

On an appeal against the disallowance and surcharge of certain payments made to an institution for the deaf and dumb, on the ground that without the approval of the Board of Education the council had no lawful authority to make any such contribution, and that the payments were unsupported by proper authority, the Local Government Board held that in the absence of evidence that the necessary approval had been obtained, the auditor was justified in disallowing the amounts as charges in the council’s accounts; but that as the necessary consent had in fact been obtained they did not consider that this could be regarded as a sufficient ground for the surcharge, the non-production at the audit of evidence of the proper authority for the expenditure being in itself neither a proof of illegality nor an omission for which the persons who authorised the payments could be held responsible.

Legality of
surcharge.

The auditor is not justified in surcharging the members of a committee of a local authority who have honestly recommended the acceptance of a tender for the supply of goods, merely because it was not the lowest tender;³⁷ or the engineer of a local authority who had certified for payment to a contractor for work done after the expiration of the time limited by the contract.³⁸

A district auditor was held to have no power to reopen accounts which had previously been audited.³⁹

Reopening
accounts.

Cozens Hardy, M.R., and Farwell, L.J., differed on the question whether the Law of Evidence Act, 1851,⁴⁰ enables the auditor to take evidence on oath.⁴¹

Administer-
ing oath.

Certiorari.

The following are the conditions upon which writs of *certiorari* are issued, and the powers of the King’s Bench Division with respect to allowances, disallowances, and surcharges under the poor law :—

Procedure.

“It shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorised to receive the same all such money, goods, and chattels as are admitted by his account to be due from

(37) See *Bailey’s Case*, *post*, p. 642 (3).
(38) *Rex (O’Leary) v. Calvert*, 1898 Ir. K. B. 266.
(39) *Reg. v. Chiddingstone Inhabitants*

(1862), 2 B. & S. 294; 31 L. J. M. C. 121;
6 L. T. 44; 26 J. P. 246.
(40) 14 & 15 Vict. c. 99, s. 16.
(41) See *Bailey’s Case*, *post*, p. 642 (3).

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Procedure—
continued.

him or remaining in his hands, to apply to the [King's Bench Division of the High Court of Justice] for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace,¹ except that the condition of such [*sic*] recognisance shall be, to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor-rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary; and on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditor was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such court may seem fit; which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable."² With regard to the enforcement of rules of court, see the Note to sect. 294.

Grounds for
over-ruling
auditor.

On an application under sub-sect. (8) of the present section for a writ of *certiorari* to bring up and quash an auditor's disallowance, the court may review his decision where it is erroneous in point of fact as well as where it is erroneous in point of law or is unsupported by evidence.³

In the cases cited below, auditors' surcharges were quashed,⁴ and upheld,⁵ respectively.

Burden of
proof.

In the Irish case cited below,⁶ Palles, L.C.B., said: "The *onus* lies upon the persons who have made a payment, for which credit is sought in an account under audit, to show a statutable authority for making that payment. The statute here relied on shows that authority, but subject to the condition that the roads are public roads. Therefore it lies on the persons surcharged here to show that these roads are public roads." This they were unable to do, and the surcharge was accordingly upheld.

(1) 5 & 6 Will. & M. c. 11; 5 Geo. II. c. 19, ss. 2, 3; 5 & 6 Wm. IV. c. 33, now superseded by the Crown Office Rules, 1906.

(2) P. L. Am. Act, 1844, 7 & 8 Vict. c. 101, s. 35.

(3) *Rex (Bailey) v. Carson Roberts* (C. A.), L. R. 1908, 1 K. B. 407; 77 L. J. K. B. 281; 98 L. T. 154; 72 J. P. 81; 6 L. G. R. 268.

(4) *Rex (Bailey) v. Carson Roberts*, *supra* (3), *re* non-acceptance of lowest tender; *Rex v. Calvert*, *ante*, p. 641 (38), *re* engineer's certificates; *Rex (Stepney B.C.) v. Carson Roberts* (C. A.), L. R. 1915 3 K. B. 313; 84 L. J. K. B. 1577; 80 J. P. 41; 13 L. G. R. 1172; *re* small tenement abatements. *Rex (Oulton) v. Easton* (C. A.), L. R. 1913, 2 K. B. 60; 82 L. J. K. B. 618; 108 L. T. 471; 77 J. P. 177; 11 L. G. R. 279; *re* furniture at new non-provided school. *Rex (O'Neill) v. Newell* (No. 1) (K. B. D., I.), 1911 Ir. K. B. 535; 2 Glen's Loc. Gov. Case Law 80; *re* expenses of county surveyor in giving evidence for his council. *Rex (Bridge) v. Locke* (C. A.), L. R. 1911, 1 K. B. 680; 80 L. J. K. B. 358; 103 L. T. 790; 75 J. P. 145; 9 L. G. R. 103; *re* interest paid to bank after transfer of existing loan. *Rex (Butler) v. Browne*, 1909

Ir. K. B. 333, *re* payment of instalments of loan by R.D.C. after transfer of subject of loan to U.D.C. but before legal requisites for effecting transfer under adjustment award had been fully carried out; and *Rex (Kennedy) v. Browne*, 1907 Ir. K. B. 505, *re* solicitors' charges of two guineas per document for preparing 113 contractors' housing agreements, these being printed forms which merely needed filling in of names, etc., which had formerly been done by local authority's clerk or his assistant.

(5) *Rex (Battersea B.C.) v. Carson Roberts* (C. A.), L. R. 1914, 1 K. B. 369; 83 L. J. K. B. 146; 109 L. T. 466; 77 J. P. 403; 11 L. G. R. 913; *re* small tenement abatements. *Rex (O'Neill) v. Newell* (No. 2) (K. B. D., Ir.), 1911 Ir. K. B. 573; 2 Glen's Loc. Gov. Case Law 81; *re* repairs to undedicated roads. *Rex (Gatti) v. Lyon*, L. R. 1922, 1 K. B. 232; 91 L. J. K. B. 139; 126 L. T. 332; 86 J. P. 6; 19 L. G. R. 776, *re* Shakespeare plays for children; *Rex (Harrison) v. Lyon*, *ante*, p. 523, *re* non-deduction for superannuation fund.

(6) *Rex (O'Neill) v. Newell* (No. 2), *supra*, footnote (5).

Appeals to Minister of Health.

Any person aggrieved by an allowance, disallowance, or surcharge, in lieu of making application to the King's Bench Division for a writ of *certiorari*, may apply to the Minister of Health "to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said [Minister] to issue such order therein, under [his] seal, as [he] may deem requisite for determining the question." ⁷

A ratepayer may appeal to the Minister of Health against an allowance by the district auditor, although he was not present at the audit.

Where an appeal is made to the Minister of Health against any allowance, disallowance, or surcharge made by any auditor in the accounts of any district council, or their officers, the Minister may "decide the same according to the merits of the case; and if [he] shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, [he] may . . . direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge." ⁸ And, by the Divided Parishes and Poor Law Amendment Act, 1876, ⁹ "where an auditor shall have allowed, disallowed, or surcharged a sum in any account rendered to him jointly, and an appeal shall be made against the same, the decision of the auditor may be reversed by the court or the [Minister of Health], as the case may be, and the disallowance or surcharge may be remitted by the said [Minister] in favour of one or more of the persons appealing only without discharging the other person or persons against whom such decision of the auditor was pronounced."

The Local Government Board, in April, 1905, issued the following "instructions as to the mode of appealing against disallowances and surcharges by a district auditor":—

"1. Any person affected by a district auditor's certificate of disallowance or surcharge may, if he feels aggrieved by the auditor's decision, appeal to the [Minister of Health], who, upon the receipt of the appeal, [is] empowered to decide as to the lawfulness of the reasons stated by the auditor for his decision; and where [he upholds] the disallowance or surcharge, [he] may, upon payment of the costs (if any) incurred by the auditor in taking steps to enforce payment of the money certified, remit the disallowance or surcharge, if [he considers] that the subject-matter of it was incurred under such circumstances as make it fair and equitable that this course should be taken. 2. Any person desiring to appeal must, unless the auditor has already entered his reasons in the book of account in which the disallowance or surcharge was made, apply to him to enter his reasons in that book; and for this purpose the book should be submitted to him. 3. When the auditor has entered his reasons, an exact copy of them and also a copy of his certificate of disallowance or surcharge, including his signature and the date of the entry, should be forwarded to the [Minister] with the appeal. 4. The appeal should be by letter on foolscap paper, addressed to the Secretary of the [Ministry of Health], Whitehall, London, and must be signed by the appellant in his own handwriting. Where two or more persons are mentioned in the auditor's certificate, the appeal should be signed by each of those desirous of appealing. 5. The appeal should contain a full statement of the facts which the appellant may desire to lay before the [Minister]; and the grounds upon which the appeal is made should be explicitly set out. If there are any (1) Cheques, (2) Bills, (3) Vouchers, or (4) Other papers or documents bearing upon the matter, they should be forwarded to the [Minister] with the appeal; and where there are resolutions of the local authority with reference to the subject-matter of the expenditure, copies of the resolutions should also be sent. 6. Unless an appeal be made against the auditor's decision, the sum certified by him to be due must be paid over as follows:— (a.) Money certified to be due in the accounts (including accounts of committees and officers) of a (1) county council, or (2) visiting committee of a lunatic asylum, or (3) metropolitan borough council, or (4) town council, or (5) district council, or

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Equitable
jurisdiction
of Minister of
Health.Instructions
of Local
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Board.

(7) P. L. Am. Act, 1844, 7 & 8 Vict. c. 101, s. 36.

(8) P. L. Audit Act, 1848, 11 & 12 Vict. c. 91, s. 4; amended by P. L. Am. Act, 1866, 29 & 30 Vict. c. 113, s. 5; as applied by

s. 247 (8), *ante*, p. 635. For instance of exercise of this jurisdiction, see "Addendum" to p. 2012.

(9) 39 & 40 Vict. c. 61, s. 38.

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(6) port sanitary authority, or (7) parish council or parish meeting, or (8) any other authority to whom [sub-sect. (9) of the present section] applies, must be paid within fourteen days from the date of the auditor's certificate, to the treasurer of the authority; or, in the case of a parish council or parish meeting having no treasurer, to the person or persons who receive money on their behalf. (b.) Money certified to be due in the accounts (including the accounts of officers) of a (1) board of guardians, or (2) board of management for a poor law school or asylum district, must be paid over within seven days to the treasurer of the authority. (c.) Money certified to be due in the accounts of overseers, assistant overseers, or collectors, relating to the under-mentioned rates, must be paid over within seven days, as hereinafter mentioned, except where the sum, or the aggregate of the sums, disallowed is less than £2, in which case the money may be paid over with the balance (if any) to the succeeding overseers:—(1) Money certified in the poor rate accounts must be paid to the treasurer of the guardians: (2) Money certified in the separate sanitary rate account must be paid to the treasurer of the rural district council: (3) Money certified in the lighting rate account or separate burial rate account must be paid to the treasurer of the authority on whose precept or certificate the rate was made."

"The reference to officers in paragraph 6 (a) above applies to the managers of any public elementary school to whom any receipts or payments of money under the Education Act, [1921], are entrusted by the local education authority—see sect. [130] of the Act." ¹⁰

In cases of disallowances and surcharges by district auditors, the Local Government Board pointed out that it is necessary that each person who may be desirous of being relieved of liability under a certificate of the auditor should appeal against the decision to which the certificate relates; but that, where a particular sum has been surcharged upon more than one person, it will be sufficient if the persons surcharged jointly sign and transmit an appeal.

For the result of such an appeal, see "Addendum" to page 2012.

Recovery of certified Sums.

By the Poor Law Amendment Act, 1844,¹¹ all moneys certified by a poor-law auditor to be due are recoverable as so certified from all or any of the persons making or authorising the illegal payment, or otherwise answerable for such moneys, and they were to be recovered on the application of the auditor or of any auditor subsequently appointed, or by any person for the time being entitled or authorised to receive the same, in the same manner as penalties and forfeitures may be recovered under the Poor Law Amendment Act, 1834,¹² that is, by distress and sale of the goods and chattels of the person liable to pay the money certified to be due.

The limitation, by the Summary Jurisdiction Act, 1848,¹³ of the time for making a complaint or laying an information does not apply to these proceedings by an auditor to recover certified sums, but under the Poor Law Amendment Act, 1849,¹⁴ "no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the [King's Bench Division] or to the [Minister of Health], after the lapse of nine calendar months from the determination thereupon." Where there has been an appeal to the Minister of Health, the nine months commence to run from the date of the final determination of the matter by that Minister, even though the Minister has consented to reconsider his first determination, and his final determination is the same as the first.¹⁵

By the Summary Jurisdiction Act, 1884,¹⁶ "the payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, and the Acts amending the same, or with any other Act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor-rate," that is, by distress and sale of the defaulter's goods under a warrant of justices without any previous order to pay being made by such justices; the same Act providing that "nothing in

(10) 11 & 12 Geo. V. c. 51, s. 130.

(11) 7 & 8 Vict. c. 101, s. 32.

(12) 4 & 5 Wm. IV. c. 76, s. 99.

(13) 11 & 12 Vict. c. 43, s. 11.

(14) 12 & 13 Vict. c. 103, s. 9.

(15) *Brooks v. Dolby* (1902), 66 J. P. 532.

(16) 47 & 48 Vict. c. 43, s. 11.

this Act shall alter the procedure for the recovery of or any remedy for the non-payment of any poor-rate, or of any rate or sum the payment of which is not adjudged by the conviction or order of a court of summary jurisdiction.”¹⁷ This Act does not expressly repeal sect. 99 of the Poor Law Amendment Act, 1834, and it seems doubtful in the first place whether proceedings may still be taken under that section at the option of the auditor, and in the second place whether the limitation of time above mentioned is applicable where the proceedings are taken under the Summary Jurisdiction Act, 1884. It is also questionable whether the power of the justices to commit the defendant to prison in default of distress, which is only indirectly a mode of enforcing payment, is applicable to the recovery of certified sums.

Under the Poor Law Audit Act, 1848,¹⁸ “In any proceedings to be taken by an auditor, or by his [solicitor], before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the [Minister of Health], and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information.”

The certificate of the auditor that the money is due will be final, if it be not appealed against, as in the case of a poor-law audit.¹⁹ But payment of the amount certified to the proper officer subsequently to the date to which the certificate relates may of course be proved if proceedings are taken, as they were in one case notwithstanding such payment.²⁰

Guardians paid their medical officer certain fees for extra services on a scale higher than that authorised, though the Irish Local Government Board had been consulted and had advised against such payment. An auditor surcharged the excess against two members who had respectively proposed and seconded a resolution ordering payment. The surcharged members unsuccessfully appealed to the Board, and defended the summons for payment of the amount surcharged. The justices dismissed the summons on the ground that the defendants had neither signed nor initialled the order for payment. A rule *nisi* for a writ of *certiorari* quashing the justices' order was made absolute on the ground that the decision of the Board on the appeal to them was final.²¹

The auditor's costs will be payable by the local authority, even though he may fail to obtain a distress warrant for the certified sum.²²

An auditor who successfully shows cause against the quashing of a surcharge is not entitled to solicitor and client costs under the Public Authorities Protection Act, 1893.²³

In an Irish case an order *nisi* for a writ of *certiorari* quashing an auditor's allowance of a certain item in a local authority's accounts was made conditional on the prosecutor entering into a recognisance to secure the auditor's costs.²⁴

Sect. 248. [*The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.*]

The accounts of the overseers collecting or paying any money for the purposes

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Finality of decision of Local Government Board.

Auditor's costs.

Audit of accounts of rural authority.
P.H. 1872, s. 49.

(17) 47 & 48 Vict. c. 43, s. 10.

(18) 11 & 12 Vict. c. 91, s. 9.

(19) See *Reg. v. Finnis* (1859), 1 E. & E. 935; 28 L. J. M. C. 201; 5 Jur. (N.S.) 791; 23 J. P. 692; *Reg. v. Brecknock JJ.* (1857), 7 E. & B. 951, n.; *Reg. v. Linford* (1857), 7 E. & B. 950; *Reg. v. Denbighshire JJ.* (1859), 33 L. T. (O.S.) 145.

(20) *Reg. v. Fordham* (1873), L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85.

(21) *Rex (Considine) v. Fermanagh County JJ.* (1910, K. B. D., I.), 44 Ir. L. T. 188;

1 Glen's Loc. Gov. Case Law 33.

(22) *Prest v. Royston Guardians* (1875), 33 L. T. 564; 24 W. R. 174.

(23) *Carson Roberts v. Battersea B.C.*, post, Vol. II., p. 1977.

(24) *Rex (Currid) v. Baker* (C. A., I.), 1910 Ir. K. B. 187; 44 Ir. L. T. 77; 1 Glen's Loc. Gov. Case Law 24.

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of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

Note.**Accounts of rural district councils.****Repeal.**

With regard to the mode in which the accounts of rural district councils are to be kept, see sect. 245 and the Note to that section.

The present section is repealed "except so far as it relates to overseers," by sect. 89 and Sched. II. of the Local Government Act, 1894; and sect. 58 of that Act requires the accounts of rural district councils, their committees and officers, to be audited half-yearly by the district auditors, and applies to such audit the enactments relating to the audit of the accounts of urban sanitary authorities and their officers, as to which see sect. 247 of the present Act and the Note thereto.

Accounts of officers.

With regard to the audit of the accounts of officers of the rural district council, see sect. 250.

Taxation of bill of solicitor or attorney.

P.H. 1872, s. 50.
P.H. 1874, s. 39.

Sect. 249. On the application of any local authority whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor [*or attorney*] in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the master of the Crown Office, and declared by an order of the [Minister of Health].

If any such bill is not taxed by the clerk of the peace or some other duly authorised taxing officer before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final.

Note.**Taxation of solicitor's costs.**

The present section applies to both rural and urban districts.

The Local Government Board stated that they were advised that the present section only applies to bills in respect of legal business performed on behalf of the council, and that the costs of the solicitor to the vendor of land purchased by the council cannot be regarded as incurred on behalf of the council, even though such costs may be payable by them.

As to the taxation of costs under the Lands Clauses Acts, see sect. 52 of the Act of 1845,¹ and, under the Borough Funds Acts, sect. 6 of the Act of 1872.²

Costs incidental to procuring a provisional order under the Housing Act of 1890 were held, in Ireland, to be taxable on the parliamentary scale.³

An umpire fixed his fee, for valuing land compulsorily purchased, on an *ad valorem* scale. The taxing master reduced it to five guineas. A summons to review was dismissed, though the local authority wished to pay the larger amount.⁴

Where two local authorities agreed to carry out a joint sewerage scheme and stipulated that all disputes should be referred to arbitration, and an arbitrator made an award directing that one of the authorities should pay the costs, but did not fix the amount, it was held that the court could order the taxing master to tax without an action being brought on the award.⁵

Local authorities are not obliged to prevent their solicitors electing to charge according to the old system as altered by Sched. II. to the General Order under the Solicitors' Remuneration Act, 1881,⁶ and so, where a taxing master reduced a bill from £50 2s. to £13 on the ground that the authority should have retained a

(1) *Post*, Vol. II., p. 1576.

(2) *Post*, Vol. II., p. 1704.

(3) *Lurgan U.D.C. v. Moore and Johnson*, 1906 Ir. Ch. 599.

(4) *In re James & Sons* (1903, Kekewich, J.),

W. N. 99.

(5) *Chesterfield Cpn. v. Brampton Loc. Bd.* (1886), 50 J. P. 824.

(6) 44 & 45 Vict. c. 44.

solicitor who did not insist upon the more expensive mode of payment, the bill was referred back for taxation in accordance with the solicitor's election.⁷

After a local authority had lost an action and paid the plaintiff's taxed costs, they proceeded to have their own solicitors' bill taxed. The solicitors had been given special instructions that extra copies of the evidence were to be printed, that counsel's speeches were to be transcribed and printed, and that these were to be bound up with prints of the judgment, so that each councillor might have a complete record of the trial. This was done, and the solicitors had made reasonable charges. The taxing master disallowed disbursements in respect of these items amounting to £130. He considered that accepting the contention that special instructions entitled solicitors to charge these items would render taxation of costs valueless on the very subject where its importance was greatest; that, in the present case, the local authority had resolved that these prints should be obtained and supplied to each member after expensive and unsuccessful litigation on a matter involving no question of law, principle, or public interest; and that such expenditure was "absolutely unnecessary, if not absolutely useless, and one which would not have been incurred but for the fact that it would not fall on individual councillors." The solicitors took out a summons to review this taxation. The local authority admitted giving the special instructions, the reasonableness of the charges, and their liability to pay them. It was held that the case must be sent back to the taxing master to review the taxation and allow the items. *Per Swinfen Eady, J.*: "In this case the accounts are subject to audit, . . . the ratepayers have the right to be present and raise objections, and the auditor is bound to disallow and surcharge illegal payments. An allowance of any sum on a taxation by the clerk of the peace or his deputy," under the present section, "is *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge. In the present case the reasonableness of the amount charged is admitted, and no question of *quantum* is raised, and the taxing master, in taxing the costs as between solicitor and client, is not entitled, on the grounds set out in this answer, to disallow items incurred on the client's expressed instructions, and for which the charges are admittedly reasonable. The taxing master has taxed this bill on the footing of preventing the waste of rates in useless expenditure. The liability of the council to their solicitors is, however, entirely a different matter, and the bill ought to have been taxed in the ordinary way as between solicitor and client."⁸

Under the Clerk of the Peace (Taxation Allowance) Order, 1922,⁹ "a clerk of the peace shall be entitled to remuneration after the rate of sixpence per folio of seventy-two words for the taxation of bills under" the present section.

The present section is similar to sect. 39 of the Poor Law Amendment Act, 1844,¹⁰ with respect to which it was held that the right of a person aggrieved to apply, under sect. 35 of the same Act,¹¹ for a *certiorari* to remove the allowance or disallowance by the auditor of a law bill, was confined to cases in which the bill had been taxed by the clerk of the peace before it was presented to the auditor, and that if it had not been so taxed the decision of the auditor on the reasonableness as well as the legality of the charges in the bill was final.¹²

Taxation by the clerk of the peace is only made "primâ facie evidence of the reasonableness of the amount," and is therefore not final. Although a solicitor's bill had been taxed by the clerk of the peace under sect. 39 of the above-mentioned Act of 1844, it was held that the guardians were entitled to their order for taxation as between solicitor and client under the Solicitors Act, 1843.¹³

The disallowance and surcharge by a district auditor of a sum representing law costs, on the ground that they had not been taxed, was upheld by the Local Government Board, who considered that the auditor was entitled to require any authority or officer accountable to him to show in respect of a charge for such costs, either that the bill had been taxed or that it did not require taxation.¹⁴

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Taxation of
solicitor's
costs—cont.Allowance to
clerk of the
peace.Finality of
auditor's
decision.(7) *In re Evans*, L. R. 1905, 1 Ch. 290.(8) *Re Porter Amphlett and Jones*, L. R. 1912, 2 Ch. 98; 81 L. J. Ch. 544; 107 L. T. 40. Cf. the *Chesham Case*, ante, p. 467 (25); and see treatise in 85 J. P. Jo. 485.

(9) S. R. O. No. 987. Revoking Orders of Nov. 21, 1844, and Apr. 20, 1877. The Order, which came into operation on Sep. 1, 1922, also applies to taxation under P. L. Am. Act, 1844, 7 & 8 Vict. c. 101, s. 39. It will be found in 20 L. G. R. (Orders) 205.

(10) 7 & 8 Vict. c. 101, s. 39.

(11) *Q.v.*, ante, pp. 641, 642.(12) *Reg. v. Hunt* (1856), 6 E. & B. 408; s.c. *nom. Reg. v. Napton Overseers*, 25 L. J. Q. B. 296; 2 Jur. (N.S.) 1138; 20 J. P. 581.(13) 6 & 7 Vict. c. 73, s. 37. *Southampton Guardians v. Bell and Taylor* (1888), L. R. 21 Q. B. D. 297; 59 L. T. 181; 52 J. P. 567.(14) See also *In re Bevan Jones* (1872), L. R. 13 Eq. 336; *In re Barber* (1845), 14 M. & W. 720.

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Taxing
master or
clerk of the
peace.

A solicitor's bill of costs against a local authority in respect of certain actions against the authority in which he had been retained was taxed by the clerk of the peace. The solicitor's executor subsequently carried in to the clerk of the peace some supplemental bills, though the authority had passed a resolution that these be taxed by a master of the High Court. Field, J., in chambers, ordered that the supplemental bills be taxed by a master. On an appeal against this order, it was contended that all the bills had been incurred under one retainer, and that the solicitor's application to the clerk of the peace inured for the benefit of all. The local authority contended that, as the powers of the present Act were "cumulative" (see sect. 341), and under the present section the bills were to be taxed "by the clerk of the peace or his deputy or any other competent taxing officer," they could be taxed by a taxing master. The latter contention prevailed, and the appeal was dismissed by Denman and Mathew, JJ.¹⁵

In the case cited below,¹⁶ an order for taxation of a local authority's solicitors' costs by the taxing master, and not by the clerk of the peace, was made, though the action, a dispute as to whether a path was or was not a highway, was disposed of on agreed minutes.

The Minister of Health informed a local authority in 1922 that they could call on the clerk of the peace to tax items that did not form part of certain party and party costs which had been taxed by the taxing master.

On an application in 1922 by an urban district council to the Minister for sanction under sect. 298 of the costs of opposing an application by a borough council for a provisional order, the Minister required them to be taxed by a Parliamentary taxing officer although they had been taxed by the clerk of the peace under the present section.

Counsel's
fees.

Fees paid to counsel after the solicitor had commenced proceedings under Order XIV. to recover his bill of costs from his client were held to have been wrongly disallowed by the taxing master and McCardie, J.^{16a}.

Auditor to audit
accounts of
officers.
P.H. 1874, s. 38.

Sect. 250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts.

Note.

Accounts of
officers.

See sect. 195, under which the officers and servants are to account to the council. Sect. 246 provides for the audit of the accounts of the receipts and expenditure under the present Act of the councils of municipal boroughs; sect. 247 for the audit of accounts of other urban district councils.

Extension of
enactment.

The present section and sect. 247 are applied by the Local Government Act, 1894,¹⁷ to the audit of the accounts of non-municipal district councils both urban and rural, and parish councils and parish meetings, and to the audit of the accounts of committees and officers of such councils and meetings, including those of any joint committee appointed by a municipal and a non-municipal council. The same two sections are applied to the accounts of county councils and their officers by the Local Government Act, 1888,¹⁸ and to those of hospital committees under the Isolation Hospitals Act, 1893,¹⁹ and their officers.

Engineers'
accounts.

An auditor having disallowed unvouched payments in accounts kept by engineers appointed by an urban district council to carry out works of sewerage and sewage disposal, the Local Government Board, considering that the engineers were not intended to be appointed as officers or servants within the meaning of sect. 189, held that the auditor's action was null and void.

Small
holdings
and allot-
ments.

For the purpose of the audit of accounts, persons appointed under the Small Holdings and Allotments Act, 1908, by a council to exercise and perform powers and duties as to the management of allotments are to be deemed to be officers of the council. Expenses of borough and urban district councils are defrayed as expenditure under the Public Health Acts.²⁰

(15) *Blake v. Croydon R.S.A.* (1886), 2 T. L. R. 336.

(16) *Duke of Northumberland v. Alnwick R.D.C.* (1923, Eve, J.), M.S. and 58 L. J. Jo. 32.

(16a) *Smith v. Howes* (C. A.), L. R. 1922,

1 K. B. 590; 91 L. J. K. B. 388; 126 L. T. 625.

(17) See s. 58, *post*, Vol. II., p. 2092.

(18) 51 & 52 Vict. c. 41, s. 71. (3).

(19) See s. 25, *post*, Part II., Div. I.

(20) See ss. 53, 54, *post*, Vol. II., pp. 1522, 1523.

PART VII.
LEGAL PROCEEDINGS.

PROSECUTION OF OFFENCES AND RECOVERY OF PENALTIES, ETC.

Sect. 251. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice.

Summary proceedings for offences, penalties, &c. P.H., s. 129, &c.

Note.

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Summary Proceedings.

The Summary Jurisdiction Acts are, by sect. 4, " the Summary Jurisdiction Act, 1848,¹ and any Act amending the same "; and a " court of summary jurisdiction " by the same section means " any justice or justices of the peace, stipendiary or other magistrate or officer by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to." The amending Acts are an Act of 1857, providing for the statement of cases for the opinion of the court,² the Summary Jurisdiction Act, 1879,³ the Summary Jurisdiction (Process) Act, 1881,⁴ and the Summary Jurisdiction Acts, 1884 and 1899.⁵

The Criminal Justice Administration Act, 1914,⁶ amended the Summary Jurisdiction Acts and other Acts relating to the administration of criminal justice in the following respects :—Sect. 1, " Obligation to allow time for payment of fines "; sect. 2, " Allowance of further time "; sect. 3, " Reduction of imprisonment on part payment of sums adjudged to be paid "; sect. 4, " Provisions for enforcement of payment of fines, etc. "; sect. 5, " Payment and allocation of fines and fees "; sect. 6, " Uniform scale of court fees as respects all courts of summary jurisdiction "; sects. 7-9, " Probation "; sects. 10 and 11, " Committals to Borstal Institutions "; sect. 12, " Power to order detention for one day in precincts of the court "; sect. 13, " Substitution of police custody for imprisonment in case of short sentences "; sect. 14, " Provisions as to malicious damage to property " ⁷; sect. 15, " Extension of powers to deal with cases summarily " ⁸; sects. 16-18, " Imprisonment "; sects. 19-24, " Bail and remand "; and sects. 25-44, " Miscellaneous and general," some of which have been quoted elsewhere.⁹

The present section only mentions offences and penalties " under this Act "; and sect. 183, which authorises the imposition of penalties by bye-laws made under the Act, does not expressly state how penalties under the bye-laws are to be

Summary Jurisdiction Acts.

Criminal Justice Administration Act, 1914.

Offences under bye-laws.

(1) 11 & 12 Vict. c. 43.
(2) 20 & 21 Vict. c. 43.
(3) 42 & 43 Vict. c. 49.
(4) 44 & 45 Vict. c. 24.
(5) 47 & 48 Vict. c. 43; 62 & 63 Vict. c. 22.
(6) 4 & 5 Geo. V. c. 58, ss. 1-44. The date of commencement of certain sections of this Act was postponed by 5 Geo. V. c. 9, s. 1, to 1st April, 1915.
(7) Quoted *ante*, p. 429.
(8) Amending S. J. Act, 1879 (42 & 43 Vict. c. 49), ss. 10, 12, 14, Sched. I., and S. J. Act, 1899 (62 & 63 Vict. c. 22), Sched.
(9) Namely, ss. 25, *post*, p. 674, 33, *post*, p. 667, and 37, *post*, p. 716.

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recovered. But, as Lord Alverstone, C.J., said ¹⁰: "Where a statute enables an authority to make regulations, a regulation made under the Act becomes for the purpose of obedience or disobedience a provision of the Act. The regulation is only the machinery by which Parliament has determined whether certain things shall or shall not be done." And see sect. 6 of the Public Health Acts Amendment Act, 1907.¹¹

Prosecuting corporations.

A corporate body may be prosecuted under the Summary Jurisdiction Acts.¹²

Mandamus to issue summons.

A magistrate having refused to issue a summons against an employer for not stamping the national insurance cards of his servants unless the servants were summoned also, the court made absolute a rule *nisi* for a writ of *mandamus* directing the issue of the summons desired.¹³

Injunction to restrain summary proceedings.

The court will not interfere by injunction to restrain summary proceedings before justices on any ground which is merely matter of defence before them; for the court will assume that they will give full weight to such defences.¹⁴ Stirling, J., said that it would not be right to say that there was absolutely no jurisdiction in the court to restrain summary proceedings, but that it ought not be exercised in the absence of very special circumstances.¹⁵

Disqualification of justices.

With regard to the disqualification of justices for acting in certain cases by reason of personal interest, see the Note to sect. 258. By that section the mere fact that a justice, before whom a matter arising under this Act is brought, is a member of the local authority, or a ratepayer, or one of a class of persons interested in any rate or fund out of which expenses under the Act are payable, does not disqualify him from acting as a justice in the matter.

Stipendiary magistrates.

By the Stipendiary Magistrates Act, 1858,¹⁶ "every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police court or other place appointed in that behalf, shall have power to do alone any act and to exercise alone any jurisdiction which under any law now in force, or any law not containing an express enactment to the contrary, hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of Parliament auxiliary to the jurisdiction of such justices shall be applicable to the jurisdiction of such stipendiary magistrate"; and "the authority and jurisdiction given to a stipendiary magistrate by the enactment hereinbefore contained shall extend and apply as well to the cases where the act or jurisdiction is or may be expressly required to be done or exercised by justices sitting or acting in petty sessions as to other cases, and any enactment authorising or requiring persons to be summoned or to appear at such petty sessions shall in the like cases authorise or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting."

Under the Stipendiary Magistrates Act, 1863,¹⁷ non-municipal urban authorities of districts having twenty-five thousand inhabitants may apply to the Secretary of State for the appointment of a stipendiary magistrate, and may fix the salary to be paid to him and his clerk out of the local rates, and provide a police office. In a municipal borough the council may apply to the Secretary of State by petition for the appointment of a stipendiary magistrate.¹⁸

Deputies.

The Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906,¹⁹ makes provision for the appointment of deputies, and of persons to act temporarily in case of vacancies.

Limitation of Time.

Six months' limitation.

The time within which summary proceedings may be taken after the occurrence of the cause of complaint is limited to six months by the Summary Jurisdiction Act, 1848,²⁰ which enacts (a) with respect to any information "laid before one or more of [His] Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any offence or act within the

(10) In *Willingale v. Norris*, L. R. 1909, 1 K. B. 57, at p. 64; 78 L. J. K. B. 69; 99 L. T. 830; 72 J. P. 495; 7 L. G. R. 76. *Reg. v. Walker*, *post*, p. 743 (15), followed.

(11) *Post*, Part I., Div. III.

(12) See *Pearks, Ld. v. Ward*, cited in Note to S. F. D. Act, 1875, s. 6, *post*, Part II., Div. II. See also *post*, Vol. II., p. 1968 (1).

(13) *Rex (National Insurance Comrs.) v. Mead* (1916), 85 L. J. K. B. 1065; 114 L. T. 1172; 80 J. P. 332; 14 L. G. R. 688.

(14) *Kerr v. Preston Cpn.*, *ante*, p. 371 (22).

(15) *Grand Junction Water Co. v. Hampton U.D.C.*, *ante*, p. 371 (23). For decision on special case afterwards stated by justices, see *ante*, p. 367 (12).

(16) 21 & 22 Vict. c. 73, ss. 1, 2.

(17) 26 & 27 Vict. c. 97, ss. 3, 4.

(18) 45 & 46 Vict. c. 50, s. 161.

(19) 6 Edw. VII. c. 46, s. 1.

(20) See 11 & 12 Vict. c. 43, s. 11.

jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished," and (b) with respect to any complaint "made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise,"²¹ as follows: "In all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose."

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The limitation applies to proceedings taken in the county court under sect. 261 for the recovery of small demands: see the Note to that section.

Application
of the
limitation.

An application for an order to be made by a justice for demolition of a building erected contrary to the requirements of a local Act was held to be one whereon the justices had power to make an order for payment of money "or otherwise" within the meaning of the provision quoted above; and therefore a complaint for infringing the provisions of such local Act was held to be out of time, because it had not been made within six months from the time when the matter of the information arose.²² On the other hand, the adjudication of two justices under the Lands Clauses Act, 1845,²³ with respect to compensation, is not an "order for the payment of money," and a summons to hear and determine the question of such compensation is not out of time if issued after six months from the service of notice to treat.²⁴

The limitation was held not to apply to an offence against the Defence of the Realm Regulations, which had been referred by the competent military authority to a court of summary jurisdiction.²⁵

Where an offence was punishable either summarily or on indictment,²⁶ and the form of the summons was appropriate only to an offence punishable summarily, and the summons was issued more than six months after the commission of the offence, the justices, who were sitting on a day notified for indictable offences, treated the offence as a charge of an indictable offence and committed the defendant for trial at assizes. A rule *nisi* for *certiorari* was discharged on the ground that the objection was really one relating to the form of the summons, and therefore bad.²⁷

Where the date of an alleged offence is amended, but not the nature of the offence, the proceedings are in time if the new date is within the six months preceding the laying of the original information.²⁸

An information laid on the 30th June for an offence committed on the 30th May of the same year was laid "within one calendar month" after the cause of complaint arose.²⁹

Time for issue
of summons.

On summary proceedings to recover the amount of apportioned expenses it is no objection to the validity of a summons that it was issued more than a year after the date of the complaint on which it was founded.³⁰

The Salmon Fishery Act, 1873,³¹ contains a provision that penalties may be recovered within six months after the commission of the offence in manner directed by the Summary Jurisdiction Acts. A summons for such penalties was issued and served within six months after the date of the alleged offence, but not being heard by the justices until after the expiration of that period, the justices dismissed it. The court held that, although the "recovery" meant the obtaining of the judgment of the court upon which the penalty became payable, sect. 11 of the Summary Jurisdiction Act, 1848, rendered it sufficient for the complaint or information to be made or laid within the six months, although the judgment was not obtained

(21) 11 & 12 Vict. c. 43, s. 1.

(22) *Morant v. Taylor* (1876, C. A.), L. R. 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. 139; 40 J. P. 501.(23) See ss. 22, 24, *post*, Vol. II., pp. 1570, 1571.(24) *Reg. v. Hannay* (1874), 44 L. J. M. C. 27; 31 L. T. 702; 23 W. R. 164. See also *Reg. v. Edwards* (1884, C. A.), L. R. 13 Q. B. D. 586; *Rex v. Part*, *post*, Vol. II., p. 1659 (1).(25) *Kaye v. Cole* (1916), 86 L. J. K. B. 1084; 115 L. T. 783; 81 J. P. 3; 15 L. G. R. 45.

(26) Trading with Enemy Act, 1914 (4 &

5 Geo. V. c. 87), s. 1 (1).

(27) Indictable Offences Act, 1848 (11 & 12 Geo. V. c. 42), s. 9; S. J. Act, 1848 (11 & 12 Geo. V. c. 43), ss. 1, 11, 14; *Rex (Holt, Ld.) v. Walmsley* (1916), 80 J. P. 209.(28) *Rex v. Wakeley*, L. R. 1920, 1 K. B. 688; 89 L. J. K. B. 97; 122 L. T. 623; 84 J. P. 31.(29) *Radcliffe v. Bartholomew*, *post*, Vol. II., p. 2104 (9).(30) *Simcox v. Handsworth Loc. Bd.*, *ante*, p. 330 (6).

(31) 36 & 37 Vict. c. 71, s. 62.

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Time of
matter of
complaint
arising.

Ignorance.

Continuing
offences.

until afterwards.³² Further as to the meaning of "recovery," see the cases cited below.³³

On a prosecution under the General Turnpike Act of 1882,³⁴ for encroaching on a road, it was held that the time commenced to run from the date when the building, etc., first constituted a substantial encroachment on the road.³⁵ And in proceedings for infringing the general line of buildings under the Metropolis Management Act, 1862,³⁶ the time was held not to run from the date of the superintendent architect's certificate, fixing the general line of buildings, but from the date on which the existing line of buildings was actually infringed.³⁷

Where the time for laying a complaint of default in complying with certain requirements of the Coal Mines Regulation Acts was limited to six months after service of notice to comply with those requirements, a complaint was held to be out of time when an informal letter pointing out the default had been sent to the defaulter more than six months before the complaint was made, although a more formal notice had subsequently been given within the six months.³⁸

Ignorance of the fact that the offence has been committed is no answer if the time has expired.³⁹ But under some Acts time runs from "discovery of the offence."^{39a}

Where the offence is a continuing offence, the six months' limitation does not apply.⁴⁰ But a conviction imposing a penalty of 1s. a day for 193 days for disobeying a closing order under the Public Health (London) Act, 1891,⁴¹ was quashed on the ground that it was for an offence extending over more than six months from the time when the matter of complaint arose.⁴²

A person had been convicted of causing a nuisance by smoke from a factory chimney, and had been ordered to alter the chimney, furnaces, etc., so as to consume the smoke, and no longer be a nuisance, within two months. On a subsequent summons for disobeying the order the evidence given was that a nuisance had been caused by smoke from the chimney at dates within six months before the issuing of the summons, but more than six months after the date of the order. The justices again convicted, and the conviction was upheld.⁴³

A notice to abate a nuisance from black smoke and to prevent its recurrence having been given under the Public Health (London) Act, 1891,⁴⁴ no further emission of black smoke was observed by the officers of the sanitary authority for nearly a year, when a similar nuisance occurred. Summary proceedings were taken for default in complying with the notice, but were dismissed. Their dismissal was upheld on the ground that the magistrate must, in the circumstances, have come to the conclusion that the original nuisance had been abated, and that he had not considered that the later and the earlier emissions of black smoke were connected together so as to make the offence a continuing offence.⁴⁵

A harness room was used for habitation without any structural alteration, and no plan was deposited. A conviction was obtained in October for failure to deposit a plan. A second conviction followed in February for a "continuing offence," the room still being used for habitation. An appeal on the ground that as nothing had been done there could not be such an offence was dismissed.⁴⁶

(32) *Morris v. Duncan*, L. R. 1899, 1 Q. B. 4; 68 L. J. Q. B. 49; 79 L. T. 379; 62 J. P. 823.

(33) *In re Stretton* (1845), 15 L. J. Ex. 16; *Collins v. Hopwood* (1846), 15 M. & W. at p. 464; *Cooper v. Pegg* (1855), 24 L. J. C. P. 167; *Wigens v. Cook* (1859), 28 L. J. C. P. 312; *Cream v. Ray* (1861), 30 L. J. Ex. 110; *Smith v. Edge* (1863), 33 L. J. Ex. 9; *Cowell v. Amman Colliery Co.* (1865), 34 L. J. Q. B. at p. 163; *Ings v. London & S. W. Ry. Co.* (1868), L. R. 4 C. P. at p. 20; *Ferguson v. Davison* (1882), L. R. 8 Q. B. D. 470; *Lamb Bros. v. Keeping* (1914), 111 L. T. 527.

(34) 3 Geo. IV. c. 126, s. 118.

(35) *Hyde v. Entwistle* (1884), 52 L. T. 760; 49 J. P. 517. See also *Ranking's Case*, ante, p. 507 (8).

(36) 25 & 26 Vict. c. 102, s. 75, now 57 & 58 Vict. c. cxxiii. s. 22.

(37) *Paddington Vestry v. Snow* (1881), 45 L. T. 475; 30 W. R. 46; 46 J. P. 87, following *Morant v. Taylor*, ante, p. 651. See also ante, pp. 371, 372.

(38) *Stokes v. Hill*, L. R. 1901, 1 K. B. 493; 70 L. J. K. B. 331; 84 L. T. 122; 65 J. P. 280. See also, as to effect of Coal Mines Act, 1914 (4 & 5 Geo. V. c. 22), s. 2, on S. J. Act, 1848,

s. 11, *Felton v. Heal*, L. R. 1920, 3 K. B. 1; 90 L. J. K. B. 85; 123 L. T. 394; 84 J. P. 157.

(39) *Carden v. Tipperary (N.R.) C.C.* (1914), C. A., I., 48 Ir. L. T. 205; 5 Glen's Loc. Gov. Case Law 143, re malicious injury to churchyard cross.

(39a) See, e.g., s. 3 of Corruption Act of 1916, ante, p. 546.

(40) *Rumball v. Schmidt* (1882), L. R. 8 Q. B. D. 603; 46 L. T. 661; 46 J. P. 567. See also *Airey's Case*, ante, p. 392 (6).

(41) 54 & 55 Vict. c. 76, s. 5 (9).

(42) *Reg. v. Slade*, L. R. 1895, 2 Q. B. 247; 64 L. J. M. C. 232; 73 L. T. 343; 59 J. P. 471. But see the *Chepstow Case*, cited in Note to P. H. Act, 1890, s. 22, post, Part I., Div. II.

(43) *Higgins v. Northwich Union* (1870), 22 L. T. 752; 34 J. P. 806.

(44) 54 & 55 Vict. c. 76, s. 4.

(45) *Battersea B.C. v. Goerg* (1906), K. B. D., 71 J. P. 11; 5 L. G. R. 62. See also ante, p. 188 (17), as to this case.

(46) *Harding v. Larne U.D.C.* (1911), K. B. D., Ir., 45 Ir. L. T. 182; 2 Glen's Loc. Gov. Case Law 205. See also the cases cited in the Notes to ss. 156, 158, and 183, ante, pp. 372, 403, 507.

Building in front of the building line,⁴⁷ failure to render accounts under sect. 196,⁴⁸ persistent cruelty to children,⁴⁹ and wrongful detention of army stores,⁵⁰ were held to be "continuing" offences. But encroaching on a highway,⁵¹ and furnishing a false statement under the Registration of Business Names Act, 1916,⁵² were held not to be such offences. As to the distinction between two separate offences and one continuing offence, see the case cited below.⁵³

The limitation does not apply to the enforcement of the "charge on the premises" for expenses of private improvements under sect. 257.⁵⁴

In the year 1854 certain permanent improvements were completed by a local board upon premises in a town within their jurisdiction. A receiver of the rents of these premises, appointed by the Court of Chancery in 1853 and 1854, agreed with the local board that the expenses should be raised by mortgage, and notice of the same was given to the receiver, who paid £30 in part payment thereof. Afterwards, having ceased to be receiver of the rents, he refused to pay the balance, and a demand for payment having been made upon him in 1857, in December of that year, he finally refused to pay. A complaint was then made to the justices by the local board on the 19th January, 1858, and was dismissed. Upon a case stated it was held that the matter of complaint arose when notice of the amount to be raised by mortgage was given to the receiver, and that the information ought therefore to have been laid within six months from that time. It was also held that the local board, in agreeing to the mortgage, had exercised their option, and could not afterwards proceed to recover the expenses by summary proceedings.⁵⁵

Ouster by Claim of Right.

The jurisdiction of a court of summary jurisdiction is ousted if the defendant *bonâ fide* claims a right to do what he is charged with doing, provided that the claim is not "impossible in law."¹

This defence has succeeded where the defendant has claimed a right to cross a railway,² to obstruct a highway by exposing goods for sale, even though the right was used to excess,³ to keep an unlighted sewer trench across a road alleged to be private,⁴ and to remove shingle from foreshore.⁵ Where there is such a claim, there is no *mens rea*.⁶

The defence has failed where there has been an honest belief in a right which has been held impossible in law because of a statute,⁷ or because of the common law.⁸

The jurisdiction is also ousted if the dispute raises a question of the title to land,⁹ unless such question is not disputed.¹⁰

But where a local authority prosecuted the owner of an overflowing stream for a nuisance under the Public Health (Ireland) Act, 1878,¹¹ a *bonâ fide* claim that the stream was a "sewer" vested in the local authority was held not to oust the

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of charge on
premises.Exercise of
option.Jurisdiction
of justices.

(47) See *Rumball's Case*, ante, p. 371 (25).

(48) See *Mayer's Case*, ante, p. 552 (5).

(49) *Rex (Brown) v. Londonderry JJ.* (1912, K. B. D., I.), 46 Ir. L. T. 170; 4 Glen's Loc. Gov. Case Law 124. But see *Kay v. Kay* (1912), 108 L. T. 813; 77 J. P. 128—*re* husband and wife.

(50) *Pullen v. Carlton*, L. R. 1918, 2 K. B. 207; 87 L. J. K. B. 904; 119 L. T. 82; 82 J. P. 153; 16 L. G. R. 770.

(51) See *Ranking's Case*, ante, p. 507 (8); *Hyde's Case*, ante, p. 652 (35).

(52) 6 & 7 Geo. V. c. 58, ss. 1, 3, 9; *Board of Trade Solicitor v. Ernest*, L. R. 1920, 1 K. B. 816; 89 L. J. K. B. 766; 122 L. T. 781; 84 J. P. 43; 18 L. G. R. 128.

(53) *Flack v. Church* (1917), 87 L. J. K. B. 744; 117 L. T. 720; 82 J. P. 59; 15 L. G. R. 951—*re* dog without licence twice in one year; *Smedley v. Registrar of Companies*, L. R. 1919, 1 K. B. 97; 88 L. J. K. B. 345; 120 L. T. 277; 83 J. P. 18—*re* failure to hold general meeting of company.

(54) *Tottenham Loc. Bd. v. Rowell*, post, p. 682 (41).

(55) *Eddleston v. Francis* (1860), 7 C. B. (N.S.) 568; 3 L. T. 270; 25 J. P. 135.

(1) See treatise on this subject in 56 J. P. 211; and cases collected in "Stone's Justices' Manual" under "Practice, Ouster of Jurisdiction."

(2) *Arnold v. Morgan*, L. R. 1911, 2 K. B.

314; 80 L. J. K. B. 955; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917. Further as to claims of rights of way, see *Rex (Fitzgerald) v. Cork County JJ.* (1910, K. B. D., I.), 44 Ir. L. T. 110; 1 Glen's Loc. Gov. Case Law 83; *Travis v. West* (1894), *Times*, Dec. 13.

(3) In *Kennedy's Case*, ante, p. 433 (13). But see *Clemens' Case*, ante, p. 430 (31).

(4) *Rex v. Burrows* (1911, Brentford P. Ct.), 75 J. P. Jo. 220; Loc. Gov. Chron. 402.

(5) *Lord Talbot de Malahide v. Dunne*, 1914 Ir. K. B. 125; 5 Glen's Loc. Gov. Case Law 136.

(6) *Mogan or Moyan v. Caldwell* (1919), 88 L. J. K. B. 1141; 121 L. T. 148; 83 J. P. 213; 17 L. G. R. 330, *re* unconsumed seamen's rations. See also *Frailey's Case*, post, p. 658 (75a).

(7) *Smith v. Cooke* (1914), 84 L. J. K. B. 959; 112 L. T. 864; 79 J. P. 245, *re* oyster fishery. See also cases, post, p. 751 (22) (26).

(8) *Rex v. Tyrone JJ.*, 1917 Ir. K. B. 96, *re* claim of public right of way from highway to private bathing place. See also *Twigdon's Case*, ante, p. 434 (15).

(9) *Dickinson v. Ead* (1914), 111 L. T. 378; 78 J. P. 326; 30 T. L. R. 496, *re* trespass in pursuit of game.

(10) *Lucan v. Barrett* (1915), 84 L. J. K. B. 2130; 113 L. T. 737; 79 J. P. 463; 13 L. G. R. 1361, *re* assault on pupil by school teacher.

(11) 41 & 42 Vict. c. 52, s. 107.

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jurisdiction of the justices to enquire (a) if the nuisance in fact existed, and (b) if the defendant was, or the local authority were, responsible.¹²

Procedure.

Seal on summons.

A summons for assault was signed by a justice and otherwise complete, but was not sealed. At the trial the defendant's solicitor objected to the jurisdiction of the justices on this ground, and, on his objection being overruled, took no further part in the proceedings. The defendant was present in court during part of the first and the whole of the second day's hearing, but only as a spectator. A rule *nisi* for *certiorari* quashing the conviction was obtained, and cause was shown on the grounds (1) that, though warrants and convictions must be under seal, no seal was necessary on a summons; (2) that, if a seal was necessary, the defect was one of form to which, by reason of the proviso to sect. 1 of the Act of 1848, no objection could be taken; and (3) that, the defendant being present in court either by his solicitor or in person during the whole of the proceedings, the justices were entitled to deal with the charge regardless of the means by which he had been induced to come there. The rule was unanimously discharged on ground (2), the court not being unanimous on the other points.¹³

Service of summons.

Service on the defendant's clerk at his lock-up shop was held bad as not being at his "place of abode" within sect. 1 of the Act of 1848.¹⁴ So also was service on a woman who occupied a flat over the defendant's shop, though the defendant had told the inspector (who had purchased butter in the shop) that he lived over the shop¹⁵; and so was service at a place of temporary residence after the defendant's return to his usual residence.¹⁶ Service on a company at a branch office was also held bad.¹⁷

Where a summons for hearing within three days was served while the defendant was abroad, his conviction was quashed on the ground that the time was unreasonably short.¹⁸

Form of complaint.

Sect. 39 of the Summary Jurisdiction Act, 1879,¹⁹ which is applicable to summary proceedings under the present Act, provides as follows:—"The following enactments shall apply to proceedings before courts of summary jurisdiction; (that is to say,) 1. The description of any offence in the words of the Act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law; and 2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant."

With reference to negativing in an indictment a proviso to an enactment creating a statutory offence, the Court for Crown Cases Reserved laid down the rule that it is not necessary for the prosecution to negative a proviso, even though the proviso be contained in the same section of the Act of Parliament creating the offence, unless the proviso is in the nature of an exception which is incorporated directly or by reference with the enacting clause, so that the enacting clause cannot be read without the qualification introduced by the exception.²⁰

A summons against a councillor for acting when disqualified was not vitiated by not alleging that his absence was not caused by illness or other approved cause.²¹

It is not necessary to use the exact words of the Act so long as the words used are sufficient to embody the elements of the offence.²²

(12) *Comerford v. Taylor*, 1918 Ir. K. B. 207.

(13) *Rex (Brown) v. Garrett-Pegge*, L. R. 1911, 1 K. B. 880; 80 L. J. K. B. 609; 104 L. T. 649; 75 J. P. 169. S. J. Acts, 1848 (11 & 12 Vict. c. 43), s. 1 and Sched.; 1879 (42 & 43 Vict. c. 49), s. 29; and 1884 (47 & 48 Vict. c. 43), s. 12. S. J. Rules, 1886, Rules 31, 32, and Sched., Form 2. See, now, S. J. Rules, 1915, Rule 60, Sched., Form 2.

(14) 11 & 12 Vict. c. 43, s. 1. *Rex (McVittie) v. Rhodes* (1914), 85 L. J. K. B. 830; 113 L. T. 1007; 79 J. P. 527.

(15) *Rex (Taylor) v. Lilley* (1910, K. B. D.), 114 L. T. 77; 75 J. P. 95.

(16) *Rex (Regan) v. Cork County JJ.*, 1911 Ir. K. B. 258; 45 Ir. L. T. 7; 2 Glen's Loc. Gov. Case Law 197.

(17) *Pearks, Ld. v. Richardson*, L. R. 1902,

1 K. B. 91; 71 L. J. K. B. 18; 85 L. T. 616; 66 J. P. 119.

(18) *Rex (Dickie) v. Donegal JJ.* (1910, K. B. D., I.), 44 Ir. L. T. 222; 1 Glen's Loc. Gov. Case Law 82.

(19) 42 & 43 Vict. c. 49, s. 39.

(20) *Rex v. James and Johnson*, L. R. 1902, 1 K. B. 540; 86 L. T. 202; 66 J. P. 217.

(21) *Rex v. Kilkenny JJ.*, *post*, Vol. II., p. 2080 (8).

(22) *Rex (Daniels) v. Holloway Prison Governor* (1916), 85 L. J. K. B. 689; 80 J. P. 244; W. N. 53. "Found" omitted from charge of drunkenness in highway. See also *Isaacs v. Arlidge* (1917), 87 L. J. K. B. 347; 82 J. P. 289; 16 L. G. R. 73. Departure from Form II. in Schedule to Courts (Emergency Powers) Rules held not "substantial."

In a prosecution for not protecting children from fire it was held that a summons, which followed the exact words of the Act,²³ but did not specify what precautions should have been taken, was not bad for that reason.²⁴ Where a complaint describes an offence as including an unnecessary element, that element need not be proved.²⁵ And where justices dismissed a summons because an immaterial allegation in it had not been proved, the court amended the summons and sent the case back for a conviction.²⁶ Unnecessary words in a summons may be treated as "surplusage,"²⁷ and necessary words may be added by amendment, if the offence has been "stated with sufficient particularity,"²⁸ but not otherwise.²⁹ A summons contained no geographical limitation. It was held that it must be amended by limiting it to the district of the complainants. The summons also contained no reference to the fact that the Public Health Acts Amendment Act, 1907, had been duly applied to the complainants' district by order of the Local Government Board. It was held that the summons must be amended so as to remedy this omission. It was agreed that the formality of sending the case back to the magistrates should not be required, but that the conviction should stand without costs.³⁰

Where "embarrassment" was not alleged in the affidavit in support, a rule for *certiorari* was refused,³¹ and a rule was discharged because the defendant was not "prejudiced."³² Another was discharged because the points had been taken before the justices and decided against the defendant, and the defendant was not prejudiced.³³

But a summons, charging a dairyman with selling adulterated milk, was held bad because it did not allege, as the fact was, that the sale had been effected by a servant,³⁴ and a summons was held to have been dismissed properly as being "ambiguous and self-contradictory."³⁵ A police court conviction and sentence to pay a fine was erroneously recorded as of the date 21st September when the true date was 23rd September. The record was corrected after payment of the fine. It was held that the defect was one of substance and not form, and the conviction was quashed.³⁶ And a conviction under a summons which alleged a previous conviction in aggravation while that previous conviction was under appeal was quashed.³⁷

A summons by a local authority for recovery of possession of a small holding did not allege a demand and refusal of possession, and the order for possession was accordingly quashed.³⁸

A conviction under the second part of a section was quashed because the summons was under the first part,³⁹ and so was one under a section which imposed a penalty for two acts, the summons only alleging one.⁴⁰

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Form of
complaint—
continued.

(23) 8 Edw. VII. c. 67, s. 15.
(24) *Renton v. Ramage*, 1911 S. C. (J.) 100; 2 Glen's Loc. Gov. Case Law 190.
(25) *McIntyre v. Persichini*, 1914 S. C. (J.) 126; 51 Sc. L. R. 610; 5 Glen's Loc. Gov. Case Law 139, as to purpose for which refreshment house was kept open after hours. In *Lena v. Davidson*, 1913 S. C. (J.) 76; 50 Sc. L. R. 757; 4 Glen's Loc. Gov. Case Law 123, it had been held that the summons need not specify the purpose.
(26) *Keenan v. Costelloe*, cited in Note to S. F. D. Act, 1879, s. 3, *post*, Part II., Div. II.
(27) *Per Avory, J.*, in *Blain v. King*, L. R. 1918, 2 K. B. 30; 87 L. J. K. B. 992; 119 L. T. 54; 82 J. P. 179; 17 L. G. R. at p. 271. "Implying that he was registered" as a dentist.
(28) *Smart v. Wilkins* (1919), 83 J. P. 181; 17 L. G. R. 400. "By retail" (*re* Maximum Prices Order).
(29) *Smith v. Moody*, L. R. 1903, 1 K. B. 56; 72 L. J. K. B. 43; 87 L. T. 682; 67 J. P. 67. "Injured certain property of" the informant, not enough, *re* Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86).
(30) *Fearon v. Warrenpoint U.D.C.*, cited in Note to P. H. Am. Act, 1907, ss. 3, 12, 94, *post*, Part I., Div. III. *Keenan v. Costelloe*, *supra*, followed.
(31) *Ex parte Beecham*, L. R. 1913, 3 K. B. 45; 82 L. J. K. B. 905; 109 L. T. 442, as to

refusal of information leading to identification of driver who had committed "an offence under" Motor Car Act, 1903, 3 Edw. VII. c. 36, s. 1 (1).
(32) *Rex (Sheehan) v. Waterford JJ.*, 1914 Ir. K. B. 178; 48 Ir. L. T. 5; 5 Glen's Loc. Gov. Case Law 138.
(33) *Rex v. Belfast JJ.*, cited in Note to P. H. Am. Act, 1890, s. 51, *post*, Part I., Div. II.
(34) *Wilson v. Fleming*, 1914 S. C. (J.) 20; 51 Sc. L. R. 72; 5 Glen's Loc. Gov. Case Law 62.
(35) *Nimmo v. Lees*, cited in Note to S. F. D. Act, 1875, s. 20, *post*, Part II., Div. II.
(36) *Smith v. Semphill*, 1911 S. C. (J.) 32; 2 Glen's Loc. Gov. Case Law 196. *Cf. White v. Jeans*, 1911 S. C. (J.) 88; 2 Glen's Loc. Gov. Case Law 196.
(37) *McCall v. Mitchell*, 1911 S. C. (J.) 1; 48 Sc. L. R. 53; 1 Glen's Loc. Gov. Case Law 84. But see *Rex v. Hankey*, *post*, p. 697 (47).
(38) *Rex (Leonard) v. Carlow JJ.* (1911, K. B. D., I.), 45 Ir. L. T. 48; 2 Glen's Loc. Gov. Case Law 190.
(39) *Rex (McCarron) v. Down JJ.* (1912, K. B. D., I.), 46 Ir. L. T. 44; 4 Glen's Loc. Gov. Case Law 124, as to Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12.
(40) *Masterton v. Soutar*, cited in Note to S. F. D. Act, 1875, s. 30, *post*, Part II., Div. II.

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But where a summons was dismissed because the summons specified only one of the three Acts, and did not mention the regulations, which made the offence punishable, the case was sent back for a conviction.⁴¹ And an objection to a complaint, based on the fact that the defendant had been charged as Poli Francisco when his real name was Francisco Poli, was overruled.⁴²

Duplicity.

In some cases convictions have been quashed because two separate offences have been charged in one information,⁴³ and in others this defence of "duplicity" has been overruled.⁴⁴ In Ireland it has been held that the use of "or" to describe the offence pointed to different operations, while "and" pointed to one continuous operation.⁴⁵

The rule against duplicity does not prevent two persons being charged in one information with the same offence.⁴⁶

A conviction for "treating" two persons at different times on the same day was quashed, *per* Lord Reading, C.J., on the ground that, though there was only one offence (supplying liquor contrary to law), the justices had heard evidence as to what took place on each of the two occasions before deciding to convict with reference to either; *per* Ridley, J., on the ground of duplicity; and *per* Avory, J., on the ground that it was not apparent which of the two acts the defendant had been convicted of committing.⁴⁷

Where a rule for *certiorari* quashing a conviction on the ground of duplicity was made absolute, the court said that the defect could be cured on the return to the writ under the Quarter Sessions Act, 1849.⁴⁸

A person may not be charged with two separate offences in one count of an indictment,⁴⁹ but the conviction may be affirmed on the ground that there has been no miscarriage of justice.⁵⁰

Division of opinion.

Where justices are equally divided in opinion, they may either dismiss the summons,⁵¹ adjourn for a rehearing before a differently constituted bench,⁵² or decide in the absence of one of their number who retires for the purpose.⁵³

Opportunity for defence.

A board of guardians, having, it was alleged, neglected to comply with the bye-laws of the district council by failing to deposit plans of a new workhouse which they were building, were summoned and convicted, notwithstanding an application made to the justices on their behalf to adjourn the case in order to allow a meeting of the guardians to be held to discuss the matter. But the court made absolute a rule for a writ of *certiorari* to bring up the conviction to be quashed, on the ground that the guardians ought to have had sufficient opportunity for defending themselves before the case was determined.⁵⁴

Evidence.

The constitution of the district council need not be proved: see sect. 260; nor, in certain cases, need the name of the defendant be specified, sect. 255. With regard to proceedings against joint offenders, see sect. 255.

Proof of statutory orders.

Where a printed paper marked "Dried Fruits (Distribution) Order, 1918," but

(41) *Tighe v. Wilson*, 1913 S. C. (J.) 20; 50 Sc. L. R. 122; 4 Glen's Loc. Gov. Case Law 122, as to obstructing revenue officer.

(42) *Poli v. Thomson* (1910, Sc. J.), 47 Sc. L. R. 771; 1 Glen's Loc. Gov. Case Law 82.

(43) *Connell v. Mitchell*, 1913 S. C. (J.) 13; 50 Sc. L. R. 117; 4 Glen's Loc. Gov. Case Law 97, driving motor car "recklessly or negligently"; *Rex (Murdock) v. Hammick* (1918), 87 L. J. K. B. 846; 82 J. P. 169; 16 L. G. R. 467, "hoarding flour and sugar."

(44) *Rex (Patterson) v. Tyrone JJ.*, 1915 Ir. K. B. 162, "buying, detaining, or receiving from soldiers" military property. *Rex (Thomas) v. Jones*, L. R. 1921, 1 K. B. 632; 90 L. J. K. B. 543; 124 L. T. 668; 85 J. P. 112; 19 L. G. R. 354; driving motor car "recklessly and" at dangerous speed.

(45) In *Rex (Higgins) v. Kildare JJ.* (1911, K. B. D. I.), 45 Ir. L. T. 76; 2 Glen's Loc. Gov. Case Law 190; but see *Patterson's Case*, *supra* (44).

(46) *Macphail v. Jones*, L. R. 1914, 3 K. B. 239; 83 L. J. K. B. 1185; 111 L. T. 547; 78 J. P. 367; 12 L. G. R. 1237. Husband and wife making false old age pensions declaration.

(47) *Parke v. Sutherland* (1917) 86 L. J. K. B. 1052; 116 L. T. 820; 81 J. P. 197; 15 L. G. R. 535. See also *Cotterill's Case*, *ante*, p. 507 (4).

(48) 12 & 13 Vict. c. 45, s. 7. *Rex (Farwell)*

v. Wood (1918), 87 L. J. K. B. 913; 119 L. T. 48; 82 J. P. 268, conviction for contravening Milk (Prices) Order on two dates.

(49) *Rex v. Molloy*, L. R. 1921, 2 K. B. 364; 90 L. J. K. B. 862; 125 L. T. 470; 85 J. P. 233; *Townsend v. Lord Advocate*, 1914 S. C. (J.) 85; 51 Sc. L. R. 373; 5 Glen's Loc. Gov. Case Law 133.

(50) *Rex v. Thompson*, L. R. 1914, 2 K. B. 99; 83 L. J. K. B. 643; 110 L. T. 272; 78 J. P. 212.

(51) In *Reg. v. Ashplant* (1888), 52 J. P. at p. 475, col. i., Manisty, J., said: "The proper thing is to dismiss the summons." In *Reg. (Burrows) v. Wardle* (1898), 14 T. L. R. at p. 424, Hawkins, J., considered this course "a very doubtful one" in a civil case (summons for damages under Employers and Workmen Act, 1875). It was adopted without comment in *Wood Green U.D.C. v. Joseph* (1904 Loc. Gov. Chron. 400, and see 3 L. G. R. at p. 1152) which afterwards went to the House of Lords.

(52) *Bagg v. Colquhoun*, L. R. 1904, 1 K. B. 554; 73 L. J. K. B. 272; 90 L. T. 386; 68 J. P. 159.

(53) *Rex (O'Hare) v. Thomas*, L. R. 1914, 1 K. B. 32; 83 L. J. K. B. 351; 109 L. T. 929; 78 J. P. 55.

(54) *Rex v. Maude* (1901), *Times*, Nov. 9; Loc. Gov. Chron. 1153.

containing no printer's name or anything to show that it was "official," was the only evidence given of the making of such an order, a conviction under it was quashed.⁵⁵

It is the duty of justices, when technical objections are taken, either before or after the close of the case for the prosecution, to offer an adjournment if the defect can be remedied thereby.⁵⁶

Orders and convictions are not to be vacated, quashed, or set aside for want of form : see sect. 262.

By a section in the non-adoptive Part of the Public Health Acts Amendment Act, 1890,⁵⁷ "any information, complaint, warrant, or summons made or issued for the purposes of" the Public Health Acts "may contain in the body thereof or in a schedule thereto several sums."

By sect. 1 of the Probation of Offenders Act, 1907,⁵⁸ "(1) Where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either (i) dismissing the information or charge; or (ii) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order." Sub-sect. (2) of the same section contains a similar provision with respect to persons "convicted on indictment of any offence punishable with imprisonment." By sub-section (3), "the court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss (not exceeding in the case of a court of summary jurisdiction £10, or, if a higher limit is fixed by any enactment relating to the offence, that higher limit) and to pay such costs of the proceedings as the court thinks reasonable." The remainder of this sub-section, relating to persons under sixteen, was repealed by the Children Act, 1908.⁵⁹

The three conditions on which the exercise of the jurisdiction conferred by sect. 1 of the Act of 1907 is made to depend are "alternative" and not "cumulative," and, though one justice may accept one and another justice another, there must be facts in evidence to justify their individual conclusions. Thus, a person was charged with contravening a regulation under the Defence of the Realm Act as to drilling, and one of three justices found that the offence had been proved and was not trivial; another that it had been proved, but was trivial; and the third that it had been proved, but that the Executive had unfairly discriminated between the defendant and others who had committed the same offence before and afterwards. It was held that, as the offence was not trivial, and there was no evidence of unfair discrimination (the justices having acted *ex informata conscientia*), the case must be sent back for a conviction.⁶⁰

But the Divisional Court, in a prosecution for obstructing a footway by a stall projecting about sixteen inches from the shop front, held that the fact that a number of other stalls projected from shop fronts in the same street, in some cases to a greater extent than the defendant's stall, was, for the purposes of the above-quoted provision of the Act of 1907, an "extenuating circumstance."⁶¹ And the facts (a) that an obstruction over a sewer could be removed within a few hours, and (b) that the sewer was twenty-six feet deep, were held to justify a finding that the offence was "trivial" under this section.⁶² And where justices "did not say that to play cards in a public-house was a trifling offence," but

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Duty of justices to adjourn.

Form of order.

Consolidation of proceedings.

Probation of Offenders Act, 1907.

Trivial offences.

(55) *Tyrrell v. Cole* (1918), 120 L. T. 156; 83 J. P. 53; 17 L. G. R. 258. But see *Duffin's Case*, *infra*. Further as to the proof of official documents, see *ante*, p. 261.

(56) *Duffin v. Markham* (1918), 88 L. J. K. B. 581; 119 L. T. 149; 82 J. P. 281; 16 L. G. R. 807, *re non-proof of statutory order*.

(57) See s. 8, *post*, Part I., Div. II.

(58) 7 Edw. VII. c. 17, s. 1, repealing, by s. 10 and Sched., S. J. Act, 1879, 42 & 43 Vict. c. 49, s. 16.

(59) 8 Edw. VII. c. 67, s. 134 (3), Sched. III. For the provisions of this Act as to "juvenile

offenders," see ss. 94-113. Further as to legal proceedings in respect of children, see Education Act, 1921, 11 & 12 Geo. V. c. 51, ss. 139-149.

(60) *McClelland v. Brady*, 1918 Ir. K. B. 63. See also *Vigers' Case*, *infra* (62), where one good reason was held to cure several bad ones; and *Barnard's Case*, *post*, p. 658 (70), as to discriminatory action by police.

(61) *Dunning v. Trainer* (1909, K. B. D.), 101 L. T. 421; 73 J. P. 400; 7 L. G. R. 919.

(62) *Vigers Bros. v. London C.C.*, *ante*, p. 93 (7).

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Trivial
offences—
continued.

found on the facts that what was done "was of a trifling nature," a rule *nisi* requiring them to state a case was refused.⁶³

In two cases, one where justices had dismissed a summons under a bye-law because they considered (wrongly, as the King's Bench Division held) that the bye-law was unreasonable,⁶⁴ and the other where they had convicted of an offence against a bye-law, but in which their attention had not been called to the corresponding and now repealed provision in the Act of 1879,⁶⁵ the court remitted the special cases which had been stated for the opinion of the court with an intimation that the justices could exercise a discretion and deal with the matter under that provision if they thought the circumstances warranted that course.⁶⁶

The fact that the defendant has been previously convicted does not prevent the justices holding that his second offence is trivial.⁶⁷

A dismissal of a summons under sect. 16 of the Act of 1879, on the ground that the factory occupiers had "used every possible means to carry out" the Act, was held not justified by the facts.⁶⁸ The fact that justices disagree with the refusal of an exemption by the Inland Revenue Commissioners is no ground for holding that keeping a dog without a licence is a trivial offence.⁶⁹ And a *bonâ fide* intention to get a transfer of a licence at the next available sessions did not make the offence of selling intoxicating liquor without a licence trifling.⁷⁰ Repeated attempts to obtain a conscientious objection certificate did not render non-vaccination a trifling offence.⁷¹ The fact that a sewerage scheme was contemplated was held not to justify a finding that pollution was "trifling."⁷² And though justices found that the defendant's use for non-domestic purposes of water supplied for domestic purposes had been "trifling," the case was sent back for a conviction.⁷³ An unpremeditated disturbance of a public meeting was held trivial.^{73a}

In an Irish case it was held that, looking at the terms of the Act which created the offence (a publican's displaying a flag which was not known as the usual sign of the premises), it was obvious that the Legislature considered the offence a serious one, and that the justices were wrong in dismissing the summons on the ground that the offence was "trivial" without evidence of "extenuating circumstances."⁷⁴

In another Irish case⁷⁵ justices found that a councillor had been acting when disqualified by reason of interest in a contract, but dismissed the summons on the ground of the triviality of the offence, extenuating circumstances, and the good character of the defendant. It was held that, as the facts (1) that the contract had been in existence for five years, and (2) that the councillor had never been told of his disqualification, were not extenuating circumstances, and, as no actual evidence of good character had been given, the case must be sent back for a conviction.

Intention.

Absence of intention to contravene a prohibition against harbouring goods was held to be a good defence.^{75a}

Appeal.

Though a summons is dismissed under sect. 1 of the Act of 1907, the defendant can appeal by special case, as the finding that the offence has been proved is a "determination" within sect. 33 of the Act of 1879.⁷⁶

Imprisonment
for debt.

By the Debtors Act, 1869,⁷⁷ which was not repealed by the Bankruptcy Acts, 1883 or 1914, "with the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money. There shall be excepted from the operation of the

(63) *Per* Darling, J., in *Ex parte Marshall* (1907), 71 J. P. at p. 502, col. ii.

(64) *Salt v. Scott-Hall*, ante, p. 503 (81).

(65) 42 & 43 Vict. c. 49, s. 16.

(66) *Pomeroy v. Malvern U.D.C.* (1903), 89 L. T. 555; 67 J. P. 375; 1 L. G. R. 825.

(67) *Venters or Vinters v. Freedman* (1901), 71 L. J. K. B. 48; 85 L. T. 628; 66 J. P. 135.

(68) *Rogers v. Barlow & Sons* (1906), 94 L. T. 519; 70 J. P. 214.

(69) *Phillips v. Evans*, L. R. 1896, 1 Q. B. 305; 65 L. J. M. C. 101; 74 L. T. 314; 60 J. P. 120.

(70) *Barnard v. Barton*, L. R. 1906, 1 K. B. 357; 75 L. J. K. B. 326; 92 L. T. 859; 69 J. P. 281. See also *Banton v. Davies* (1891), post, Vol. II., p. 1666, driving stage coach without licence not trivial.

(71) *Nisbet v. Lloyd* (1904, K. B. D.), 69 J. P. 396; 2 L. G. R. 1277.

(72) See the *Lee Conservancy Case*, post, Vol. II., p. 1760 (20).

(73) *Cambridge Water Co. v. Hancock* (1910, K. B. D.), 103 L. T. 562; 74 J. P. 477; 8

L. G. R. 1018.

(73a) *Redwood v. Jones* (K. B. D.), Ap. 17, 1923, M.S.

(74) *Glasgow v. O'Connor* (1910, K. B. D., I.), 45 Ir. L. T. 5; 2 Glen's Loc. Gov. Case Law 194. See also *Oaten's Case*, infra (76); *Marshall v. Skett*, cited in Note to S. F. D. Act, 1875, s. 6, post, Part II., Div. II.; *Preston v. Redfern*, cited in Note to s. 14 of the same Act; and *Rennie v. Boardman* (1914, K. B. D.), 111 L. T. 713; 78 J. P. 420; 12 L. G. R. 1092, as to school attendance.

(75) *O'Donoghue v. Morris* (1914, K. B. D., I.), 48 Ir. L. T. Jo. 61; 5 Glen's Loc. Gov. Case Law 37.

(75a) *Frailey v. Charlton*, L. R. 1920, 1 K. B. 147; 88 L. J. K. B. 1285; 121 L. T. 577; 83 J. P. 249, re ship steward and toilet soap.

(76) 42 & 43 Vict. c. 49, s. 33. *Oaten v. Auty*, L. R. 1919, 2 K. B. 278; 88 L. J. K. B. 1072; 121 L. T. 215; 83 J. P. 173; 17 L. G. R. 697. See also ante, p. 372 (38), post, p. 662 (11).

(77) 32 & 33 Vict. c. 62, s. 4.

above enactment : (1) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract : (2) default in payment of any sum recoverable summarily before a justice or justices of the peace."

The general rule is that the Crown neither pays nor receives costs, and accordingly where an action, for breach of contract,⁷⁷ failed because the defendant was "the Crown" it was dismissed "without costs."⁷⁸

But it has been held that the Crown is bound by the provisions of sect. 18 of the Summary Jurisdiction Act, 1848, in consequence of sect. 53 of the Summary Jurisdiction Act, 1879, and that the justices can therefore give costs for or against the Crown in prosecutions under the Revenue Acts.⁷⁹

Where prohibition proceedings succeeded, and there was no power to order costs against the Crown, the court said they thought it "eminently just" that the Crown should pay.⁸⁰

The Crown is not bound by the rule that application for a writ of *certiorari* must be made within six months of the making of the justices' order.⁸¹ Although the Public Works Commissioners are an incorporated body, they are not bound by the Statute of Limitations when they are acting as mere agents of the Crown.⁸²

Jurisdiction of County Court.

Demands below £50, which are by this Act recoverable in a summary manner, may at the option of the local authority be recovered in the county court instead.⁸³

Statutory Remedies.

Where a statute creates a new offence by prohibiting and making unlawful anything that was before lawful, and appoints a specific remedy against such new offence by a particular method of proceeding, that particular method of proceeding must be pursued and no other.¹ There is, however, a distinction between a substantive independent clause and a prohibition *sub modo*. *Per* Denison, J. : "where an offence is not so at common law, but made an offence by Act of Parliament, yet an indictment will lie where there is a substantive prohibitory clause in such Act of Parliament, though there be afterwards a particular provision, and a particular remedy given : but it is otherwise where the Act is not prohibitory, but only inflicts the forfeiture and specifies the remedy."²

In the case of the existence of a specific legal right, and the absence of an effectual remedy, proceedings by *mandamus* may be taken.³

In one case the rule was made absolute, leaving the respondents to raise the question of the appropriateness of the remedy upon the return to the writ.⁴ The court will exercise its discretion in favour of the applicant if "natural justice" requires this relief,⁵ and against him if his "interest" is not sufficient,⁶ or if there has been undue delay on his part,⁷ or if the objection is "technical and trumpery,"^{7a} or if the Crown Office Rules have not been strictly complied with,⁸ or if there has been no demand and refusal,⁹ or if there has been a mere "error" of fact or law as distinguished from "excess of jurisdiction,"¹⁰ or if there is a more satisfactory,¹¹ or even an equally convenient,¹² remedy. If the act required

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The Crown
and costs.The Crown
and statutes.Small
demands.Criminal
offences.

Mandamus.

(77) *Rowland v. Air Council* (No. 1) (1923, Russell, J.), 39 T. L. R. 228; 67 Sol. J. & W. R. 365; W. N. 64.

(78) *Rowland v. Air Council* (No. 2) (1923, Russell, J.), W. N. 72; 58 L. J. Jo. 99.

(79) *Thomas v. Pritchard*, L. R. 1903, 1 K. B. 209; 72 L. J. K. B. 23; 87 L. T. 688; 67 J. P. 71.

(80) See *Rex v. Emerson*, *post*, p. 697 (48).

(81) C. O. R. 1906, Rule 21. *Rex* (A.G.) *v. Amendt*, L. R. 1915, 2 K. B. 276; 84 L. J. K. B. 1259; 113 L. T. 35; 79 J. P. 324.

(82) *Public Works Comrs. v. Pontypridd Masonic Hall Co.*, L. R. 1920, 2 K. B. 233; 89 L. J. K. B. 607; 123 L. T. 334; 84 J. P. 139; 18 L. G. R. 771. For other cases relating to the Crown, see *post*, p. 784, and Index.

(83) See s. 261, *post*, p. 699.

(1) *Reg. v. Lovibond* (1871), 24 L. T. 357; 19 W. R. 753; 36 J. P. 20; *Reg. v. Hall*, L. R. 1891, 1 Q. B. 747; 60 L. J. M. C. 124; 64 L. T. 394; *Reg. v. Wigg*, *ante*, p. 128; *Atkinson v. Newcastle and Gateshead Water Co.*, and other cases cited *ante*, p. 371 (19), and *post*, pp. 660 (17), 661 (27), 674 (4), 743 (11).

(2) *Rex v. Wright* (1758), 1 Burr. 547. Followed in *Reg. v. Buchanan* (1846), 8 Q. B. 883; 15 L. J. Q. B. 227; and see *ante*, p. 371.

(3) *Rex v. Nottingham Water Co.* (1837),

6 A. & E. 355; 1 N. & P. 480. See also the *Poplar Case*, *ante*, p. 577, and *Hardy's Case*, *post*, p. 703 (47).

(4) *Rex v. Wilts and Berks Canal Co.*, *ante*, p. 281 (14).

(5) *Rex* (Vaugh) *v. Estate Comrs.*, 1911 Ir. K. B. 11; 2 Glen's Loc. Gov. Case Law 174.

(6) *Reg. v. Lewisham Guardians*, *ante*, p. 240 (29), but see *Rex v. Manchester Cpn.*, *ante*, p. 496 (48).

(7) *Rex v. Hertford Overseers*, *ante*, p. 527.

(7a) See *Watson's Case*, *post*, Vol. II., p. 1962 (14).

(8) *Rex v. Andover R.D.C.*, *post*, Vol. II., p. 2093.

(9) *Ex parte Parsons*, *post*, p. 745 (27). But see *per* Darlinz, J., in *Rex* (Crosby) *v. Hanley Revising Barrister*, 10 L. G. R. at p. 847.

(10) *Rex* (Neville) *v. Monmouthshire JJ.* (1913, C. A.), 109 L. T. 788; 78 J. P. 9; 30 T. L. R. 26.

(11) For instance to appeal to magistrate, see *Rex* (Thornton) *v. London C.C.* (1911, K. B. D.), 27 T. L. R. 422; 2 Glen's Loc. Gov. Case Law 176. See also (7a), *supra*.

(12) See *Kynoch's Case*, cited in Note to P. H. Am. Act, 1890, *post*, Part I., Div. II. But see *Peake's Case*, *ante*, p. 517 (36).

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to be done is merely "ministerial," the court has no discretion, but must make the rule absolute.¹² As to whether an appeal against an improper refusal of a licence should be by *mandamus*, prohibition, or special case, see the case cited below.¹³

Injunction.

A bye-law, for the infringement of which penalties recoverable summarily are imposed, can, it has been held, be enforced by injunction in an action by the Attorney-General at the relation of the local authority, but not in an action by the local authority in their own name alone.¹⁴

Action.

Costs and expenses recoverable by an urban authority in respect of the services of their fire brigade are not "costs and expenses" within the present section, and can therefore be recovered by action.¹⁵

A local Act, which incorporated the Waterworks Clauses Act, 1847, imposed certain penalties on the local authority for neglecting to provide the prescribed compensation water for mill owners and enabled such owners to "sue for and recover" the penalties. It was held by the Court of Appeal that this enabled the owners to recover the penalties by action, and that they were not confined to the statutory summary remedy, the penalties being compensatory and not punitive.¹⁶

Where a pecuniary obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy and that remedy only must, as a general rule, be adopted.¹⁷ But an action lies for a declaration that a liability exists, though the liability is only enforceable summarily.¹⁸

In cases in which expenses, etc., are to be recovered by summary proceedings, an action will not lie for their recovery, except where, as above mentioned, with reference to the jurisdiction of the county court, express provision is made for their recovery by action.¹⁹ The objection can, however, be waived.²⁰

When there is a liability existing at common law, which is only re-enacted by a statute with a special form of remedy, then, unless the statute contains words necessarily excluding the common law remedy, a person has his election of proceeding either under the statute or at common law. If the statute has created a liability without giving any special remedy for it, then he may adopt an action of debt or other remedy at common law to enforce it.²¹

If a statute gives a summary remedy and declares it not in derogation of a right to recover "by any other proceedings," the statutory remedy is not exclusive.²²

And if a statute enacts, either by way of new creation or by way of restatement of an ancient right, a right of property, the ordinary incidents attach to such right, including the right to protect it by proceedings in the Court of Chancery. This was so held by Farwell, J., in a case in which the plaintiff claimed rights and tolls under certain local Acts for the regulation of an ancient market, and sought a declaration that the defendant was not entitled to sell marketable commodities except in accordance with those Acts, and an injunction, an account of tolls due, and damages.²³

The imposition of a penalty for default in supplying electricity to consumers was held not to prevent a person supplied by agreement from enforcing such agreement by action.²⁴

(12) *Rex (Kent) v. Bishop of Sarum*, L. R. 1916, 1 K. B. 466; 85 L. J. K. B. 544; 114 L. T. 366; 80 J. P. 53; 14 L. G. R. 335, *re* admission of duly elected but unfit churchwarden. See also *Rex (Dunn) v. Christ's Hospital Governors*, L. R. 1917, 1 K. B. 19; 85 L. J. K. B. 1494; 115 L. T. 545; 80 J. P. 975, *re* appointment of almoner "recommended" by Lord Mayor.

(13) *Ellis v. Dubowski*, cited in Note to P. H. Am. Act, 1890, s. 51, *post*, Part I., Div. II. On this point, see *per* Avory, J., 19 L. G. R. at p. 646.

(14) See *ante*, p. 209.

(15) *Grays Thurrock U.D.C. v. Grays Chemical Works, Ltd.*, *post*, Vol. II., p. 1658.

(16) *Meltham Spinning Co. v. Huddersfield Cpn.* (1903), 89 L. T. 403; 67 J. P. 445; 2 L. G. R. 32.

(17) *Stevens v. Evans* (1761), 2 Burr. 1157; *St. Pancras Vestry v. Batterbury* (1857), 2 C. B. (N.S.) 477; 26 L. J. C. P. 243; 3 Jur. (N.S.) 1106. *Hendon Electric Supply Co. v. Banks*, *post*, Vol. II., p. 1315. *Hulme v. Ferranti, Ltd.*, L. R. 1918, 2 K. B. 426; 87 L. J. K. B. 938; 118 L. T. 719; 16 L. G. R. 813.

(18) *Berwick v. South Eastern Ry. Co.*, *ante*, p. 12 (14); *Simmonds v. Newport Coal Co.*, L. R. 1921, 1 K. B. 616; 90 L. J. K. B. 609; 124 L. T. 557; 85 J. P. 109.

(19) See *Blackburn Cpn. v. Parkinson* (1858), 1 E. & E. 71; 28 L. J. M. C. 7; 5 Jur. (N.S.) 572.

(20) See *per* Warrington, L.J., in *Postmaster-General v. Blackpool Tramroad Co.* (1919, K. B. D.), 18 L. G. R. at p. 146. Affirmed in C. A. (where this point was not taken), *post*, Vol. II., p. 1363.

(21) *Wolverhampton New Water Co. v. Hawkesford* (1859), 6 C. B. (N.S.) 336; *Stevens v. Chown*, *infra*.

(22) *Waghorn v. Collison* (1922, C. A.), 91 L. J. K. B. 735; 127 L. T. 8; 86 J. P. 94; 20 L. G. R. 351, *re* wages under Corn Production Act, 1917, 7 & 8 Geo. V. c. 46, ss. 4, 6.

(23) *Stevens v. Chown*, L. R. 1901, 1 Ch. 894; 70 L. J. Ch. 571; 84 L. T. 796; 65 J. P. 470.

(24) *Morris and Bastert, Ltd. v. Loughborough Cpn.*, *post*, Vol. II., p. 1225.

Where a special remedy has been given, but the person aggrieved can no longer have recourse to it, he may have a right of action.²⁵ **Sect. 251, n.**
Action—cont.

But where a navigation Act authorised the undertakers to remove any vessel which might be sunk in the navigation and detain it until payment of their expenses should be made, or sell it to defray such expenses, or to recover the expenses summarily, the House of Lords held that this did not make the expenses a debt due to the undertakers, and that therefore an action would not lie to recover them.²⁶ Where, however, a statute made a person who obstructed a highway liable to a penalty, “and to a further sum equal to the cost incurred” by the local authority in removing the obstruction, it was held that an action lay for the sum so incurred.²⁷

For a case relating to the “inherent jurisdiction” of the High Court, see that cited below.²⁸

Appeal.

Summary proceedings are not to be quashed for want of form, nor removed to the High Court of Justice except on special case.²⁹ As to appeals by special case, see sect. 262; as to appeals to the Minister of Health in respect of expenses recoverable summarily, see sect. 268; and as to appeals to quarter sessions against summary convictions, etc., see sect. 269 and the Notes to those sections, *post*.

Sect. 252. [*General provisions as to summary proceedings.*³⁰]

Sect. 253. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General: Provided that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house building manufactory or place situated without their district.

Restriction on recovery of penalties.
P.H., s. 133.

Note.

The Divisional Court held that the present section does not apply to penalties under the incorporated provisions of the Town Police Clauses Act, 1847, and that therefore a police constable can arrest and prosecute an offender under those provisions, though he is not a person aggrieved.² But a district council cannot, under sect. 259, give a general power to the police to institute proceedings under the present Act at their discretion as officers of the council.³

Party aggrieved.

It has been held that an information for violation of a bye-law, laid on behalf of the corporation who were the local board for the district, did not require to be laid by a person appointed under the seal of the board, and by consent of the Attorney General.⁴

The term “party aggrieved” is not a technical expression. Such party is not brought into existence by the Act which gives him the penalty: he was a person who was grieved before, and the Act is passed to relieve him.⁵

A complainant proved that a nuisance from black smoke reached her property outside the district on several occasions other than the date specified in her complaint, but, as a person is not, if once aggrieved, “always aggrieved,” she was held not to be “aggrieved” within the meaning of sect. 105 of the present Act.⁶

An unsuccessful candidate at an election was held to have been a person aggrieved by the fabrication of a voting paper in which votes were given to his opponent.⁷ But an unsuccessful candidate was held not to be aggrieved by the successful

(25) *Per Romer, J., in Bentley v. Manchester Sheffield and Lincolnshire Ry. Co., post, p. 760 (41).*

(26) *Barraclough v. Brown* L. R. 1897 A. C. 615; 66 L. J. Q. B. 672; 76 L. T. 797; 62 J. P. 275; 8 Asp. M. C. 290.

(27) *Snushall v. Kaikoura C.C.* (1923, P. C. from New Zealand), L. R. 1923 A. C. 459.

(28) *In re Jones and Carter* (C. A.), L. R. 1922, 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622, *re exclusive jurisdiction of C. Ct. under Ag. Holdings Act, 1908*, 8 Edw. VII. c. 28, s. 13 (4), Sched. II.

(29) See s. 262 and Note, *post*, p. 700; and *Garrett-Pegge's Case, ante*, p. 654 (13).

(30) First clause of present section (similar to S. J. Act, 1848, s. 11, set out *ante*, p. 650),

repealed by S. J. Act, 1884; remainder (similar to S. J. Act, 1849, s. 39 (1), (2), set out *ante*, p. 654), repealed by S. L. R. Act, 1883.

(2) *Jobson v. Henderson* (1900), 82 L. T. 260; 64 J. P. 425.

(3) See *Kyle v. Barber, post*, p. 698 (10).

(4) *Harring v. Stockton Cpn.* (1867), 31 J. P. 420.

(5) *Per Bramwell, L.J., in Robinson v. Currey* (1881), L. R. 7 Q. B. D. 465; 50 L. J. Q. B. 561; 45 L. T. 368; 46 J. P. 148.

(6) *Hilton v. Hopwood*, 1900 Loc. Gov. Chron. 137; 44 Sol. J. 90; 34 L. J. Jo. 667.

(7) *Verdin v. Wray* (1877), L. R. 2 Q. B. D. 608; 46 L. J. M. C. 170; 35 L. T. 942; 41 J. P. 484.

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Party
aggrieved—
continued.

though unqualified candidate acting as a member.⁸ In a case where it seems to have been assumed that the present section is applied by sect. 316 to proceedings under enactments incorporated with the Act, it was held that proceedings taken by the servant of an association of retail dealers, many of whom dealt in tollable articles, for a breach of sect. 13 of the Markets and Fairs Clauses Act, 1847, were taken by a "party aggrieved."⁹

The compensation authority under the Licensing Acts, merely having to pay out of their funds the amount determined by another body, cannot appeal against such a determination as "parties aggrieved."¹⁰

Where justices found that an offence under the Military Service Acts had been proved, but dismissed it under the Probation of Offenders Act, 1907, the defendant was held entitled to appeal as a "person aggrieved."¹¹

A person who first pleads guilty before a court of summary jurisdiction, and then withdraws the plea and is convicted, can appeal as a "person aggrieved"¹²; but he cannot do so if he does not withdraw the plea,¹³ unless the offence is not indictable, in which case his plea makes no difference.¹⁴

It was held that Sched. II., Part I., rule 70 of the present Act, under which a person acting as member of a local board when disqualified was liable to a penalty recoverable by any person by action, constituted such an exception as is referred to in the present section; and that any person was entitled to bring an action to recover the penalty under that rule without being a "party aggrieved."¹⁵ See also sects. 68, 105, and 106 of the present Act.

In holding that a local authority cannot prosecute in respect of any contravention of any provision in Part I. of the Children Act, 1908,¹⁶ the following observations were made in the Scottish Court of Justiciary:—"I cannot conceive any case in which a public body—whether a Government Department or a local authority—entrusted with the administration of an Act of Parliament, can be said to be aggrieved or injured by failure to observe the statutory provisions"¹⁷; and "I cannot assent to the suggestion that they had a pecuniary interest in respect that they might incur greater expense in the course of their administration if such offences were committed."¹⁸

As to the right of food and drugs inspectors of local authorities, and of police superintendents, to take summary proceedings on their own initiative under sect. 117 of the present Act, see the Note to that section.¹⁹

An applicant for a writ of *certiorari* must be "aggrieved."^{19a}

Common
informer.

A corporation cannot be a common informer in a penal action, unless expressly empowered by statute²⁰; but an officer of a corporation can take summary proceedings for penalties, although he may lay the information "on behalf of the corporation," at any rate, if there is no evidence that the corporation do not possess the necessary statutory powers to prosecute.²¹ As to withholding from a common informer his share in a penalty, see the Note to sect. 254.

The surveyor of an urban district council laid an information against the defendant for unlawfully taking shingle from a portion of the foreshore of a port. The information was expressed to be laid by the prosecutor "as surveyor for and on behalf of the" council. It was under an Act which provided that half the

(8) *Hollis v. Marshall* (1858), 2 H. & N. 755; 27 L. J. Ex. 235; see also *Drapers' Co. v. Hadder*, *post*, p. 716 (15).

(9) *Ross v. Taylerson* (1898), 62 J. P. 181.

(10) *Liverpool Compensation Authority v. I. R. Comrs.*, L. R. 1913, 1 K. B. 165; 82 L. J. K. B. 349; 108 L. T. 68.

(11) *Oaten v. Auty*, *ante*, pp. 372 (38), 658 (76). See also *Rex (Collas) v. Bermondsey L.T.* (1917), 87 L. J. K. B. 330; 118 L. T. 23; 82 J. P. 98; 16 L. G. R. 151, *re appeal* to A. T.

(12) *Harris v. Cooke* (1918, K. B. D.), 88 L. J. K. B. 253; 83 J. P. 72; 16 L. G. R. 850. See also *post*, p. 716 (10), as to this case.

(13) *Moseley v. Director of Public Prosecutions*, L. R. 1920, 1 K. B. 16; 88 L. J. K. B. 1166; 121 L. T. 581; 83 J. P. 214; 17 L. G. R. 562.

(14) *Mittelman v. Denman*, L. R. 1920, 1 K. B. 519; 89 L. J. K. B. 310; 122 L. T. 426; 84 J. P. 39; 18 L. G. R. 121. See *Metrop. P. C. Act*, 1839, 2 & 3 Vict. c. 71, s. 50. *S. J. Act*, 1879, 42 & 43 Vict. c. 49, ss. 13, 17, 19. *C. J. Adm. Act*, 1914, 4 & 5 Geo. V. c. 58, s. 37.

(15) *Fletcher v. Hudson* (1880, C. A.), L. R.

5 Ex. D. 287; 49 L. J. Ex. 793; 43 L. T. 404; 45 J. P. 5.

(16) 8 Edw. VII. c. 67, ss. 1-11.

(17) *Per Lord Strathclyde, L.J.G.*, in *Glasgow P.C. v. Edward*, 1914 S. C. (J.) 159 at p. 163; 51 Sc. L. R. 674; 5 Glen's Loc. Gov. Case Law 34. But see *Savill v. Harben*, *post*, Vol. II., p. 1660 (4).

(18) *Per Lord Guthrie, ibid.*, 1914 S. C. (J.), at p. 164.

(19) *Ante*, p. 230. See also *Rigney's Case*, *ante*, p. 225, and *Jones' Case*, *post*, Vol. II., p. 1911.

(19a) *Ex parte Stott*, *post*, p. 701 (13a).

(20) *Shoreditch Guardians v. Franklin* (1878), L. R. 3 C. P. D. 377; 47 L. J. C. P. 727; 39 L. T. 122; 42 J. P. 727; distinguished in *Lake's Case*, *post*, p. 663.

(21) *Allman v. Hardcastle* (1903), 89 L. T. 553; 67 J. P. 440; 2 L. G. R. 13. See also *Giebler v. Manning*, *ante*, p. 231; *Reg. v. Stewart*, L. R. 1896, 1 Q. B. 300; 65 L. J. M. C. 83; 74 L. T. 54; 60 J. P. 356; and *Keep v. Alexander* (1909, K. B. D.), 101 L. T. 430; 73 J. P. 403; 7 L. G. R. 894.

penalty should go to the Crown and half to the informer. The justices dismissed the information on the ground that the council, as a corporation, could not be common informers. The case was remitted to the justices to be dealt with on the ground that the surveyor and not the council was the informer.²²

The defendant was alleged to have committed malicious damage to a holly tree at Burnham Beeches, belonging to the Corporation of the City of London. Information was laid by the chief ranger, and expressed to be "on behalf of the Mayor and Corporation of the City of London." The chief ranger had general power to prosecute for offences against the bye-laws of the corporation. The justices dismissed the summons on the ground that there had been no resolution of the corporation authorising the prosecution, or documentary evidence that the proceedings had been instituted by a properly constituted attorney of the corporation. It was held that the case must be remitted to be heard on its merits on the ground that the words above quoted either meant that the information was laid by the appellant because the tree belonged to the corporation and he was their officer or were surplusage, for anyone could prosecute for the offence in question.²³

Proceedings for trespass in pursuit of game were instituted by a person who was acting as gamekeeper for a harrier club, but who had no gamekeeper's licence. The defendant's solicitor took the preliminary objection that the prosecutor had no *locus standi*. The prosecutor maintained that he was prosecuting as "gamekeeper," and not as "common informer." The summons was dismissed, subject to a special case. It was held that, as the prosecutor had denied that he was a common informer merely because he considered it a term of abuse, and as he had not withdrawn the complaint, he must be taken to have instituted the proceedings as "common informer," and that the case must go back to the justices to be dealt with on its merits.²⁴

A common informer need not be "an eye-witness of the matter about which he informs." ²⁵

During the hearing of an appeal at quarter sessions the common informer died, and the court adjourned the case. At the next quarter sessions the court allowed a fresh common informer to appear. It was held that power to substitute was given "by the necessities of the case," and that a rule *nisi* for *certiorari* quashing the conviction must be discharged.²⁶

The plaintiff, a common informer, in an action for a penalty under the above-mentioned rule 70, was held not to be entitled to administer interrogatories to the defendant.²⁷

The proviso to the present section has reference to sect. 108 relating to nuisances, and sect. 118 relating to offensive trades.

Sect. 254. Where the application of a penalty under this Act is not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local authority of the district in which the offence was committed : Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered ; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act.

Note.

With regard to the persons who may act as informers, see sect. 253 and Note. Sect. 316 of the present Act provides that "all penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act."

Penalties imposed by an Act not so incorporated, if such Act contains no "directions for the payment thereof to any person or persons," are to be paid "to

(22) Harbours Act, 1814 (54 Geo. III. c. 159), ss. 14, 21. *Lake v. Smith* (1911, K. B. D.), 108 L. T. 41; 76 J. P. 71; 10 L. G. R. 218. *Giebler's Case*, ante, p. 231, applied.
(23) 24 & 25 Vict. c. 97, s. 22. *Duchesne v. Finch* (1912, K. B. D.), 107 L. T. 412; 76 J. P. 377; 10 L. G. R. 559. See also *Young v. Peck*, under Conspiracy, etc., Act, 1875, 38 & 39 Vict. c. 86, s. 7; 107 L. T. 857; 77 J. P. 59; 29 T. L. R. 31; 23 Cox C. C. 270.
(24) *Hennessy v. Ryall* (1910, K. B. D., I.), 45 Ir. L. T. 4; 2 Glen's Loc. Gov. Case Law 188. See also *Munro v. Buchanan* (prosecution by member of angling association), 1910 S. C. (J.) 47; 47 Sc. L. R. 467; 1 Glen's Loc.

Gov. Case Law 87.
(25) *Per Palles*, L.C.B., in *McCormack v. Carroll* (1910, K. B. D., I.), 45 Ir. L. T. 7; 2 Glen's Loc. Gov. Case Law 188.
(26) *Rex (Donovan) v. Cork County JJ.* (1913, K. B. D., I.), 47 Ir. L. T. 168; 5 Glen's Loc. Gov. Case Law 135.
(27) *Martin v. Treacher* (1886, C. A.), L. R. 16 Q. B. D. 507; 55 L. J. Q. B. 209; 54 L. T. 7; 50 J. P. 356. But see *National Assoc. of Operative Blasterers v. Smithies*, L. R. 1906 A. C. 434; 75 L. J. K. B. 861; 95 L. T. 71. No answer to application for interrogatories that answer might "incriminate."

Sect. 253, n.
Common informer—
continued.

Death of informer.

Interrogatories.

Proviso.

Application of penalties.
P.H., s. 133.
L.G., s. 47.

Informer.
Application of penalties.

Sect. 254, n.

the treasurer of the county, riding, division, liberty, city, borough, or place for which " the justice or justices acted, and the treasurer is required to give the clerk to the justices " a receipt without a stamp." ²⁸

The expression " borough or place " means a place having a court of quarter sessions, and, in boroughs having a commission of the peace, but no grant of quarter sessions, unappropriated penalties are payable to the treasurer of the county. ²⁹

See also sect. 221 of the Municipal Corporations Act, 1882, and Note, ³⁰ and sects. 5 and 34, sub-sect. (6) of the Criminal Justice Administration Act, 1914. ³¹

Remission of penalties.

The Crown may remit in whole or in part any sum of money which, under any Act now in force or hereafter to be passed, may be imposed as a penalty or forfeiture on a convicted offender, although such money may be, in whole or in part, payable to some party other than the Crown, and extend the royal mercy to any person who may be imprisoned for non-payment of any sum of money so imposed, although the same may be, in whole or in part, payable to some party other than the Crown. ³² This enactment, however, only allows the Crown to remit penalties imposed on offenders who have been convicted in proceedings of a criminal nature taken with a view to the punishment of the parties offending, and not penalties which are recoverable by action of debt. ³³

Withholding penalty.

Under the Metropolitan Police Courts Act, 1839, ³⁴ which gives a magistrate a discretion to withhold a share in a penalty from a common informer, it was held that such a share might be withheld, although there might be no evidence of corrupt practice on the part of the informer. ³⁵

Proceedings in certain cases against nuisances.

N.R. 1855,
ss. 33, 34, 39.

Sect. 255. Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to such court may appear fair and reasonable.

Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the " owner " or " occupier " of such premises, without name or further description.

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

Note.**Joint offenders.**

The general provisions of the present Act in relation to the abatement of nuisances are contained in sects. 91-111. " Sect. 255 facilitates proceedings against persons who jointly contribute to a nuisance. Under the Nuisances Removal Acts much difficulty was experienced in enforcing any remedy, unless it could be clearly

(28) 11 & 12 Vict. c. 43, s. 31; 40 & 41 Vict. c. 43, s. 6.

(29) *Reg. v. Dale* (1853, C. C. R.), 1 Dears. 37; 22 L. J. M. C. 44; 17 Jur. 47; 17 J. P. 68; see also M. C. Act, 1882, s. 221, *post*, Vol. II., p. 1837; and *Seamen's Hospital Soc. v. Liverpool Cpn.* (1849), 4 Ex. 180; 18 L. J. Ex. 371; *Reigate Cpn. v. Hunt* (1868), L. R. 3 Q. B. 244; 9 B. & S. 129; 37 L. J. M. C. 70; 18 L. T. 237; 32 J. P. 342; *Winn v. Mossman* (1869), L. R. 4 Ex. 292; 38 L. J. Ex. 200; 20 L. T. 672; 33 J. P. 743; *Reg. v. Yorkshire JJ.*, L. R. 1900, 1 Q. B. 291; 69 L. J. Q. B. 13; *George v. Thomas*, L. R. 1910, 2 K. B. 951; 80 L. J. K. B. 7; 103 L. T.

456; 74 J. P. 398; 8 L. G. R. 849. As to appropriation of penalties under local Acts, see *Alison v. Foyster*, 1871 W. N. 48; *Alison v. Charlesworth* (1885), 49 J. P. 294; *Alison v. Hall* (1888), 4 T. L. R. 527.

(30) *Post*, Vol. II., p. 1837.

(31) 4 & 5 Geo. V. c. 58, ss. 5, 34 (6).

(32) 22 Vict. c. 32, s. 1.

(33) *Todd v. Robinson* (1884), L. R. 12 Q. B. D. 530; 53 L. J. Q. B. 251; 50 L. T. 298; 48 J. P. 692.

(34) 2 & 3 Vict. c. 71, s. 34.

(35) *Hawke v. Mackenzie* (No. 3), L. R. 1902, 2 K. B. 234; 71 L. J. K. B. 570; 87 L. T. 131; 66 J. P. 712.

proved that the separate contribution of the person proceeded against would alone cause a substantial nuisance, such proof being often from the nature of the case almost impossible." ¹ Some cases in which this difficulty arose are cited in the Note to sect. 94.

It was held by the King's Bench Division that, where adjoining owners were both called upon by the local authority to repair a common drain used for the premises of both of them, and one owner did the work, the other refusing, the owner who did the work could not recover contribution from the other. ²

The fact that the lessees of two adjoining houses (held under the same landlord, and drained by a combined drain made under the order of a metropolitan vestry and therefore not vested in the local authority) were each bound by their respective leases to contribute to the cost of repairing the drain, was held by the same court not to give rise to any implied contract between the lessees, so as to enable one of them, who had been compelled to repair the drain under a nuisance order, to recover contribution from the other in an action based upon such contract; and it was also held that contribution was not recoverable under the Public Health (London) Act, 1891, ³ which expressly enables such contribution to be recovered in certain cases. ⁴

One of two defendants, against whom an action was brought in respect of a nuisance caused by their respective motor waggons, was ordered to be struck out. ⁵

Where two defendants join in their defence and both fail, the damages may not be apportioned. ⁶

A local authority employed a contractor to execute certain works on land adjoining a highway. The contractor left an unfenced and unlighted hole twenty-three feet deep at the side of the highway. A foot-passenger fell into the hole after dark, and died of the injuries received. In an action against the contractor and the local authority, the jury awarded the widow £1,000 and the daughter £200. It was contended by the contractor, on an application by the local authority for enforcement of an indemnity clause in the contract, that the local authority were guilty of a tort, either in not supervising his work or in neglecting to protect the public passing along the highway, and that therefore he and the local authority were joint tort-feasors, and that, as it was against public policy to order contribution between such persons, the local authority's application ought to be refused. It was contended by the local authority that one who employs a third person to fulfil a duty imposed by law may take an indemnity to himself in case mischief comes from that person fulfilling the duty negligently. It was held that the local authority were entitled to be indemnified by the contractor in respect both of the damages and the costs of the action. ⁷

By sect. 5 of the Summary Jurisdiction Act, 1848, ⁸ "Every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough, or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring may have been committed."

A servant cannot be convicted of aiding and abetting his master when his master is acquitted. ⁹ For other cases relating to "aiding and abetting," see those cited below. ¹⁰

Sect. 255, n.
Joint offenders—
continued.

Joint tort-feasors.

Aiding and abetting.

(1) L. G. Bd. Circular, Sep. 30, 1875.

(2) *Reeve v. Sadler* (1903), 88 L. T. 95; 67 J. P. 63; 1 L. G. R. 441.

(3) 54 & 55 Vict. c. 76, s. 120.

(4) *Nathan v. Rouse*, L. R. 1905, 1 K. B. 527; 74 L. J. K. B. 285; 92 L. T. 321; 69 J. P. 135; 3 L. G. R. 354.

(5) *Munday v. S. Metrop. Electric Light Co.* (1913), 29 T. L. R. 346; 57 Sol. J. & W. R. 427. See also *Sadler's Case*, ante, p. 207 (16); *Sansinena Co. v. Houlder Bros.*, L. R. 1910, 2 K. B. 354; 79 L. J. K. B. 1094; 103 L. T. 333.

(6) *Damiens v. Modern Society, Ltd.* (1910, Grantham, J.), 27 T. L. R. 164.

(7) *Newcombe v. Croydon R.D.C. and Yewen* (1913, Darling, J.), 29 T. L. R. 299;

4 Glen's Loc. Gov. Case Law 11.

(8) 11 & 12 Vict. c. 43, s. 5.

(9) *Morris v. Tolman*, L. R. 1923, 1 K. B. 166; 128 L. T. 118; 86 J. P. 221; 20 L. G. R. 803, *re* use of commercial car for unlicensed purposes.

(10) *Callow's Case*, ante, p. 231 (52); *Gould & Co.'s Case*, cited in Note to S. F. D. Act, 1899, s. 19, *post*, Part II., Div. II; *Provincial Motor Cab Co. v. Dunning*, L. R. 1909, 2 K. B. 599; 78 L. J. K. B. 822; 101 L. R. 231; 73 J. P. 387; 7 L. G. R. 765, *re* cab sent out with back lamp hanging too low, owners convicted of aiding and abetting offence; *Cook v. Stockwell* (1915), 84 L. J. K. B. 2187; 113 L. T. 426; 79 J. P. 394, *re* brewers and sellers of liquor without licence.

Sect. 255, n.
Form of
notices.

Summary
proceedings
for recovery
of rates.
P.H., s. 103.

L.G., s. 54

Notices may be addressed to the “ owner ” or “ occupier ” of premises without naming him, under sect. 267.

Sect. 256. If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for nonpayment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

Note.

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Rates made under this Act.

Water rates.

The present section refers only to the rates made by an urban district council under the present Act. Special provision is made with respect to the recovery of water rates, whether made by an urban or a rural district council, by the Water-works Clauses Act, 1847¹; but the Divisional Court has held that a water rate made by an urban district council is “ made under this Act,” so as to render a demand in writing necessary, and that consequently the six months’ limitation of the time for recovering the amount by summary proceedings does not commence to run before service of such demand.²

Private
improvement
rates.

Under sect. 232 a private improvement rate made by a rural district council is recoverable in the same manner as if it had been made by an urban district council.

Rural
districts.

As to the recovery of contributions to general and special expenses in rural districts, see sect. 230.

Demand.

Service of
demand.

The demand of the rate may be served in the manner provided by sect. 267. A demand, where one is requisite, for a larger sum than the amount which is really due, cannot be treated as a demand for the proper amount.³ And the Local Government Board intimated that it is not a proper proceeding for a council to include in the demand note for a general district rate a request for payment of a voluntary rate.

Amount
demanded.

But where a ratepayer went out of occupation during the period of a poor rate, a demand of the amount of the rate for the whole period, served on him before he went out of occupation, was held to be sufficient to justify the issue of a distress warrant for the apportioned part of the rate which remained due after his occupation ceased, even though the complaint alleged the amount for the whole period to be due.⁴

Payment on
account.

There is nothing to prevent the district council from accepting payment of an instalment of a rate on account, provided that they take care that they do not thereby prejudice the recovery of the balance, although they have not directed payment by instalments under sect. 222.

Bill of
exchange.

There being no authority to take payment by a bill of exchange accepted by the ratepayer, the latter cannot set up payment if the collector misappropriates the proceeds of such a bill.⁵

Remission on
ground of
poverty.

The urban authority may reduce or remit payment on account of the poverty of the person liable under sect. 225.

(1) See s. 74 and Note, *post*, Vol. II., p. 1235.

(2) *Elliott v. Russell*, L. R. 1902, 2 K. B. 748; 72 L. J. K. B. 15; 88 L. T. 204; 67 J. P. 158.

(3) See *per* Bowen, J., in *Pool and Forden Highway Bd. v. Gunning* (1882), 51 L. J.

M. C. 49; 46 L. T. 163; 46 J. P. 708.

(4) *Mansel v. Itchen Overseers*, L. R. 1906, 1 K. B. 221; 75 L. J. K. B. 232; 94 L. T. 320; 70 J. P. 148; 4 L. G. R. 279.

(5) *Smith v. Barham* (1887, Q. B. D.), 51 J. P. 581.

Recovery of Rates.

Sect. 256, n.

By the Poor Rates Recovery Act, 1862⁶: "Where any number of local rates and taxes, whether of the same or of different kinds, are due from the same person, the rates and taxes so due may be included in the same information, complaint, summons, order, warrant, or other document required by law to be laid before justices or to be issued by justices, and every such document as aforesaid shall, as respects each rate or tax comprised in it, be construed as a separate document, and its invalidity as respects any one rate or tax shall not affect its validity as respects any other rate or tax comprised in it. No costs shall be allowed in respect of several informations, complaints, summonses, orders, warrants, or other such documents as aforesaid, in cases where, in the opinion of the justices or court having jurisdiction over the said costs, one information, complaint, summons, order, warrant, or other document aforesaid might have sufficed, regard being had to the provisions of this Act."

Consolidation of proceedings.

It is also enacted by the Public Health Acts Amendment Act, 1890,⁷ that any complaint, warrant, or summons made or issued for the purposes of the Public Health Acts may contain in the body thereof or in a schedule thereto several sums.

One summons may contain both a claim in respect of unpaid poor rates and also a claim in respect of unpaid general district rates.⁸

By sect. 33 of the Criminal Justice Administration Act, 1914,⁹ "the provisions of the Summary Jurisdiction Acts relating to the backing of warrants,¹⁰ and of sect. 41 of the Summary Jurisdiction Act, 1879, relating to the proof of service of documents and of the handwriting and seal on documents, shall apply to proceedings in respect of the non-payment of any rate."

Backing warrants, proof of service, &c.

Under the repealed clause of the Public Health Act, 1848,¹¹ corresponding to the present section, a single justice had power to hear a complaint for non-payment of the rate, and to issue a distress warrant without a preliminary order, but under the present section it will be seen that the defaulter must be summoned to appear before a *court of summary jurisdiction* (i.e. two justices, or a stipendiary magistrate), and that such court must first make an order for the payment of the rate, and can only issue the distress warrant in default of compliance therewith.

Procedure.

It was held that the issue of a distress warrant to levy a rate made under a local Act was not within the limitation as to time laid down in the Summary Jurisdiction Act, 1848,¹² namely, six months from the time when the cause of complaint arose¹³; but inasmuch as, under the present section, the justices cannot issue such a warrant in the first instance, but must make an order for the payment of the money, and can only issue a distress warrant after the defendant has failed to comply with that order, the six months' limitation and other provisions of the Summary Jurisdiction Acts relating to cases in which justices may make orders for the payment of money are applicable to proceedings for the recovery of rates made under the present Act.

Limitation of time.

Where the assessment of a ratepayer to a general district rate is, after the rate has been demanded, reduced in consequence of an alteration made in the valuation list upon an appeal against the poor rate, and the reduced general district rate is then demanded, the time for recovery of the amount runs from the date of the latter demand and not from that of the former.¹⁴

The Rates (Proceedings for Recovery) Act, 1914,¹⁵ provides that sect. 11 of the Act of 1848 is not to apply to "any proceedings for the recovery of any rate where the institution of the proceedings has been deferred by the rating authority for the purpose of allowing time to persons who, by reason of circumstances attributable directly or indirectly to the present war, are temporarily unable to pay the rate."

War losses.

Objections to Enforcement of Rate.

If a rate is open to an objection not appearing on the face of it, the persons who deem themselves aggrieved by it must appeal against it under sect. 269¹⁶; for if

Objections constituting ground for appeal.

(6) 25 & 26 Vict. c. 82, s. 1.

(7) See s. 8, *post*, Part I., Div. II.(8) *Reg. (Hornsey U.D.C.) v. Glover* (1900, Q. B. D.), 35 L. J. Jo. 269, 270.

(9) 4 & 5 Geo. V. c. 58, s. 33.

(10) See S. J. Acts, 1848, 11 & 12 Vict. c. 43, s. 3, and 1879, 42 & 43 Vict. c. 49, ss. 36, 41.

(11) 11 & 12 Vict. c. 63, s. 103.

(12) 11 & 12 Vict. c. 43, s. 11, *ante*, p. 650.(13) *Sweetman v. Guest* (1868), L. R. 3 Q. B. 262; 37 L. J. M. C. 59; 18 L. T. 52.(14) *Keeton v. Sheffield Coal Co.*, L. R. 1901, 2 K. B. 26; 70 L. J. K. B. 374; 84 L. T. 387; 65 J. P. 341.

(15) 4 & 5 Geo. V. c. 85, s. 1.

(16) See *Hutchins v. Chambers* (1758), 1 Burr. 579.

Sect. 256, n.
Objections
constituting
ground for
appeal—cont.

a rate be good upon its face the justices ought to enforce it,¹⁷ unless in the cases, first, of the person assessed not having any assessable property; or secondly, unless some formalities in making the rate have not been duly observed, rendering the rate an absolute nullity. Where, therefore, a person was assessed to a special district rate, and not having appealed, was summoned for non-payment, and he thereupon alleged that the rate was bad, inasmuch as it was made to repay expenses to which it was not applicable, it was held that this was not an objection to which the justices ought to have given effect; but that the rate being good upon its face and not appealed against, they ought to have issued their warrant to levy it.¹⁸

Under a local Act, which was, so far as material to the question, in similar terms to the present section, and gave a similar right of appeal to quarter sessions to that given by sect. 269, a tramway company were rated in respect of their tramway at the full value, instead of (according to a decision of the Court of Appeal) at one-fourth of that value. It was held that, although no appeal had been made against the rate, the court of summary jurisdiction were not bound to enforce payment of the full amount of the rate.¹⁹

The ratepayer is not entitled to resist payment of the rate on the ground that the persons who acted as members in making the rate were not the persons entitled to act as such members; and a rule requiring justices, who had dismissed a summons on this ground, to enforce payment of the rate, was therefore made absolute.²⁰

Concurrent
rates.

On an application under the present section to enforce a general district rate which is good on the face of it, the justices may not refuse to make an order for payment of the rate on the ground that there is a concurrent rate made for the same purpose.²¹

Alteration of
valuation list.

But there is "sufficient cause for non-payment" of the rate, if the valuation list on which the rate was based has, since the making of the rate, been altered by the assessment committee, and the rate has not been amended accordingly by the council. A waterworks company were assessed to a general district rate made by the corporation of a borough, and five weeks afterwards applied to the assessment committee to reduce the poor law valuation on which the rate was made. The committee reduced the rate to some extent, and the company did not appeal in time to the quarter sessions against the district rate, though an appeal against the poor rate was pending. Afterwards the corporation took out a summons, under the present section, to enforce the rate against the company, and the magistrate made an order to pay it, as it had never been appealed against. It was held that the magistrate was wrong, and ought to have held it a sufficient cause for non-payment that the assessment committee had reduced the valuation before the summons was taken out.²²

Undertaking
pending
appeal.

Pending the decision on a case stated by quarter sessions on a tramway company's appeal against a general district rate made by the council of one district, the council of another urban district gave the company an undertaking in 1905 that if the company were successful in their "appeal to the High Court," the council would refund a due proportion of the amount of a general district rate of which they demanded payment in full. The company's appeal failed in the Divisional Court, but was successful in the Court of Appeal and House of Lords.²³ In 1908 the last mentioned council, after the decision of the appeal by the Court of Appeal, made and proceeded to enforce payment in full of another general district rate; but the Court held firstly that the undertaking had reference to the ultimate success of the company's appeal, and secondly that the justices in enforcing payment of the rate were bound to consider the undertaking and give the company credit for overpayments on previous rates made since the date of the undertaking.²⁴

Non-occupa-
tion of
premises.

In the case of a poor rate the question of occupation or non-occupation of premises rated to that rate may be raised before the justices on application for a distress

(17) *Reg. v. Essex JJ.* (1877), 36 L. T. 554.

(18) *Luton Loc. Bd. v. Davis* (1860), 2 E. & E. 678; 29 L. J. M. C. 173; 2 L. T. 172; 6 Jur. (N.S.) 580; 24 J. P. 677. See also *Shillito's Case*, post, p. 671 (46).

(19) *Dixon v. Blackpool and Fleetwood Tramroad Co.*, L. R. 1909, 1 K. B. 860; 78 L. J. K. B. 637; 100 L. T. 403; 73 J. P. 219; 7 L. G. R. 390.

(20) *Reg. v. Derbyshire JJ.* (1855), 19 J. P. 772; see also Sched. I., Part I., rule 9, post.

(21) *Sandgate Loc. Bd. v. Pledge* (1885), L. R. 14 Q. B. D. 730; 52 L. T. 546; 49 J. P.

342, followed in *Reg. v. Hannam* (1886, C. A.), 34 W. R. 355. Further as to concurrent rates, see ante, p. 600.

(22) *Sheffield Water Co. v. Sheffield Cpn.* (1885), 55 L. J. M. C. 40; 54 L. T. 179; 50 J. P. 6.

(23) *Thornton U.D.C. v. Blackpool, &c. Tramroad Co.*, ante, p. 586.

(24) *Blackpool and Fleetwood Tramroad Co. v. Bispham-with-Norbreck U.D.C.*, L. R. 1910, 1 K. B. 592; 79 L. J. K. B. 322; 102 L. T. 238; 74 J. P. 141; 8 L. G. R. 149.

warrant, and replevin will lie in such a case; but if the person who is the visible occupier objects that his occupation is not beneficial, that is matter for appeal to the quarter sessions.²⁵ In one case it was held that the justices could inquire and determine whether the person rated, his wife, his son, or his daughter, were in occupation of the premises.²⁶ Ratepayers liable under a local Act to the payment of rates in respect of houses and gardens cannot, when summoned before the justices for non-payment, resist the issue of distress warrants because at the time of the making of the rate warehouses and other property not rateable under the Act were improperly included in the assessment. In such case the proper remedy is by appeal to the sessions, where the error can be corrected.²⁷

But an order for a distress warrant was set aside in these circumstances. A mansion house, gardens, stables, and meadowland were owned by one person, assessed together in one lump sum, and described in the rate book as "mansion house and grounds," and a rate was made upon the property as such. At the date when the rate was made the mansion house was unoccupied, but the rest of the property was occupied by the owner. During the currency of the rate the owner let the garden and stables, but reserved the right to determine the agreement on giving one month's notice, and remained in occupation of the meadow. During the whole period of the rate attempts were made by the owner to let or sell the whole as one property. It was contended for the owner that, where one entire assessment is made on a property of which only part is occupied by the person rated, and the description in the rate book cannot be satisfied without including property which the person rated does not occupy, the rate is bad. It was contended for the rating authority that, where the same person owns a house and garden and occupies the garden, he cannot say that he is not in occupation of the house, for a person could not, by shutting up half of the rooms in a house, escape payment of the rate on the whole house. The rate was held bad, and an order for the issue of a distress warrant was set aside.²⁹

By the Bills of Sale Act, 1882,³⁰ a bill of sale, to which that Act applies (*i.e.* one which was not registered before the 1st November, 1882, or, if registered before that time, a bill of which such registration has been avoided), is "no protection in respect of personal chattels included in such bill of sale, which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates."

The above exception of goods liable to distress for rates from the protection afforded by a bill of sale was held not to be applicable to proceedings for the recovery of rates in the county court under sect. 261, and it was doubted whether general district rates were "parochial" within the meaning of the provision.³¹ In a subsequent case, *North, J.*, decided that general district rates were not taxes, and being imposed in respect of districts which might or might not include one or more parishes, or might, before the Local Government Act, 1894, have included only part of a parish, were not "parochial" rates, and were not within the enactment.³²

A memorandum of a decision, handed as an act of courtesy to the defendant by the clerk of the justices, without the knowledge of such justices and without their signature, was held to be an inoperative document.³³

Where part of a poor rate was tendered, and payment of the remainder was refused on the ground of conscientious objection, it was held that there was jurisdiction to decline to issue a distress warrant for more than the remainder³⁴; but justices may issue a warrant for the whole, if in their discretion they think fit.³⁵

Sect. 256, n.

Non-occupa-
tion of
premises—
continued.

Bill of sale.

Order of
justices.Tender of
part of rate.

(25) *Reg. v. Bradshaw or Warwickshire JJ.* (1860), 2 E. & E. 836; 29 L. J. M. C. 176; 6 Jur. (N.S.) 629; 2 L. T. 233. See also *Milward v. Caffin* (1779), 2 W. Bl. 1330; *Marshall v. Pitman* (1833), 9 Bing. (o.s.) 595; and *London and North-Western Ry. Co. v. Buckmaster* (1874), L. R. 10 Q. B. 70; 44 L. J. M. C. 29; 31 L. T. 835, affirmed in Ex. Ch. (1875), L. R. 10 Q. B. 444; 44 L. J. M. C. 180; 33 L. T. 329; *Reg. v. Simmonds* (1893), 62 L. J. M. C. 106.

(26) *Reg. v. Bagshawe* (1897), 75 L. T. 513.

(27) *Reg. v. Twopeny* (1867), 17 L. T. 266.

(29) *Langford v. Cole* (1910, K. B. D.), 102 L. T. 808; 74 J. P. 229; 8 L. G. R. 771; *Manchester Overseers v. Headlam* (L. R. 21 Q. B. D. 96) applied. But see *Vernon's Case*,

post, p. 671.

(30) 45 & 46 Vict. c. 43, s. 14.

(31) *Wimbledon Loc. Bd. v. Underwood*, L. R. 1892, 1 Q. B. 836; 61 L. J. Q. B. 484; 67 L. T. 55; 56 J. P. 633.

(32) *Richards v. Kidderminster Overseers*, L. R. 1896, 2 Ch. 212; 65 L. J. Ch. 502; 74 L. T. 483.

(33) *Reg. (Perry) v. Tottenham Loc. Bd. of Health* (1860), 1 L. T. 413; 24 J. P. 87.

(34) *Rex v. Gillespie*, L. R. 1904, 1 K. B. 174; 73 L. J. K. B. 106; 90 L. T. 15; 68 J. P. 11; 2 L. G. R. 59.

(35) *Ex parte Wyles or Wiles* (1904), 73 L. J. K. B. 112, n.; 90 L. T. 225; 68 J. P. 13; 2 L. G. R. 103.

Sect. 256, n.
Distress.

It has been held, with reference to a poor rate assessed upon tenants in common, that a distress warrant may issue against any one of the tenants in common³⁶; and the same would doubtless be held with reference to rates assessed under the present Act.

A metropolitan vestry were held by Ridley, J., not to be liable for distress levied on goods of the wrong persons, where they had given the broker no special instructions and had not ratified his acts.³⁷

Distress was levied in a proper manner in respect of a rate which was invalid, because it was made on a previous occupier who was dead. In an action for damages against the rate collector and the rating authority it was held that both were liable to such an action, but that the action against the authority must be dismissed because the plaintiff did not properly prove the issue of the distress warrant by them.³⁸

A local Act enacted that, where the goods of any person liable to pay the poor rate made under that Act should be taken in execution by a sheriff before the rate was paid, the sheriff should pay the rate. A sheriff seized the goods of a judgment debtor who owed the vestry the amount of a rate made up of the poor rate and a general rate under the Metropolis Management Act, 1855, the latter rate being leviable with the same powers, remedies, and privileges as the poor rate. The rate collector demanded from the sheriff the amount due in respect of these rates, but the sheriff, having subsequently received from the debtor the amount of the judgment debt, withdrew from possession without paying the rates. It was held that he was liable to the vestry for the amount of both rates, the goods having been "taken in execution" by him.³⁹

A *mandamus* directing justices to name a person to be entrusted with the execution of a distress warrant for rates was granted, the justices having refused to name anyone at all, because the applicant for the rule had refused to name anyone but the police.⁴⁰ And where a similar distress warrant was ordered to be issued, and the justices nominated the sheriff to execute the warrant, it was held that, as the sheriff had not consented to act, the justices' order must be quashed.⁴¹

Justices in issuing a distress warrant for the recovery of poor rates have no power to order that there shall be any delay in the execution of the warrant.⁴²

On an application for a distress warrant to enforce payment of a general district rate, the defendant contended that the justices had no jurisdiction, on the following grounds: (1) that the local board had not been duly elected, because under a local Act the notice of vestry was signed by a clerk to the local commissioners instead of by a rector, churchwarden, etc., and not affixed on a church door; (2) that a poll was allowed when no poll had been formally demanded; (3) that no minute was made in the vestry-book of a meeting being summoned for election of commissioners. These objections the Court of Queen's Bench held were cured by the clause of the Public Health Act, 1848,⁴³ which corresponded to rule 9 of the first part of Sched. I. to the present Act, and the justices were upheld in issuing their distress warrant.⁴⁴

In some cases the court has held that distress warrants have been rightly refused by justices (or that they ought to have been refused),⁴⁵ and in others that such warrants have been improperly refused (or rightly granted).⁴⁶

(36) *Paynter v. Reginam* (1847), 10 Q. B. 908; 16 L. J. M. C. 136; 11 Jur. 973.

(37) *Carter v. Kensington Vestry* (1899), 63 J. P. 487.

(38) *O'Neill v. Waterford C.C. and Drohan*, 1914 Ir. K. B. 495; 5 Glen's Loc. Gov. Case Law 190; *Tozeland v. West Ham Guardians*, L. R. 1907, 1 K. B. 920, considered. See also *McKeown v. McKee* (1911, K. B. D., I.), 45 Ir. L. T. 249; 2 Glen's Loc. Gov. Case Law 235, where damages for illegal distress were awarded, and *Prudential Mortgage Co. v. St. Marylebone B.C.* (1910, Neville, J.), 8 L. G. R. 901; 1 Glen's Loc. Gov. Case Law 108, where injunction restraining sale was granted.

(39) *St. Marylebone Vestry v. Sheriff of London*, L. R. 1900, 2 Q. B. 591; 69 L. J. Q. B. 848; 83 L. T. 355; 64 J. P. 628.

(40) *Rex (Moore) v. Dublin County JJ.*, 1910 Ir. K. B. 681; 45 Ir. L. T. 9; 1 Glen's Loc. Gov. Case Law 108.

(41) *Rex (Hynes) v. Clare JJ.*, 1912 Ir. K. B. 57; 45 Ir. L. T. 76; 2 Glen's Loc. Gov. Case Law 235.

(42) *Reg. v. Handsley* (1881), L. R. 7 Q. B. D. 398; and also *Reg. v. Middlesex JJ.* (1843), 4 Q. B. 807; 12 L. J. M. C. 36.

(43) 11 & 12 Vict. c. 63, s. 29.

(44) *Bowling v. Bailey* (1867), 31 J. P. 358.

(45) *Whenman's Case*, ante, p. 590; *Dixon's Case*, ante, p. 668; *Langford's* and other cases, ante, p. 669; *Hudson v. Rhodes*, L. R. 1909, 1 K. B. 85; 78 L. J. K. B. 128; 99 L. T. 967; 73 J. P. 66; 7 L. G. R. 159, re illegal increase of assessment on objection to committee; *Curzon v. Westminster Cpn.* (1916, K. B. D.), 86 L. J. K. B. 198; 115 L. T. 823; 80 J. P. 468; 14 L. G. R. 1112, re non-exclusive occupation of whole theatre.

(46) *Braithwaite's Case*, post, p. 710 (19); *Whaley v. Great Northern Ry. Co. of Ireland*, 1913 Ir. K. B. 142; 47 Ir. L. T. 1; 4 Glen's Loc. Gov. Case Law 168, re railway wrongly

Where additions to the names in the rates books had been made after allowance of the rate by the justices, *mandamus* ordering the overseers to strike out the names was refused on the ground that the proper remedy was to oppose the issue of a distress warrant.⁴⁷

Appeal and not *certiorari* (to quash an illegal rate) was held to be the proper remedy in the case cited below.⁴⁸

Where distress failed, as there was nothing in the house which could be seized, it was held that the statutory remedy was not exclusive, and an action for the appointment of a receiver or sale of the premises succeeded.⁴⁹

It has been held that a married woman, rated as owner under the Poor Rate Assessment and Collection Act, 1869, may be committed in default of distress.⁵⁰

A commitment under sect. 2 of the Distress for Rates Act, 1849,⁵¹ for non-payment of a general rate in the metropolis was held to be a punitive order, and not a legal process to enforce payment within the repealed sect. 10, sub-sect. (2) of the Bankruptcy Act, 1883⁵²; and the court of bankruptcy therefore cannot discharge the debtor from prison.⁵³

Justices granted a distress warrant for non-payment of a poor rate and a special expenses rate, and the overseers levied distress. The person upon whom it was levied first entered into recognisances to prosecute an appeal at quarter sessions, and then gave notice of appeal. The justices at quarter sessions refused to hear the appeal, because the recognisances had been entered into before the giving of the notice of appeal. It was held that recognisances were not necessary at all, as such an appeal was not against any "order of a court of summary jurisdiction." A rule *nisi* for *mandamus* directing the justices to hear the appeal was accordingly made absolute.⁵⁴

A verbal agreement by a landlord, made on letting premises to a weekly tenant, that he would pay the rates on the premises, was held by the Court of Appeal to amount to an indemnity, so as to render the landlord liable in damages when the tenant was imprisoned for non-payment of a general rate made under the London Government Act, 1899.⁵⁵

It was held under the Public Health Act, 1848, that justices could not be called upon to state a special case on grounds which were matters of appeal against the rate to quarter sessions.⁵⁶ But where a case had been stated by petty sessions on the question whether they ought to enforce a general district rate under the present Act when there was a concurrent rate for the same purpose, an objection to the power to state the case was overruled.⁵⁷

An application to a court of summary jurisdiction for an order to enforce payment of a general district rate is not a criminal cause or matter, and an appeal therefore lies to the Court of Appeal from the judgment of a Divisional Court upon a case stated on such an application.⁵⁸

Bankruptcy and Liquidation.

By the Bankruptcy Act, 1914,⁵⁹ it is enacted that "in the distribution of the property of a bankrupt, there shall be paid in priority to all other debts—(a.) All parochial or other local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax, assessed on the

Sect. 256, n.

Default of distress.

Commitment.

Appeal against distress warrant.

Indemnity.

Special case

Preferential payment of rates.

rated in full; *Hornchurch Overseers v. London Tilbury and Southend Ry. Co.* (1912, K. B. D.), 107 L. T. 293; 76 J. P. 385; 10 L. G. R. 731, *re* rates paid to absconding collector; *Shillito v. Hinchcliffe*, L. R. 1922, 2 K. B. 236; 91 L. J. K. B. 730; 127 L. T. 367; 86 J. P. 110; 20 L. G. R. 492, *re* flaws in valuation list; *Vernon v. Castle* (1922, K. B. D.), 127 L. T. 748; 86 J. P. 213; 20 L. G. R. 580, *re* wrong description of property in rate book and non-exclusive occupation.

(47) *Rex (Harnett) v. Monken Hadley Overseers* (1910, K. B. D.), 74 J. P. 169; 8 L. G. R. 363. See also *ante*, p. 602.

(48) *Rex v. Dublin Cpn.*, *ante*, p. 569 (9).

(49) *Mountjoy Square Comrs. v. Morrin*, 1914 Ir. Ch. 43; 5 Glen's Loc. Gov. Case Law 6.

(50) *In re Allen*, L. R. 1894, 2 Q. B. 924; 63 L. J. M. C. 267; 43 W. R. 141.

(51) 12 & 13 Vict. c. 14, s. 2.

(52) 46 & 47 Vict. c. 52, s. 10 (2).

(53) *In re Edgcome* (C. A.), L. R. 1902,

2 K. B. 403; 71 L. J. K. B. 722; 87 L. T. 108.

(54) *Rex (Bower) v. Lincolnshire (Lindsey) JJ.*, L. R. 1912, 2 K. B. 413; 81 L. J. K. B. 967; 107 L. T. 170; 76 J. P. 311; 10 L. G. R. 703.

(55) 62 & 63 Vict. c. 14, s. 10 (2). *Atkins v. Hutton* (1909), 103 L. T. 514; 74 J. P. 329; 8 L. G. R. 513. See also *Isaacs v. Arlidge* (1917, K. B. D.), 87 L. J. K. B. 347; 82 J. P. 289; 16 L. G. R. 73; and the *Reigate Case*, *ante*, p. 581.

(56) *Reg. v. Newman* (1860), 2 E. & E. 420; 29 L. J. M. C. 117; 6 Jur. (N.S.) 293; s.c. nom. *Reg. v. Gloucester JJ.*, 1 L. T. 294.

(57) *Sandgate Loc. Bd. v. Pledge*, *ante*, p. 668.

(58) *Southwark and Vauxhall Water Co. v. Hampton U.D.C.*, L. R. 1899, 1 Q. B. 273; 68 L. J. Q. B. 207; 79 L. T. 512; 63 J. P. 100. Further as to meaning of "criminal cause or matter," see *post*, p. 701.

(59) 4 & 5 Geo. V. c. 59, s. 33 (1) (a).

Sect. 256, n.
Preferential
payment of
rates—cont.

bankrupt up to 5th day of April next before the date of the receiving order, and not exceeding in the whole one year's assessment."

Provisions to the same effect are contained in the Companies Act of 1908 as to companies being wound up.⁶⁰

These rates and taxes rank equally with sums due in respect of compensation to workmen,⁶¹ national insurance contributions,⁶² and certain wages and salaries of clerks, servants, labourers, and workmen,⁶³ and are to be paid in full, or, if necessary, to abate in equal proportions; and, subject to retention of sums to meet the costs of administration, are to be discharged forthwith. They are also to be a first charge on any goods or effects of the bankrupt or company, which may have been distrained on by a landlord or other person within three months next before the date of the receiving order or winding-up order. The above-quoted provision applies, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order. It applies where the estate of a person, who died after the commencement of the Act, is being administered in the Chancery Division.⁶⁴ It also applies to a composition or a scheme of arrangement, but not to an administration of the estate of a judgment debtor in the county court under an unrepealed section of the Bankruptcy Act, 1883.⁶⁵

Nothing in the section of the Bankruptcy Act, 1914, relating to priority of debts,⁶⁶ is to alter the effect of sect. 3 of the Partnership Act, 1890,⁶⁷ or prejudice the provisions of the Friendly Societies Act, 1896,⁶⁸ or of sect. 14 of the Trustee Savings Banks Act, 1863,⁶⁹ or the provisions of any enactment relating to deeds of arrangement⁷⁰ respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.⁷¹ Nor does it affect the common law priority of Crown debts.^{71a}

In Scotland it was held that the landlord of a bankrupt ratepayer could not claim priority over rates.⁷²

A company in compulsory liquidation and a rating authority jointly sued a sole debenture-holder to recover rates on the company's premises; and it was held that, if the general assets of the company, after discharge of the costs and expenses of winding-up, are insufficient to make payment of the preferential debts, then, to the extent to which they are insufficient, the amount must be made up by the debenture-holder, he holding a security creating a floating charge upon the property of the company, out of the property of the company comprised in or subject to the charge. It was also held that the proper plaintiff was the liquidator, but that an order could be made, by consent, for payment direct to the rating authority.⁷³

It is enacted by the Companies (Consolidation) Act, 1908,⁷⁴ that in the winding-up of any company the above-mentioned priority debts shall, so far as the assets of the company available for payment of general creditors may be insufficient to meet them, have "priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge." This Act further provides that "(1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in

(60) 8 Edw. VII. c. 69, s. 209.

(61) 6 Edw. VII. c. 58, s. 5 (3); 4 & 5 Geo. V. c. 59, s. 33 (1) (d).

(62) 4 & 5 Geo. V. c. 59, s. 33 (1) (e).

(63) 8 Edw. VII. c. 69, s. 209 (1); 4 & 5 Geo. V. c. 59, s. 33 (b)-(d).

(64) *In re Heywood, Parkington v. Heywood*, L. R. 1897, 2 Ch. 593; 67 L. J. Ch. 25; 77 L. T. 423.

(65) 46 & 47 Vict. c. 52, s. 122; 4 & 5 Geo. V. c. 59, s. 16 (19).

(66) 4 & 5 Geo. V. c. 59, s. 33.

(67) 53 & 54 Vict. c. 39, s. 3.

(68) 59 & 60 Vict. c. 25.

(69) 26 & 27 Vict. c. 87, s. 14.

(70) See 4 & 5 Geo. V. c. 47, s. 21.

(71) 4 & 5 Geo. V. c. 59, s. 33 (9).

(71a) *Laycock v. Income Tax Comrs.*, L. R. 1919, 1 Ch. 241; 88 L. J. Ch. 128; 120 L. T. 473.

(72) *Campbell v. Edinburgh City P.C.*, 1912 S. C. (S.) 280; 48 Sc. L. R. 193; 2 Glen's Loc. Gov. Case Law 234.

(73) *Westminster City Cpn. and United Travellers' Club, Ltd. v. Chapman*, L. R. 1916, 1 Ch. 161; 85 L. J. Ch. 334; 114 L. T. 63; 80 J. P. 74.

(74) 8 Edw. VII. c. 69, s. 209 (2) (b).

respect of the debentures. (2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be. (3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.”⁷⁵ In a case in which the amounts due in respect of a poor rate and a general district rate, both made in October, 1898, had been paid by the receiver and manager appointed during the following month in a debenture-holder’s action, Kekewich, J., held that as between mortgagors and mortgagees the receiver was entitled under the same Act to be recouped the full amounts of the rates as preferential debts out of the general assets of the company without apportionment. The amount, however, which had been paid by the receiver for water supplied by meter, was apportioned, as it was not due until the water was supplied.⁷⁶ As to priority in respect of gas charges, see the cases cited below.⁷⁷

The estate of a bankrupt was held liable for the whole of a general district rate, although the receiving order was made during the period of the rate, and the trustee in bankruptcy sold his interest in the premises shortly afterwards, and the bankrupt remained in occupation as tenant under the purchaser until the expiration of the period of the rate.⁷⁸

The entering into occupation by a liquidator under the Companies Acts does not create a change of occupation.⁷⁹

The Debenture Corporation, having, as mortgagees and debenture-holders, appointed a receiver to take possession of the premises and carry on the business of the mortgagors, a company in voluntary liquidation, were held to be in rateable occupation of the premises which had been occupied by the company.⁸⁰ Though, where a receiver was appointed by order of the court in a debenture-holder’s action, and possession of the premises was not ordered to be delivered up to him, the Court of Appeal held that there was no such change of occupation.⁸¹

Where liquidators entered into possession solely for the purposes of the winding-up, the rating authority could only prove for such sum as they might be entitled to, and the liquidators were not bound to pay in full a rate made shortly after the liquidation commenced.⁸² An application for payment in full of rates made after the liquidation commenced was refused.⁸³ Proceedings cannot be taken against a company in liquidation without leave of the court,⁸⁴ but leave will be granted when the liquidator is carrying on the business when the rate is made.⁸⁵

Sect. 256, n.

Occupation by bankrupt.

Occupation by liquidator.

Occupation by receiver.

Sect. 257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private

Recovery of expenses by local authority from owners.
L.G., ss. 62, 63.,
L.G. Am., s. 23
and see
P.H., s. 146.

(75) 8 Edw. VII. c. 69, s. 107. As to “floating charges,” see *National Provincial Bank v. United Electric Theatres, Ltd.*, L. R. 1916, 1 Ch. 132; 85 L. J. Ch. 106; 114 L. T. 276; 80 J. P. 153; 14 L. G. R. 265.
(76) *In re Mannesman Tube Co.*, L. R. 1901, 2 Ch. 93; 70 L. J. Ch. 565; 84 L. T. 579; 65 J. P. 377.
(77) *Paterson v. Gaslight & Coke Co.*, and *Re Adolphe Crosbie, Ltd.*, post, Vol. II., pp. 1256-1258.
(78) *In re Thomas; Ex parte Ystradfydwg Loc. Bd.* (1887), 57 L. J. Q. B. 39; 58 L. T. 113; 4 Morrell’s Bankruptcy Cas. 295.
(79) *In re Wearmouth Crown Glass Co.* (1882), L. R. 19 Ch. D. 640; 45 L. T. 757; 30 W. R. 316.
(80) *Madge v. Debenture Cpn.* (1896, Q. B. D.), MS. and 12 T. L. R. 203; *Richards v. Kidderminster Overseers*, L. R. 1896, 2 Ch.

212; 65 L. J. Ch. 502, 508; 74 L. T. 483.
(81) *In re Marriage Neve & Co.*, L. R. 1896, 2 Ch. 663; 65 L. J. Ch. 839; 75 L. T. 169.
(82) *In re West Hartlepool Iron Co.* (1876), 34 L. T. 568.
(83) *In re Watson Kipling & Co.* (1883), L. R. 23 Ch. D. 500; 52 L. J. Ch. 473; 49 L. T. 115.
(84) See *In re London Dry Docks Cpn.* (1888, C. A.), L. R. 39 Ch. D. 306; 58 L. J. Ch. 33; 59 L. T. 763.
(85) *In re International Marine Hydro-pathic Co.* (1884, C. A.), L. R. 28 Ch. D. 470; 33 W. R. 587; *In re National Arms and Ammunition Co.* (1885, C. A.), L. R. 28 Ch. D. 474; 54 L. J. Ch. 673; 52 L. T. 237; *In re Blazer Firelighter Co.*, L. R. 1895, 1 Ch. 402; 64 L. J. Ch. 161; 71 L. T. 665.

Sect. 257.

improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.

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Expenses of Private Improvements.

Meaning of expenses incurred.

“ Expenses incurred ” means, at any rate, expenses which the urban authority have become liable to pay, if it is not confined to those which they have actually paid; and therefore where a local Act, incorporating the Public Health Act, 1875, in general terms empowered the authority to recover the estimated expenses of paving, etc., a street before the work was done, such estimated expenses did not become a charge on the premises under the present section before they had been actually incurred.¹

Private improvements.

The words “ works of private improvement ” are used in the general sense of works executed upon private property, and tending to improve them, and are not limited to works of which the expenses are declared to be “ private improvement expenses ” (under sect. 213), for which a private improvement rate is to be made.²

Interest.

Interest on the expenditure of the local authority is only recoverable under the present section from the date of the service of the demand, and on this ground the Local Government Board, on appeals made to them under sect. 268, disallowed claims made by urban sanitary authorities for interest, for the period previous to the date of demand, on the cost of such works of private improvement as the paving, etc., of private streets under sect. 150.

The urban district council may charge the owner with interest at 5 per cent., although they may have borrowed the money required for executing the works at a lower rate of interest.³

Recovery of Expenses.

Statutory remedy.

“ The relation of debtor and creditor cannot arise under these Acts between a board and an owner of property for expenses incurred by the board. The statute . . . creates a liability previously unknown to the law, and gives a mode of recovering it. Under these circumstances the only remedy is the remedy given by the Act.”⁴

Distress.

Sect. 25 of the Criminal Justice Administration Act, 1914,⁵ provides as follows :—“ (1) Where a sum is adjudged to be paid by a conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, and on default of payment of such sum a warrant of distress is authorised to be issued, the court may, in any case in which it appears expedient to do so, instead of issuing a warrant of distress, issue a warrant of commitment : Provided that where time is not allowed for the payment of such sum, a warrant of commitment shall not be issued in the first instance unless it appears to the court

(1) *West Ham Cpn. v. Grant* (1888), L. R. 40 Ch. D. 331; 58 L. J. Ch. 121; 60 L. T. 17.

(2) *Grece v. Hunt* (1877), L. R. 2 Q. B. D. 389; 46 L. J. M. C. 202; 36 L. T. 404; 41 J. P. 356.

(3) *North British Ry. Co. v. Holme Cultram Loc. Bd.* (1889), 54 J. P. 86. See also the

Pontypridd Case, ante, p. 349 (33).

(4) *Per Brett, L.J.*, in *West v. Downman*, post, p. 675. See L. R. 14 Ch. D. at p. 120. See also cases cited ante, p. 659 (1).

(5) 4 & 5 Geo. V. c. 58, s. 25, repealing S. J. Act, 1879, 42 & 43 Vict. c. 49, s. 21 (3) (4).

that the offender has no goods or insufficient goods to satisfy the money payable or that the levy of distress will be more injurious to him or his family than imprisonment. (2) Where a sum is adjudged to be paid by a conviction or order of a court of summary jurisdiction, and, by the statute authorising such conviction or order, a mode of enforcing the payment thereof is provided which does not authorise the issue of a warrant of distress for the purpose, a warrant of distress may nevertheless be issued in like manner in all respects and with the like consequences as if no mode of enforcing the payment were provided in such statute."

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A notice appended to an account in the following terms, "unless the amount of this account is paid within fourteen days after delivery, interest at the rate of 5 per cent. per annum will be charged thereon until fully liquidated," was held to be sufficient; Lush, J., remarking, "No one can understand the notice in any other sense than as a demand of payment."⁶

Form of demand.

A notice of demand need not be authenticated under sect. 266.⁷

The provision in the Summary Jurisdiction Act, 1848,⁸ that the complaint shall be made within six calendar months from the time when the matter of such complaint arose, applies to expenses which are incurred by a local authority, and are apportioned as mentioned in the second clause of the present section; but the six months cannot commence to run till after the expiration of the three months during which the apportionment of the expenses may be disputed.⁹ And a further demand than the notice of apportionment is necessary in such cases, even if the first notice demanded payment.¹⁰ Similarly, under the Metropolis Management Acts, the time for recovery of the expenses from the owner runs from the demand and not the apportionment, even though proceedings have been taken unsuccessfully against the occupier in the meantime.¹¹

Limitation of time.

A sum apportioned on the owner of premises in respect of paving expenses under the Metropolis Management Acts having been demanded, part payment by instalments was accepted. Two instalments were paid, and on proceedings being taken to enforce payment of the third it was held that the six months' limitation ran from the date of the demand of that instalment, and not from the date of the original demand of the whole sum.¹²

Sect. 261 enables local authorities to recover demands below £50 in the county court instead of summarily, and the six months' limitation which applies to the summary proceedings has been decided to be equally applicable to the alternative proceedings in that court.¹³

The six months' limitation was also held to be applicable to a claim, in respect of expenses of private street improvements, made in an administration action against certain persons who as executors were owners when the works were completed.¹⁴

Any information, complaint, warrant, or summons made or issued for the purposes of the present Act may contain in the body thereof or in a schedule several sums.¹⁵

Consolidation of proceedings.

An objection that proceedings under the present section had been taken in the High Court instead of in the county court was overruled.¹⁶

County court.

With regard to the meaning of the term "owner," see the Note to sect. 4.¹⁷

Owner.

The person who is owner at the time when the works are completed is the "owner in default," within the meaning of sect. 150, from whom the expenses of private street improvements are declared by that section to be recoverable,¹⁸ even though he may not have become the "owner" at the time when the notice to execute the works was served.¹⁹

(6) *Wilson v. Bolton Cpn.* (1871), L. R. 7 Q. B. 109; 41 L. J. M. C. 4; 25 L. T. 597, distinguished in *Tottenham Loc. Bd. v. Rowell*, post, p. 682.

(7) See the *Rotherham Case*, post, p. 709 (2).

(8) 11 & 12 Vict. c. 43, s. 11, ante, p. 650.

(9) *Jacomb v. Dodgson* (1863), 3 B. & S. 461; 32 L. J. M. C. 113; 7 L. T. 674; 9 Jur. (N.S.) 848; 27 J. P. 548; *Grece v. Hunt*, ante, p. 674.

(10) *Simcox v. Handsworth* (1881), L. R. 8 Q. B. D. 39; 51 L. J. Q. B. 168; 46 J. P. 260.

(11) *Marr v. Greenwich Bd. of Works* (1880), 44 J. P. 424.

(12) *Prescott v. Nicholson* (1889), 60 L. T. 563; 53 J. P. 597.

(13) See the Note to s. 261, post, p. 699.

(14) *West v. Downman* (1880, C. A.), L. R. 14 Ch. D. 111; 42 L. T. 340; 29 W. R. 6.

(15) P. H. Am. Act, 1890, s. 8, post, Part I., Div. II.

(16) In the *Pontypridd Case*, ante, p. 349 (33).

(17) Ante, p. 15.

(18) *Reg. (Hinton) v. Swindon New Town Loc. Bd.* (1880), L. R. 4 Q. B. D. 305; 48 L. J. M. C. 119; 40 L. T. 424; 44 J. P. 505.

(19) *East Ham U.D.C. v. Aylett*, L. R. 1905, 2 K. B. 22; 74 L. J. K. B. 471; 92 L. T. 420; 69 J. P. 205; 3 L. G. R. 541. See also the *Blything Case*, ante, p. 204.

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And the expenses are recoverable summarily from that person, even though he may have ceased to be the "owner" between the date of the completion of the works and the demand for payment.²⁰

It may be mentioned here that a judgment recovered by a vestry for paving expenses under the Metropolis Management Act, 1862,²¹ which allows the amount apportioned to be recovered by action "from the present or any future owner of the premises," was held to be no bar to a subsequent action for the same expenses against the tenant to a succeeding owner.²²

Res judicata.

A justice's order to pay certain paving expenses having been quashed by quarter sessions because it ordered the owner to be imprisoned *with hard labour* in default of distress, and a new order to pay the same amount having been subsequently obtained, a writ of prohibition against the enforcement of the latter order was refused.²³

*Recovery back of Expenses.***Money paid under legal process.**

It is a general rule that money paid under compulsion of legal process cannot, in the absence of fraud, be recovered back in an action for money paid by mistake or for money had and received.

In an Irish case, notice to abate a nuisance, alleged to have arisen from a structural defect, having been served on the tenant of the premises, he submitted to an order of the proper court, executed the works, and claimed to set off the expenses incurred, as money paid to the use of the landlord, in an action brought against him by the landlord for rent. But it was held that the claim to such a set off was untenable.²⁴

Nor can the money be recovered back, even though the legal process may not have resulted in a final order or judgment, but may have been withdrawn in consequence of the money having been paid. An owner of premises in the metropolis, after a summons for the expenses of paving a new street had been served upon him, paid the amount, and afterwards discovered that his premises did not abut on the street. He gave notice of the fact to the local authority, but allowed them to withdraw the summons. The Court of Appeal held that he could not recover back the amount paid. *Per* Lord Halsbury, L.C.: "When a person has had an opportunity of defending an action if he chose, but has thought proper to pay the money claimed by the action, the law will not allow him to try in a second action what he might have set up in defence to the original action."²⁵

Money paid under duress.

In the following cases no legal process had been issued, and the question was whether notices preliminary to legal process amounted to such duress or compulsion as to afford a right of action for money paid to the use of the party who ought to have borne the expenses.

A tenant recovered from his landlord the expense which he had incurred in complying with a notice under the Nuisances Removal Act, 1855,²⁶ to make good the drainage of his premises; the Act providing that in the event of the occupier not complying with a justice's order to do the work he should be liable to a penalty, and the board might do the work themselves, and then recover the expenses from the owner. *Per* Lush, L.J.: "The effect of the enactment was that the landlord was ultimately liable for the work, but that the tenant was compellable by penalty to do it in case of default of the landlord."²⁷

A notice to abate a nuisance under the Public Health (London) Act, 1891,²⁸ was served on the premises to which it related, and was addressed to the "occupier or owner." The occupier did the work, and in doing it ascertained that the nuisance arose from structural defects. It was held that he was entitled to recover the expenses which he had incurred in remedying the defects from the owner, such expenses being declared by that Act²⁹ to be money paid for the use and at the request of the person on whom the nuisance order is made, or, if no order is

(20) *Millard v. Balby - with - Hexthorpe U.D.C.* (C. A.), L. R. 1905, 1 K. B. 60; 74 L. J. K. B. 45; 91 L. T. 730; 69 J. P. 13; 2 L. G. R. 1248; reversing 90 L. T. 489, and overruling a dictum of Cockburn, C.J., to the contrary in *Reg. v. Swindon*, ante, p. 675.

(21) 25 & 26 Vict. c. 102, ss. 77, 96.

(22) *Bermondsey Vestry v. Ramsay* (1871), L. R. 6 C. P. 247; 40 L. J. C. P. 206; 24 L. T. 429; 35 J. P. 567; see also *Plumstead Bd. of Works v. Ingoldby* (1872, Ex., 1873, Ex. Ch.), L. R. 8 Ex. 63, 174; 42 L. J. Ex. 50, 136; 27 L. T. 656; 29 L. T. 375.

(23) *Lister v. Hebden Loc. Bd.* (1878), 42 J. P. 119.

(24) *Butcher v. Rutt* (1887), 22 L. R. Ir. 380.

(25) *Moore v. Fulham Vestry*, L. R. 1895, 1 Q. B. 399; 64 L. J. Q. B. 226; 71 L. T. 862; 59 J. P. 596. See also *Slater's Case*, post, Vol. II., p. 1234 (1), and the *Midland Ry. Co. Case*, *ibid.*, p. 1984 (7).

(26) 18 & 19 Vict. c. 121, ss. 12-14.

(27) *Castleberg v. Kenyon* (1879), *Times*, June 16th.

(28) 54 & 55 Vict. c. 76, s. 4.

(29) *Ibid.*, s. 11.

made, the person by whose act, default, or sufferance the nuisance has been caused. Charles, J., was of opinion that the expenses were recoverable from the owner at common law, the tenant having been compelled to expend money upon work for which the owner was legally responsible.³⁰

A rural sanitary authority served on the owner notice to abate a nuisance from a cesspool, and on his default executed the required works. Under threat of legal proceedings, but without such proceedings being actually commenced, the owner paid the expenses and then endeavoured to recover them from the tenant under the covenants in his lease. It was held by A. L. Smith, J., that the owner had paid the expenses under compulsion, though he was unable to recover them because they did not come within the covenants.³¹

So also where the owner executed work in pursuance of a notice under the Public Health (London) Act, 1891, on a "sewer," for which the local authority were responsible, under a mistaken idea that it was a "drain," he was held entitled to recover the expense incurred by him from the local authority.³² And this decision was followed by Channell, J., under the present Act.³³

But in a later case Ridley, J., distinguished the last-mentioned decision on the ground that in the case before him there was no immediate necessity for executing the work at once, and he accordingly held that the owner was not entitled to recover from the district council the cost of relaying a conduit which proved to be a "sewer" and not a "drain."³⁴

And where a preliminary notice under the London Act, addressed to the owner only and served on the occupiers, was not forwarded to the owner, but was complied with by the occupiers, the Court of Appeal considered that the notice was not a step in "hostile proceedings" under the Act, and that compliance with it was therefore voluntary, so that the expenses incurred could not be recovered from the owner.³⁵ In a later case the Court of Appeal appear to have intimated the opinion that works executed by the occupier under a similar preliminary notice to the owner, which had been held by Wright, J., not to have been done under compulsion, were done under compulsion, though according to a note appended to the report Vaughan Williams, L.J., in a subsequent case stated that the court gave no decision, and that all that was done was by consent.³⁶ And afterwards the Divisional Court (with reluctance) followed the earlier case.³⁷

Another case came before Wright, J., in which, after deciding that the expenses of executing drainage works on receipt of an intimation under the Public Health (London) Act, 1891, that a nuisance arose from the existing drains, came within a tenant's agreement to "pay all present and future rates taxes assessments and outgoings whatsoever in respect of the said premises whether payable by the landlord or tenant," he held that the service of the "intimation" under the Act did not amount to compulsion, and that the expenses had therefore been incurred by the owners voluntarily, so that such expenses were not "outgoings" within the covenant. And he further held that, inasmuch as the lease had expired and the tenant was holding over as a tenant from year to year, the usual presumption that he was holding upon such of the terms of the lease as were applicable to a yearly tenancy, did not subject his tenancy to a covenant to pay such outgoings as those in question, for a tenant from year to year could not be presumed to have intended to make himself liable for an expenditure on repairs exceeding the amount of his rent.³⁸ And subsequently the Divisional Court held that the owner himself, on whom the preliminary intimation had been served, could not recover from the borough council the expenses incurred by him in complying with such intimation, when it was discovered that the work was necessitated by the non-repair of a "sewer" repairable by the council and not of a "drain" for which he was responsible.³⁹

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under duress

—continued.

(30) *Gebhardt v. Saunders*, L. R. 1892, 2 Q. B. 452; 67 L. T. 684; 56 J. P. 741.

(31) *Lyon v. Greenhow* (1892), 8 T. L. R. 457. As to covenants, see *post*, pp. 685 *et seq.*

(32) *Andrew v. St. Olave's Bd. of Works*, L. R. 1898, 1 Q. B. 775; 67 L. J. Q. B. 592; 78 L. T. 504; 62 J. P. 328.

(33) *North v. Walthamstow U.D.C.* (1898), 67 L. J. Q. B. 972; 62 J. P. 836.

(34) *Ellis v. Bromley R.D.C.* (1899), 81 L. T. 224; 63 J. P. 711.

(35) *Thompson and Norris Manufacturing Co. v. Hawes* (1895), 73 L. T. 369; 59 J. P. 580.

(36) *Proctor v. Islington B.C.* (1903), 67

J. P. 164. Assumed to be correct in *Silles v. Fulham B.C.*, but see Note in 1 L. G. R. at p. 653. The case did not go to the House of Lords as this Note suggests might happen.

(37) *Thompson and Norris Manufacturing Co. v. Hawes*, *supra*.

(38) *Harris v. Hickman*, L. R. 1904, 1 K. B. 13; 73 L. J. K. B. 31; 89 L. T. 722; 68 J. P. 65; 2 L. G. R. 1.

(39) *Oliver v. Camberwell B.C.* (1904), 90 L. T. 285; 68 J. P. 165; 2 L. G. R. 617. Settled on appeal to C. A., on terms favourable to plaintiff (see 2 L. G. R. addenda xiv.).

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Money paid
under duress
—continued.

Channell, J., however, declined to follow this decision in similar circumstances, pointing out that in *Hawes' Case*,⁴⁰ on which that decision purported to be based, the plaintiff, who was a tenant suing on his landlord's contract to pay certain expenses borne by him, the tenant, under compulsion, had to prove legal compulsion, whereas, in *Oliver's Case*,⁴¹ the plaintiff's contention was not founded on compulsion of legal process, for if it had been he could not have recovered the money back. He admitted that it was doubtful whether a person, who, when threatened by an intimation notice under the London Act, acquiesced without protest and did the work, would not have done it as a mere volunteer so as to be unable to recover the expenses from the local authority when it was found that they ought to have done the work themselves; but the work in the case in question having been done under protest, he gave judgment for the plaintiff for damages, to be subsequently ascertained, but to include damages for inconvenience suffered by delay after receipt of the intimation, and also for the cost of the construction of a manhole, not specified in the intimation, but done under advice that it was "the best thing to do."⁴²

In a later case⁴³ Channell, J., held that an owner who, upon receipt of a statutory nuisance notice under sect. 94 of the present Act in respect of a "single private drain," did the necessary work, could recover the expenses from the local authority because such pipes are "sewers" until proceedings are taken under sect. 19 of the Act of 1890. But the Court of Appeal reversed this decision on the ground that the owner "might have been" compelled to do the work.⁴⁴ This is regarded by some as an unsatisfactory decision, and is commented on at length in the Note which follows the judgments in one of the reports.⁴⁵

Charge on Premises.

Owner for
time being.

The charge upon the premises in respect of the expenses of works of private improvement is a charge on the premises in the hands of an owner for the time being, although the district council may by negligence have lost their summary remedy against the person who was the owner at the time when the works were completed.¹

Executors.

In a case in which a local authority sought to recover private street works expenses in respect of a piece of vacant land, the defendants were executors who had not received any rent or profit from the land, and could not by the exercise of reasonable diligence have done so, and had never taken possession except as executors. It was held that they were owners as executors only, and could not be made personally liable *de bonis propriis*. The expenses were declared to be charged on the land, and the plaintiffs were given costs up to the filing of the defence, and the defendants were given subsequent costs.²

Charge on
total owner-
ship.

And it is a charge on the total ownership of the property, that is, on the respective interests of all the owners for the time being in proportion to the values of their interests; and it will therefore generally be necessary for all the persons having interests in the property to be made parties to the proceedings for enforcing the charge.³

Under a colonial Act the cost of a street improvement was to be divided between the ratepayers of the City of Sydney and those who were owners of property within a certain improvement area, and was to be paid by them by annual instalments to be spread over not less than fifty nor more than 100 years. The Privy Council held that this created a charge on the property of the owners, and not a charge upon the persons who were owners at the time when the original assessment of the instalments was made.⁴ But the charge was held not to apply to land purchased from the Crown.⁵

Separation of
charges.

(40) *Ante*, p. 677 (35).

(41) *Ante*, p. 677 (39).

(42) *Wilson Music and General Printing Co. v. Finsbury B.C.*, L. R. 1908, 1 K. B. 563; 77 L. J. K. B. 471; 98 L. T. 574; 72 J. P. 37; 6 L. G. R. 349.

(43) *Haedicke v. Friern Barnet U.D.C.* (1904, K. B. D.), cited in Note to P. H. Am. Act, 1890, s. 19, *post*, Part I., Div. II. On this point, see 2 L. G. R. at p. 1105.

(44) *Ibid.* (1904, C. A.). On this point, see *per* Collins, M.R., 3 L. G. R. at p. 30.

(45) 3 L. G. R. at pp. 38, 39.

(1) *Sunderland Cpn. v. Alcock*, 51 L. J. Ch. 546; 46 L. T. 377; 30 W. R. 655.

(2) *Glossop Cpn. v. Cooper and Hussey* (1913, G. C. Ct.), 136 L. T. Jo. 90. See also *Macey's Case*, *ante*, p. 16 (2), and *West's Case*, *ante*, p. 675 (14).

(3) *Birmingham Cpn. v. Baker* (1881), L. R. 17 Ch. D. 782; 46 J. P. 52.

(4) *Sydney Cpn. v. Terry*, L. R. 1907 A. C. 308; 76 L. J. P. C. 68; 97 L. T. 146.

(5) *Bank of Australasia v. Sydney Cpn.*, L. R. 1916, 1 A. C. 181; 85 L. J. P. C. 43; 114 L. T. 338.

the expenses on the owners of the abutting land. One owner owned several houses and plots abutting on the streets, and the local authority apportioned upon him £380 13s. 5d. in respect of his premises which abutted on one street and £299 3s. 1d. in respect of those which abutted on the other street. These sums were demanded, but not paid. The local authority then sought a declaration that they were entitled to one charge on all his premises for £679 16s. 6d. It was held that the expenses should have been apportioned separately on his separate premises, and that they were only entitled to separate charges for the amounts so apportioned.⁶

Where the land on which a charge under the present section was imposed was subject to a covenant restraining the owner from building on it, the person entitled to the benefit of the covenant was held not to be an "owner" within the meaning of the section; and the local authority enforcing the charge were therefore not entitled to an order for the sale of the land free from the covenant.⁷

It would, however, come within the statutory covenant against "incumbrances" in the Conveyancing Act, 1881,⁸ though the claim of a local authority in the county of London for the expenses of paving a new street under the Metropolis Management Acts would not come within such a covenant, since there is nothing in those Acts to render the expenses a charge on the premises.⁹

The charge on the premises does not require registration under the Land Charges Registration and Searches Act, 1888,¹⁰ since it is not made in pursuance of any "application," but is created by the statute.¹¹ As to the registration of "local land charges" under the Law of Property Act, 1922, see that Act.¹²

The charge on the premises in respect of the expenses of private improvement works has been held by the Court of Appeal to become effective upon the completion of the works, both under the present section¹³ and under the Private Street Works Act, 1892.¹⁴

A vendor was therefore held liable to pay the expenses of making up a street under sect. 150, where a contract for the sale of the equity of redemption of the premises was made after the completion of the works, but before the service of the notice of apportionment of the expenses.¹⁵

By conditions of sale a vendor required that up to the date of completion of the sale "all rents rates taxes and outgoings" should be apportioned and paid by the purchaser. After the date fixed for the completion, but before the purchaser was ready to complete, the vendor incurred expenses in complying with a notice of the local authority to abate a nuisance. It was held that the purchaser was only entitled to specific performance of the contract for sale on condition that he paid those expenses.¹⁶

Expenses incurred by the London County Council in taking down dangerous structures under the Metropolitan Building Acts,¹⁷ on default of compliance with a magistrate's order made against the vendor of the premises on the day fixed for the completion of the sale of them, were held to be "outgoings up to that day," and therefore to be payable by the vendor in pursuance of one of the conditions of sale by which outgoings up to that day were to be cleared by him.¹⁸

The last-cited case followed one in which private street improvement expenses under a local Act had been held by the Court of Appeal to be "outgoings," which a vendor had undertaken to discharge up to the time of completion of the sale of premises adjoining the street, "such outgoings being apportioned if necessary." The court also held that they were incapable of being apportioned between vendor and purchaser.¹⁹

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Restrictive covenant.

Covenant against incumbrances.

Registration.

Date of creation of charge.

(6) *Croydon R.D.C. v. Betts*, L. R. 1914, 1 Ch. 870; 83 L. J. Ch. 709; 12 L. G. R. 906. But see the *Pontypridd Case*, ante, p. 349 (33).

(7) *Tendring Union v. Dowton*, L. R. 1891, 3 Ch. 265; 61 L. J. Ch. 82; 65 L. T. 434.

(8) 44 & 45 Vict. c. 41, s. 7 (1, A). See further as to this Act, and the amending Act of 1911, ante, p. 350.

(9) *Egg v. Blayney* (1888), L. R. 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. 65; 52 J. P. 517.

(10) 51 & 52 Vict. c. 51.

(11) *Reg. v. Land Registry Vice-Registrar or Holt* (1889), L. R. 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. 117; 54 J. P. 120.

(12) *Post*, Vol. II., p. 2357.

(13) *In re Allen and Driscoll's Contract*, L. R. 1904, 2 Ch. 226; 73 L. J. Ch. 614;

91 L. T. 676; 68 J. P. 469; 2 L. G. R. 959.

(14) See s. 13, ante, p. 349; and *Stock's Case*, cited in Note thereto. See also *In re Waterhouse's Contract* (1900), 44 Sol. J. 645.

(15) *In re Bettesworth and Richer* (1888), L. R. 37 Ch. D. 537; 57 L. J. Ch. 749; 58 L. T. 796; 52 J. P. 740.

(16) *Barsht v. Tagg*, L. R. 1900, 1 Ch. 231; 69 L. J. Ch. 91; 81 L. T. 777.

(17) 18 & 19 Vict. c. 122, ss. 59-81; 32 & 33 Vict. c. 82, s. 4; for which ss. 102-114 of the London Building Act, 1894, 57 & 58 Vict. c. cxxiii. are now substituted.

(18) *Tubbs v. Wynne*, L. R. 1897, 1 Q. B. 74; 66 L. J. Q. B. 116.

(19) *Midgley v. Coppock* (1879), L. R. 4 Ex. D. 309; 48 L. J. Ex. 674; 40 L. T. 870; 43 J. P. 683.

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Omission in particulars.

Market tolls paid after a threat to seize goods were recovered back.²⁰

The omission of a vendor, without fraudulent intent, to disclose before sale the service on him of notice to execute paving works under the present Act, was held by the Court of Appeal not to be such an "omission in particulars" as to entitle the purchaser, on discovering the fact in investigating the title, to compensation under a condition that "if any error misstatement or omission in the particulars shall be discovered the same shall not annul the sale, but if the same shall be pointed out either by the vendor or purchaser before the completion of the purchase, compensation shall be allowed, or given by the vendor or purchaser," because such an omission could not possibly have affected the value of the property sold. It was also held that a condition of sale indemnifying the vendor against expenses in complying with any requirement, enforceable against him and made after the sale, by the local authority in respect of paving, etc., was not such an implied statement that no requirement had been made by the local authority before the sale as to entitle the purchaser to relief on the ground of deception. But it was considered doubtful whether the omission would have afforded the purchaser ground for resisting specific performance, or for bringing an action for rescission of the contract.²¹

Charge on settled estate.

Trustees holding leasehold premises subject to a tenant's covenant to "bear and discharge the sewers rate and all other taxes rates assessments and impositions whatsoever" executed drainage works in pursuance of a notice served on them to abate a nuisance from defective drains under the Metropolis Management and Nuisances Removal Acts. It was held that they were entitled to deduct the cost of the works from the income of the tenant for life, not only by reason of the covenant, but also because of the primary liability of the "owner" and by reason of the provision allowing the expenses to be recovered from the occupier and deducted from the rent.²²

But in a later case where certain leasehold houses formed part of a residuary bequest to trustees upon trust for a tenant for life and remainderman, and it did not appear that there was any such covenant, Stirling, J., directed that the expenses of complying with a notice to repair, alter, and renew defective drains and other works, under the Public Health (London) Act, 1891, should be paid out of the capital of the residuary estate and not by the tenant for life.²³ Byrne, J., made a similar order where expenses of reconstructing drainage works were voluntarily incurred by the trustees.²⁴ But in another case the last-mentioned judge decided that the expenses of complying with a notice to reconstruct drains and execute other work under the Public Health (London) Act, 1891, and a dangerous structure notice under the London Building Act, 1894, were chargeable against income, whether the equitable tenant for life was in receipt of a rackrent or an improved ground rent.²⁵

And in a case in the Court of Appeal Romer, L.J., said that he did not think that Stirling, J.,²⁶ meant to decide that in the case of works executed under a notice from a sanitary authority the court had no discretion to apportion the expense between tenant for life and remainderman, but he came to the conclusion that the works in that case were not in the nature of ordinary repairs.²⁷

Where the owner of the premises, who was only a tenant for life, died after the completion of the works, but before the service of the notice of apportionment, it was held by Kay, J., that, inasmuch as the statute did not create the relation of debtor and creditor between the local authority and the property owner, the charge did not become effective before the service of the notice of apportionment, or even before the date when the expenses were declared payable by instalments, and that the expenses were therefore not payable out of the residuary estate of the deceased tenant for life.²⁸

(20) *Maskell v. Horner*, L. R. 1913, 3 K. B. 106. Further as to this case, see *post*, Vol. II., p. 1436.

(21) *In re Leyland and Taylor's Contract* (C. A.), L. R. 1900, 2 Ch. 625; 69 L. J. Ch. 764; 83 L. T. 380. Cf. *Pemsel's Case*, *ante*, p. 93.

(22) *In re Crawley* (1885), L. R. 28 Ch. D. 431; 54 L. J. Ch. 652; 52 L. T. 460; 49 J. P. 598.

(23) *In re Lever, Cordwell v. Lever*, L. R. 1897, 1 Ch. 32; 66 L. J. Ch. 66; 75 L. T. 383.

(24) *In re Thomas, Weatherall v. Thomas*,

L. R. 1900, 1 Ch. 319; 69 L. J. Ch. 198; 48 W. R. 409.

(25) *In re Copland's Settlement, Johns v. Carden*, L. R. 1900, 1 Ch. 326; 69 L. J. Ch. 240; 82 L. T. 194.

(26) *In re Lever*, *supra*.

(27) *In re Farnham's Settlement, Law Union and Crown Insurance Co. v. Hartopp*, L. R. 1904, 2 Ch. 561; 73 L. J. Ch. 667; 91 L. T. 780; 2 L. G. R. 105C.

(28) *Boor v. Hopkins* (1889), L. R. 40 Ch. D. 572; 58 L. J. Ch. 285; 60 L. T. 412; 53 J. P. 467.

Where a tenant for life had paid the expenses of making up a street under sect. 150, it was held that the amount was a charge on the inheritance, which he was entitled to keep alive as an incumbrance on the settled land, and that he was entitled to raise money by mortgage of the estate under sect. 11 of the Settled Land Act, 1890,²⁹ for the purpose of discharging it.³⁰ Another tenant for life, having paid the instalments with interest which had become due to the local authorities in respect of the expenses of sewerage, paving, and flagging streets on a settled estate under the present Act and a local Act, Kekewich, J., held that they constituted an incumbrance affecting settled land under sect. 21 (ii.) of the Settled Land Act, 1882,³¹ and that the tenant for life was entitled to be repaid out of capital moneys so much of the instalments as represented capital, but not interest, and that the trustees of the settlement ought to pay the corresponding portion of the remaining instalments.³²

An urban authority, after allowing the time for taking summary proceedings to expire, brought an action in the county court claiming (1) a declaration that they were entitled to a charge on the premises in question, and that such charge was entitled to priority, (2) an inquiry as to incumbrances, (3) an order for sale of the premises, and (4) the appointment of a receiver. The county court judge dismissed the action on the ground that the present section rendered it unnecessary; but the Divisional Court, though agreeing that the action was unnecessary, allowed an appeal against his decision, on the ground that it was a convenient and reasonable proceeding to take.³³

Enforcement of Charge on Premises.

The charge may be enforced by action in the Chancery Division, or, if the amount of the charge does not exceed £500,³⁴ in the county court. Where the amount is less than £10, it cannot be enforced in the High Court.³⁵

Private street works expenses were paid by a company who held mortgages, made by tenants for life in remainder of certain settled lands which were charged with the expenses. The company then sold the interests of those tenants, together with the interest of the company in the sums so paid by them, and a summons was taken out by the purchaser for a declaration that such sums were a charge on the capital of the settlor's estate in the lands. Neville, J., granted the declaration notwithstanding the express power given to tenants for life to raise sums by mortgage under sect. 17 of the Act of 1892.³⁶

A local authority having obtained an order that they were entitled to a charge in priority on the defendant's property in respect of private street works, the defendant stated that it was already mortgaged up to the hilt. He ignored an order for his examination, and an order for his attachment for contempt of court was made, the costs to be added to the other expenses.³⁷

Where the expenses are made payable by instalments, the charge can only be enforced in respect of the instalments for the time being in arrear.³⁸

An urban district council, unable to ascertain who was the owner of premises subject to a charge for the expenses of making up streets, brought an action on the equity side of the county court expressed to be against "the owner" of the premises in question, and obtained an order for substituted service (by advertisement in certain newspapers) of the summons. An order was then made in the action declaring the expenses to be a charge on the premises, and authorising the sale of such premises, and a subsequent order was made declaring that upon the sale the owner would be a trustee for the purchaser under the Trustee Act, 1893.³⁹ The premises were put up for sale by auction and the defendant entered into a contract to purchase them, but discovering the circumstances, refused to complete the purchase. In an action for specific performance, it was held that he was justified in refusing, and had not waived his objection to the title, for the title

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Charge on
settled estate
—continued.

Jurisdiction
of courts.

Settled land.

Inquiry into
encum-
brances.

Expenses
payable by
instalments.

Unknown
owner.

(29) 53 & 54 Vict. c. 69, s. 11.

(30) *In re Smith's Settled Estates*, L. R. 1901, 1 Ch. 689; 70 L. J. Ch. 273.

(31) 45 & 46 Vict. c. 38, s. 21 (ii.).

(32) *In re Legh's Settled Estate*, L. R. 1902, 2 Ch. 274; 71 L. J. Ch. 668; 86 L. T. 884; 66 J. P. 600.

(33) *West Ham Cpn. v. Sharp*, L. R. 1907, 1 K. B. 445; 71 J. P. 100; 5 L. G. R. 694.

(34) 51 & 52 Vict. c. 43, s. 67.

(35) *Westbury-on-Severn R.S.A. v. Mere-*

dith (1885, C. A.), L. R. 30 Ch. D. 387; 55 L. J. Ch. 744; 52 L. T. 839.

(36) *Re Pizzi, Scrivener v. Aldridge*, L. R. 1907, 1 Ch. 67; 76 L. J. Ch. 87; 95 L. T. 722; 71 J. P. 58; 5 L. G. R. 86. See also the *West Ham Case*, *supra*.

(37) *Tottenham U.D.C. v. Nielsen & Co.* (1915), 79 J. P. 504; 14 L. G. R. 333.

(38) *Tottenham Loc. Bd. v. Rowell*, *post*, p. 682.

(39) 56 & 57 Vict. c. 53, s. 30.

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of the proceedings and the orders of the county court judge, shown to his solicitor after the sale, did not amount to notice that there had been no actual service of the summons.⁴⁰

Limitation of time.

The six months' limitation, imposed as above mentioned on summary proceedings and proceedings in the county court under sect. 261, is not, however, applicable to proceedings taken in the Chancery Division of the High Court of Justice, or in the county court (under the equitable jurisdiction of that court), for enforcing the "charge on the premises."⁴¹ The time for taking proceedings to enforce the charge is, however, limited by the Real Property Limitation Act, 1874,⁴² to twelve years next after a present right to receive the money secured by the charge has accrued to some person capable of giving a discharge for it; and this limitation runs from the date of the completion of the works, and not from the service of the demand for payment.⁴³

Expenses declared private improvement expenses.

A local board that had resolved that the expenses of certain private street improvements should be "private improvement expenses" (so as to be recoverable by private improvement rates under sect. 213), before they made the apportionment according to frontage, but had afterwards revoked the resolution, were held not to be precluded from enforcing the "charge on the premises."⁴⁴ But another board that, in their notice requiring the owners to execute the works, had stated that the expenses would be declared to be private improvement expenses, were held to be thereby precluded from recovering such expenses summarily from the owners.⁴⁵

Estoppel.

In the case of expenses under the Private Street Works Act, 1892, if an owner wishes to raise the point that the local authority have agreed not to charge certain premises therewith, the objection must be raised in time.⁴⁶ As to estoppel of owners, see the case cited below.⁴⁷

*Apportionment of Expenses.***Meaning of apportionment.**

A division of the expenses, incurred by a district council under sect. 36 of the present Act in substituting earth-closets for privies in five houses belonging to the same owner, by charging the owner with four-fifths of such expenses, because the preliminary notice had not been served in respect of one of the houses, was held not to be an "apportionment" of expenses within the meaning of the present section, so as to give the owner the benefit of the lapse of three months before the council could proceed to recover the amount claimed, the section having reference to an apportionment between the owner in question and other owners.⁴⁸

Evidence of apportionment.

In a case under the Metropolis Management Acts, the production of an estimate for paving works, admitted to have been signed by the surveyor, was held to be some evidence that the surveyor had made it and determined the amount, without the surveyor being called as a witness.⁴⁹

Finality of apportionment.

An apportionment under sect. 150 is conclusive only as to the proportions,⁵⁰ and an appeal lies to the Minister of Health under sect. 268 against the demand for payment.⁵¹

Settlement of disputes.

A dispute arising upon the apportionment by the surveyor may be settled by arbitration under sects. 179 and 180, or, if the amount in dispute is less than £20, by a court of summary jurisdiction under sect. 181.

The second paragraph of the present section, limiting the time for disputing apportionments, is not applicable to claims for expenses such as the cost of erecting a hoarding under the Towns Improvement Clauses Act, 1847, in front of a dangerous building.⁵²

Notice of dispute.

It had been held not to be necessary to go to arbitration if the owner's notice disputed his liability to pay anything at all, as well as the amount (if any) which he was to pay; and that the justices might, before making their order, exercise

(40) *Wealdstone U.D.C. v. Evershed* (1905), 69 J. P. 258; 3 L. G. R. 722.

(41) *Tottenham Loc. Bd. v. Rowell* (No. 2) (1880, C. A.), L. R. 15 Ch. D. 378; 50 L. J. Ch. 99; 43 L. T. 616.

(42) 37 & 38 Vict. c. 57, s. 8.

(43) *Hornsey Loc. Bd. v. Monarch Investment Building Soc.* (1889, C. A.), L. R. 24 Q. B. D. 1; 59 L. J. M. C. 105; 61 L. T. 867.

(44) *Tottenham Loc. Bd. v. Rowell*, *supra*.
(45) *Gould v. Bacup Loc. Bd.* (1881), 50 L. J. M. C. 44; 44 L. T. 103; 45 J. P. 325.

(46) See the *Porthcawl Case*, *ante*, p. 345 (5).

(47) *Pierson's Case*, *ante*, p. 320 (28).

(48) *Bower v. Caistor R.D.C.*, *ante*, p. 110 (19).

(49) *Hobman v. Greenwich Bd. of Works* (1894, C. A.), 58 J. P. 703.

(50) See *Bayley's Case*, *ante*, p. 319 (11).

(51) See the *Penarth Case*, *post*, p. 713 (9). and the remarks thereon of Mathew, J., in *Eccles v. Wirral R.S.A.*, there cited; see also *Walthamstow Loc. Bd. v. Staines*, *ante*, p. 316 (44).

(52) *Usk U.D.C. v. Mortimer* (1903), 90 L. T. 25; 68 J. P. 38; 2 L. G. R. 135.

their jurisdiction as arbitrators in a case falling within sect. 181.⁵³ The Court of Appeal, however, differed from this in a case where the notice disputing an apportionment of paving expenses was given in the following terms: "I have to point out that an error has been made in charging me with £25 19s. 11d. out of a total cost of £61, as the amount due from me on the Grafton House property, as no paving, curbing, or channelling, has been done to the portion of the road that my land abuts on; therefore I request you to go more carefully into the matter, and forward to me an amended statement." An action having been brought in the county court, notwithstanding this notice, to recover the £25 19s. 11d., the county court judge, acting on a dictum of Bacon, V.-C.,⁵⁴ directed the jury to find a verdict for the plaintiffs on the ground that the notice disputed the defendant's liability as well as the mere apportionment. The Court of Appeal, however, decided that, the accuracy of the apportionment having been disputed, the dispute was to be settled by arbitration, and it was pointed out that questions of law arising before the arbitrator could be brought before the court by special case, and that the court could, if necessary, direct him to state such a case.⁵⁵

The last-cited case was distinguished by Wright, J., in one where the notice of objection appeared to be rather an objection to the prime cost of the work than to the mode in which that cost was apportioned. The Court of Appeal, however, held that, although the notice might have been treated as not disputing the apportionment, the local authority had treated it as disputing such apportionment, and their action, for enforcing the charge on the premises, must be dismissed.⁵⁶

In another case, the owner did not dispute the apportionment of the expenses incurred in executing works other than the sewerage work, but except that he did not dispute the proportions in which the expenses of the sewerage work were apportioned between himself and the other frontagers, he wholly disputed the apportionment so far as it included the sewerage work. On an arbitrator being appointed by the local board, he appointed the same person to act on his behalf in settling the proportion to be paid by him of any of the expenses to which he might be held by a court of competent jurisdiction to be liable to contribute, and also in settling the amount of the expenses duly incurred by the board in levelling, paving, etc., and the amount so incurred in sewerage; and attended the arbitration under protest, contending that there was no question in dispute between the plaintiffs and defendant which the arbitrator had jurisdiction to determine. The arbitrator made his award dealing separately with the expenses of the levelling, paving, etc., and the expenses of the sewerage; and the board having brought an action on the award for the amount of the latter expenses, and the jury having found that the board had accepted as satisfactory a sewer which had been laid in the street some years before they gave the adjoining owners the notice to re-sewer it, judgment was given for the defendant. On appeal Lord Esher, M.R., said, "If the plaintiffs had already accepted the work which was done on the old sewer, there was nothing to be sent to arbitration, for in that case they could not charge the defendant for the new work. The arbitrator thought that there was a question whether the plaintiffs had accepted it or not; but I feel considerable doubt whether that was a point which could properly be sent to him; that difficulty, however, does not arise, for it is plain from the award that if the arbitrator had authority to decide that question, he never finally decided it. The meaning of his award is that he does not know what inference he ought to draw from the facts; he really leaves it to the court, and the proper inference is that which the jury have found."⁵⁷ See also the cases cited in the Note to sect. 268.⁵⁸

In the foregoing case the question whether an action on the arbitrator's award was the proper remedy for recovery of the expenses after an arbitration was not raised. But in a later case the Court of Appeal held that the procedure prescribed by the present Act for the recovery of such expenses must be pursued, although the apportionment had been settled by arbitration.⁵⁹

In a subsequent case it was held by Channell, J., on a special case stated by

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Notice of
dispute—cont.

Jurisdiction
of arbitrator.

(53) *West v. Downman* (1880, C. A.), L. R. 14 Ch. D. 111; 42 L. T. 340; 29 W. R. 6. But see *Brierley Hill Loc. Bd. v. Pearsall*, ante, p. 492.

(54) In *West v. Downman*, supra.

(55) *Sandgate Loc. Bd. v. Keene*, L. R. 1892, 1 Q. B. 831; 61 L. J. Q. B. 775; 66 L. T. 741; 56 J. P. 484.

(56) *Folkestone Cpn. v. Brooks*, L. R. 1893, 3 Ch. 22; 62 L. J. Ch. 863; 68 L. T. 674;

69 L. T. 403; 58 J. P. 53. See also *West Hartlepool Cpn. v. Robinson* (1897, C. A.), 77 L. T. 387; 46 W. R. 218; 62 J. P. 35.

(57) *Hornsey Loc. Bd. v. Davis*, L. R. 1893, 1 Q. B. 756; 62 L. J. Q. B. 427; 68 L. T. 503; 57 J. P. 612.

(58) *Post*, p. 713 (11).

(59) *In re Willesden Loc. Bd. v. Wright*, ante, p. 492.

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an arbitrator appointed to apportion street improvement expenses under sect. 150, that, inasmuch as some expenses were due from the owner in question, the arbitrator had no jurisdiction to inquire whether the street had been sewered to the satisfaction of the council, and that the only mode of raising that point was by appeal to the Local Government Board under sect. 268.⁶⁰

Award only binding on parties to arbitration.

A fresh apportionment made on an arbitration between the local authority and one of the owners does not affect the apportionment made upon another owner who has not been a party to the arbitration, so as to enable the authority to recover a greater amount from him than the amount originally apportioned on him.⁶¹

*Payment by Instalments.***Deductions from rent by occupier.**

The last clause of the present section has reference to the provisions as to deductions from the rent of part of a private improvement rate, which are contained in sect. 214, and if the local authority declare the expenses payable by instalments, they may, by recovering such instalments from the occupier of the premises, throw upon him one-fourth (or more, if his rent is less than a rack-rent) of the expenses which would otherwise be wholly payable by the statutory "owner"; and where there are successive sub-leases of the premises, each lessee may have a portion of the remainder of such expenses thrown upon him.

The fact that an Act provides that a tenant, called upon by the local authority to pay the expenses of private improvements, may deduct the amount from his rent, does not prevent the tenant from contracting out of that provision by the covenants into which he enters in his lease.⁶²

But it was held by North, J., that a mere contract in a lease to pay the rent without any deduction was not intended to oust the statutory right of the tenant to deduct the amount of expenses paid by him to the local authority under a provision in the Metropolis Management Act, 1862,⁶³ allowing the expenses of certain works charged on the owner of premises to be recovered from the occupier and to be deducted by him from his rent.⁶⁴

In an action, however, for illegal distress for rent, the Court of Appeal held that the landlord was at liberty to distrain for the full rent, although the tenant had paid an amount, equal to the rent due from him to the landlord, to the local authority in respect of such expenses under the Metropolitan Acts, where the tenant had not only covenanted to pay the rent clear of all deductions except property tax, but also to pay such charges as those in question. The payment to the local authority in such a case is not payment of rent, though there may be a set off in respect of it against the rent due.⁶⁵

Covenant to pay rent without deduction.

With reference to the deduction of a newly created tax or imposition, the covenants contained in the grant of a rentcharge declared that "it is the true intent and meaning of these presents that . . . [the grantees] shall be paid the rentcharge without deduction of any taxes." Holt, C.J., said that "such a covenant, if made in the year 1640, would not have freed the rentcharge from the taxes imposed by these Acts, because there was no parliamentary tax in being or known at that time; but because there were such taxes in the year 1645, which was before the grant, therefore this covenant must be construed to extend to them."⁶⁶

And in a modern case, where a tenant from year to year agreed to "pay all outgoing," this was held by Wright, J., not to prevent him from deducting from his rent a current rate made under an Act passed during the tenancy, which entitled the tenant to deduct the rate from his rent in the absence of any agreement to the contrary, though he could not deduct the amounts of previous rates which he had paid.⁶⁷

A tenant covenanted to pay the rent of certain lands "free of land tax and all other taxes and deductions whatsoever." The owners of those and other lands were liable *ratione tenuræ* to repair a bridge, and by a local Act were authorised to hold meetings and make rates and assessments on their lands for the purposes of such repair. The tenant being assessed to a rate made for those purposes paid the amount and brought an action to recover it from his landlord. It was held

(60) *In re Hanwell U.D.C. and Smith* (1904), 68 J. P. 496; 2 L. G. R. 1350.

(61) *Tunbridge Wells Loc. Bd. v. Akroyd* (1880, C. A.), L. R. 5 Ex. D. 199; 49 L. J. Ex. 403; 42 L. T. 640; 44 J. P. 504.

(62) *Payne v. Burridge* (1844), 12 M. & W. 727. Followed in *Sweet v. Seager* (1857), 2 C. B. (N.S.) 119; 3 Jur. (N.S.) 588; 29 L. T. 109.

(63) 25 & 26 Vict. c. 102, s. 96.

(64) *Home and Colonial Stores v. Todd* (1891), 63 L. T. 829.

(65) *Skinner v. Hunt*, L. R. 1904, 2 K. B. 452; 73 L. J. K. B. 680; 91 L. T. 270; 68 J. P. 402; 2 L. G. R. 769.

(66) *Brewster v. Kitchel* (1698), 1 Salk. 197; 2 Salk. 615; 1 Ld. Raym. 317.

(67) *Mile End Old Town Vestry v. Whitby* (1898), 78 L. T. 80.

that he was entitled to recover it, the Act being considered merely to supply a more convenient mode of raising the necessary funds to meet a charge already created, and the rate not being a tax or deduction within the meaning of the covenant.⁶⁸

A frontager, who had been paying irregularly instalments of principal and interest, was held not to be entitled to deduct from the last instalment income tax as on "yearly interest," there being no evidence that the local authority had made a practice of doing this as a mode of investing its funds.⁶⁹

Loans for Private Improvements.

The local authority may borrow money for private improvement expenses, taking care to charge the repayment of the loan on the proper persons—see the last clause of sect. 234.

Where the expenses of private improvements are paid with borrowed money, the local authority may grant a rentcharge on the premises to the lender under sect. 250.

The grant by the owner of certain premises of a rentcharge on the premises in pursuance of a local Act to secure repayment of private improvement expenses was held not to prevent the authority, to whom the rentcharge had been given, from bringing an action for those expenses in pursuance of the same Act, against a mortgagee, who subsequently came into possession, the remedies being held to be concurrent.⁷⁰

Landlord and Tenant.

Unless it is otherwise provided by contract between the owner and occupier, the occupier and not the owner is *primâ facie* liable to third parties and to the public for a nuisance arising from neglect to execute works, such as the repair of the drains of the premises; and a declaration against an owner for not cleansing certain drains or sewers, not alleging that he was the occupier, or showing a reason for the alleged liability, was held to be bad.¹ The owner may, however, in some cases be liable. Thus, it was held that if the owner of land erect a building which is a nuisance, and let the land, he is liable to an indictment for the nuisance being continued during the term owing to his not having taken effectual means to prevent it. So also if he let a building, which requires particular care to prevent the occupation from being a nuisance, and the nuisance occur from want of that care on the part of the tenant.² Or he may be liable to an action if he so leases premises that the nuisance is the necessary consequence of that which was contemplated in the lease.³

It is also held that, if the owner undertakes the repairs, he renders himself liable for the consequences of non-repair.⁴

With reference to covenants to repair, it may be mentioned that the expenses of the abatement of a nuisance, arising from the deposit in a piece of ornamental water, by clearing out the deposit, were held not to have been incurred by reason of neglect to repair the premises, so as to give the person who incurred the expense a right of action against the person who had agreed with him to repair the premises.⁵

Drainage works under the section of the Public Health Act, 1848, corresponding to sect. 23 of the present Act, were held not to come within the provision in a will directing the beneficiaries to keep premises "in good and absolute repair."⁶

A tenant covenanted to repair the inside of the premises and keep the gutters and water pipes free from obstructions, the landlord to repair all the outside parts of the premises. The landlord incurred expenses in repairing a defective drain, but failed to recover them from the tenant, because of his covenant to repair the outside.⁷

A landlord was held not liable to his tenant for damages for failing to repair a manhole, because it was part of a "sewer" the buildings served by which were not within the same "curtilage."⁸

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Income tax
on interest.

Rentcharge.

Primâ facie
liability for
expenses.Liability for
non-repair.

(68) *Baker v. Greenhill* (1842), 3 Q. B. 148; 11 L. J. Q. B. 161; 6 Jur. 710.

(69) *Gateshead Cpn. v. Lumsden* (C. A.), L. R. 1914, 2 K. B. 883; 83 L. J. K. B. 1121; 111 L. T. 26; 78 J. P. 283; 12 L. G. R. 701.

(70) *Blackburn Cpn. v. Micklethwaite* (1886), 54 L. T. 539; 50 J. P. 550.

(1) *Russell v. Shenton* (1842), 3 Q. B. 449; 11 L. J. Q. B. 289; 6 Jur. 1083.

(2) *Rex v. Pedly* (1834), 1 A. & E. 822; 3 L. J. M. C. 119; see also *Todd v. Flight*,

ante, p. 207 (11).

(3) *Harris v. James* (1876), 45 L. J. Q. B. 545.

(4) *Payne v. Rogers* (1794), 2 H. Bl. 349.

(5) *Bird v. Elwes*, *post*, p. 686.

(6) *Harrison v. Barney*, L. R. 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180.

(7) *Hearn v. Harinden*, 1903 Loc. Gov. Chron. 1166. But see *Lurcott's Case*, *post*, Vol. II., p. 1627.

(8) *Ashton v. Haine* (1922, Lush, J.), 153 L. T. Jo. 264, 265.

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Implied
condition.

It is an implied condition in all hirings of a furnished house that it shall be in good and tenantable condition. Thus, where a tenant had taken a furnished house for two months, but entering found a cesspool full of filth beneath the floor, he was justified in rescinding the contract and was not liable for the rent.⁸

In the case of unfurnished houses such an implied condition only exists by statute, namely, in the case of houses let for habitation by persons of the working class.⁹

A false verbal warranty that a house was dry, and that the drains were perfect, was held by the Court of Appeal not to give a right of action.¹⁰ But where the tenant's counterpart of the lease (which did not refer to the drains) was handed over to the landlord upon his assertion that the drains were perfect, such assertion was held by the same court to amount to a warranty collateral to the lease, and damages for breach of the warranty were held to be recoverable, when it turned out that the drains were in bad condition and the tenant was put to expense in altering them.¹¹

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In 1867 and 1868 two cases¹² were decided by the Court of Common Pleas, which gave rise to two divergent series of decisions¹³ on the effect of various tenant's covenants upon the ultimate liability, as between landlord and tenant, to bear the cost of works of private improvement and other more or less similar expenses.

In view of this divergency, the cases are entered in this Note in chronological order, and a uniform method of description has been adopted for the sake of conciseness and ease of comparison.

A "parliamentary tax," which is frequently mentioned in such covenants, is one imposed directly by Act of Parliament, and does not include a sewers rate made by commissioners of sewers.¹⁴

Covenant by tenant to "pay bear and discharge all *taxes rates assessments and impositions* whatsoever . . . payable in respect of the said demised premises." Money spent by landlord on private street works under local Act held not recoverable from tenant.¹⁵

Covenant by tenant to pay the rent clear of all rates and deductions whatsoever, and to "pay and discharge all *taxes rates duties and assessments* whatsoever which . . . shall be taxed assessed or imposed on the tenant or landlord of the premises hereby demised in respect thereof whether parliamentary parochial or otherwise." Money spent by landlord on paving a new street adjoining the premises, under the Metropolitan Acts, held recoverable from tenant as "duties."¹⁶

Covenant by landlord to repair the premises and to "pay and discharge all *rates taxes and other charges* payable in respect of the premises." Money spent by tenant on abating a nuisance from a deposit of mud and filth in a piece of ornamental water, after the local authority had commenced proceedings to obtain an order for abatement of the nuisance against the tenant, held not recoverable from landlord, as the covenant to repair did not apply to the cleansing of the piece of ornamental water, and the procedure prescribed by the Nuisances Removal Act, 1855, then in force, had not been followed so as to render the expenses a charge on the premises under that Act, and the money was not recoverable as paid for the landlord under compulsion. *Per* Bramwell, B.: "This is what may be called an occupation nuisance. . . . If a nuisance were created by the act of nature, as by the brook overflowing and leaving a marsh, the case might be different, because that would not be due to the occupier's default."¹⁷

Covenant by tenant to "bear pay and discharge all *taxes rates assessments and outgoings* taxed rated charged assessed or imposed upon the premises or upon the landlord or tenant in respect thereof." Money spent by tenant, by

(8) *Wilson v. Finch-Hatton* (1877), L. R. 2 Ex. D. 336; 46 L. J. Ex. 489; 36 L. T. 473. As to the repair of, *e.g.*, steps used in common, see *Dunston's Case*, cited in Note to H. T. P. Act, 1909, s. 14, *post*, Part II., Div. III.

(9) See Housing Act of 1890, s. 75, and enactments, etc., there mentioned, *post*, Part II., Div. III.

(10) *Green v. Symonds* (1897), 13 T. L. R. 301. See also *Angel's Case*, *ante*, p. 248 (6).

(11) *De Lassalle v. Guildford*, L. R. 1901, 2 K. B. 215; 70 L. J. K. B. 533; 84 L. T. 549; 66 J. P. 19, n. But see *Heilbut Symons & Co. v. Buckleton*, L. R. 1913 A. C. 30; 82

L. J. K. B. 245; 107 L. T. 769.

(12) *Tidswell v. Whitworth*, *infra*, and *Thompson v. Lapworth*, *infra*.

(13) Reviewed in *Foulger v. Arding*, *post*, p. 689 (45).

(14) *Palmer v. Earith* (1845), 14 M. & W. 428; 14 L. J. Ex. 256. See also the *South Australian Case*, *post*, p. 692 (69).

(15) *Tidswell v. Whitworth* (1867), L. R. 2 C. P. 326; 36 L. J. C. P. 103; 15 L. T. 574.

(16) *Thompson v. Lapworth* (1868), L. R. 3 C. P. 149; 37 L. J. C. P. 74; 17 L. T. 507.

(17) *Bird v. Elwes* (1868), L. R. 3 Ex. 225; 37 L. J. Ex. 91; 18 L. T. 727; 32 J. P. 694.

arrangement with the landlord, on connecting the house drains with a sewer,¹⁸ held not recoverable by him from landlord, as it was an "outgoing."¹⁹

Covenant by tenant "to pay and discharge all manner of *taxes rates charges assessments and impositions* . . . charged assessed or imposed upon the premises or in respect thereof by authority of Parliament or otherwise howsoever." Money spent by landlord on abating drainage nuisance, after default of tenant in complying with notice served upon him by the sanitary authority under sect. 94 of the present Act, held not recoverable from tenant.²⁰

Covenant by tenant to "pay all *rates taxes charges or assessments* whatsoever . . . charged or assessed upon the said premises or any part thereof or upon any person or persons in respect thereof." Money spent by landlord on private street works under Public Health Act, 1848, held recoverable from tenant as a "charge on the premises."²¹

Covenant by tenant to "bear pay and discharge . . . all the *taxes rates duties and assessments* whatsoever whether parliamentary parochial or otherwise . . . charged assessed or imposed on the premises or upon the landlord or tenant in respect thereof." Money spent by landlord on repairing drainage of premises, after the sanitary authority had obtained a justice's order under the present Act requiring the owners to abate the nuisance, held recoverable from tenant.²²

Covenant by tenant to pay certain specified rates "and other district *rates and assessments* . . . taxed rated charged assessed or imposed upon the said demised premises or any part thereof or upon or payable by the occupier or tenant in respect thereof." Money spent by landlord on paving expenses under the Metropolitan Acts held not recoverable from tenant.²³ *Per* Jessel, M.R.: "The other charges mentioned in the covenant are annual charges; but this is a payment which is to be made once for all, and is not therefore similar to the other payments which are to be thrown on the tenant."

Covenant by tenant to "pay all the *rates taxes and outgoings* . . . payable whether by landlord or tenant in respect of the said premises." Money spent by landlord on private street works executed by local authority under a local Act held recoverable from tenant, though the word "outgoings" was omitted from the reddendum, which only provided that the tenant should pay the rent "clear of all present and future rates taxes and deductions."²⁴

Covenant by tenant to "pay all *rates taxes and assessments* payable in respect of the premises during the tenancy." Money spent by landlord on paving expenses under the Metropolitan Acts held not recoverable. *Per* Manisty, J.: "The debt is in the nature of a charge which is of permanent value, and not a temporary rate or tax."²⁵

Covenant by tenant to "pay the tithe . . . and all other *taxes rates assessments impositions and outgoings* . . . and also a fair proportion with the owners and occupiers of the other houses abutting thereon of the expenses of keeping in repair and lighting the roadway and footpath in front of the said premises until the same shall be taken by the parish." Money spent by landlord on making up the road under sect. 150 of the present Act held not recoverable from tenant.²⁶

Covenant by tenant to "pay all existing and future *taxes rates assessments land tax tithe or tithe rentcharge and outgoings* of every description for the time payable either by the landlord or tenant in respect of the said premises." Money spent by landlord on private street works under the Metropolitan Acts held recoverable from tenant.²⁷

Covenant by tenant, in a lease for three years at a rent of £75, to "pay all . . . *taxes rates assessments and outgoings* of every description payable by landlord or tenant in respect of the premises." £68 due for private street works under the Metropolitan Acts held, on special case, to be payable by tenant, Kay, J., saying, "it is extremely difficult to say that a covenant the words of which would

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(18) Under 29 & 30 Vict. c. 90, s. 10, corresponding to s. 23 of the present Act.

(19) *Crosse v. Raw* (1874), L. R. 9 Ex. 209; 43 L. J. Ex. 144; 23 W. R. 6.

(20) *Rawlins v. Briggs* (1878), L. R. 3 C. P. D. 368; 47 L. J. C. P. 487; 42 J. P. 791.

(21) *Hartley v. Hudson* (1879), L. R. 4 C. P. D. 367; 48 L. J. C. P. 751; 43 J. P. 784.

(22) *Budd v. Marshall* (1880), L. R. 5 C. P. D. 481; 50 L. J. C. P. 24; 42 L. T. 793; 44 J. P. 584.

(23) *Allum v. Dickinson* (1882), L. R. 9

Q. B. D. 632; 52 L. J. Q. B. 190; 47 L. T. 493; 47 J. P. 120.

(24) *Gardner v. Furness Ry. Co.* (1883), 47 J. P. 232. See also *Midgley v. Coppock*, ante, p. 679.

(25) *Wilkinson v. Collyer* (1884), L. R. 13 Q. B. D. 1; 53 L. J. Q. B. 278; 51 L. T. 299.

(26) *Hill v. Edward* (1885), 1 Cab. & El. 481. See also *Moore v. Todd*, post, p. 691 (55).

(27) *Aldridge v. Ferne* (1886), L. R. 17 Q. B. D. 212; 55 L. J. Q. B. 587; 34 W. R. 578.

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in the case of a term of twenty-one years include a payment by the tenant, must be construed not to include it because the term is only for three years. I quite agree in thinking the length of the term is a thing which ought to be taken into consideration; but it would be rather a violent construction to say that in the one case it is included and not in the other.”²⁸

Covenant by tenant to “pay the rent free from all deductions for main drainage and sewer rates metropolitan and local improvement rates taxes land tax and tithe,” and to pay those rates, etc. Tenant held not entitled to deduct from his rent the amount which had been recovered from him, under the Metropolis Management Act, 1862,²⁹ by the local authority in respect of drainage works for remedying a nuisance.³⁰

Covenant by tenant to “pay all *rates taxes and assessments* whatsoever . . . imposed upon the said premises or the landlord or tenant in respect thereof,” and also to “make uphold support cleanse and repair and keep in repair all . . . sewers drains cesspools . . . belonging to the said premises.” Money spent by landlord in complying with notice to abate drainage nuisance held not recoverable from the tenant because the expenses did not come within the first covenant, and the second covenant was not applicable to the construction of new drains.³¹

Covenant by tenant to “pay all *outgoings* . . . imposed charged or assessed on the premises or the owner or occupier thereof,” and to “keep the premises in a tenantable state of repair, damage by fire and tempest *and all ordinary wear and tear alone excepted*.” On proceedings taken by the owner to determine whether he or the tenant was liable to abate, under the Public Health (London) Act, 1891, a nuisance in a drain arising from wear and tear and long user, it was held that the tenant was liable under the first covenant, notwithstanding the exception at the end of the second covenant.³²

Covenant by tenant to “pay bear and discharge all land tax sewers rate main drainage rate and all other *rates taxes assessments charges or impositions* whatsoever . . . taxed charged assessed or imposed upon the demised premises or on the lessor for or in respect of the premises.” Money spent by landlord on drainage works which he had been required by the local authority to execute under the Public Health (London) Act, 1891, held recoverable from tenant as “charges imposed.”³³

Covenant by tenant to “pay the land tax sewers rate and all other *taxes rates duties assessments and impositions* . . . assessed or imposed on or in respect of the said demised premises.” Money spent by landlord in complying with notice from local authority to execute drainage works for abatement of nuisance under Public Health (London) Act, 1891, held recoverable from tenant, the court holding that absence of words “assessed or imposed on the landlord” did not narrow force of covenant.³⁴

Covenant by tenant to “bear pay and discharge all rates . . . and *impositions and outgoings* whatsoever,” and to “bear and pay a fair share and proportion of all costs and expenses which the lessors in respect of being the owners or lessors of the premises . . . may be called upon to bear pay or contribute.” Money spent by landlord in providing means of escape in case of fire under the Factory and Workshop Act, 1891.³⁵ Held that he could recover from tenant a “fair share” only of such money, having regard to the second covenant.³⁶

Covenant by tenant, in lease for fourteen years, to pay “all *rates taxes and assessments* whatsoever . . . imposed or assessed upon the premises or the landlords or tenants in respect thereof.” Money spent by landlord on private street works under sect. 150 held not recoverable, though Channell, J., expressed some doubt whether the expenses, though not a rate or tax, might not be an assessment imposed on the landlord in respect of the premises.³⁷

Covenant by tenant to “pay all . . . *rates taxes outgoings and assessments* whatsoever . . . imposed or assessed upon or payable in respect of the said demised

(28) *Batchelor v. Bigger* (1889), 60 L. T. 416; W. N. 51.

(29) 25 & 26 Vict. c. 102, s. 96.

(30) *Home and Colonial Stores v. Todd* (1891), 63 L. T. 829.

(31) *Lyon v. Greenhow* (1892), 8 T. L. R. 457. Further, as to this case, see *ante*, pp. 21, 677.

(32) *Melhado v. Woodcock, In re Bettingham* (1892), 9 T. L. R. 48.

(33) *Smith v. Robinson*, L. R. 1893, 2 Q. B.

53; 62 L. J. Q. B. 509; 69 L. T. 434.

(34) *Brett v. Rogers*, L. R. 1897, 1 Q. B. 525; 66 L. J. Q. B. 287; 76 L. T. 26.

(35) 54 & 55 Vict. c. 75, s. 7; for which the Factory and Workshops Act, 1901, s. 14, *post*, Vol. II., p. 2145, is now substituted.

(36) *Arding v. Economic Printing and Publishing Co.* (1898, C. A.), 79 L. T. 622; 15 T. L. R. 111.

(37) *Baylis v. Jiggins*, L. R. 1898, 2 Q. B. 315; 67 L. J. Q. B. 793; 79 L. T. 78.

premises." Money spent by landlord on drainage works to comply with a notice to abate a nuisance under the Public Health (London) Act, 1891, held recoverable from tenant, omission of words "whether payable by landlord or tenant in respect of the premises" being held to be immaterial.³⁸

Covenant by tenant to pay "all *taxes charges rates duties* tithes and tithe rentcharge *assessments and impositions*." Money spent by landlord on private street works under Metropolitan Acts, and paid during the continuance of the lease, held recoverable from tenant, though the works were not commenced until after the lease had been determined.³⁹

Covenant by tenant to "pay and discharge all *taxes rates duties and assessments* whatsoever . . . payable for or in respect of the premises hereby demised or any part thereof." Money spent by landlord on drainage works in compliance with notice addressed "to the owner or occupier," under Metropolitan Acts,⁴⁰ held recoverable from tenant.⁴¹

Covenant by tenant to "pay all *rates taxes assessments and outgoings* . . . payable whether by the landlord or tenant in respect of the said demised premises." Money spent by landlord on private street works under sect. 150 held recoverable from tenant.⁴²

Covenant by tenant to pay "all *rates taxes charges and assessments and outgoings* whatsoever." Money spent by landlord under the Factory and Workshop Act, 1901,⁴³ in providing means of escape from fire, held apportionable between landlord and tenant by the county court judge on appeal to him under that Act. But *per* Channell, J. : "If the parties had by express terms provided for expenses under this section of the Factory Act, so that, by that contract, the liability for those expenses fell clearly on either the landlord or the tenant, then I do not think it would be just or equitable for the county court judge to make any other order." ⁴⁴

These decisions were, in 1902, reviewed by the Court of Appeal, who reversed a decision of the Divisional Court.⁴⁵ Covenant by tenant, in lease for sixteen years, to "pay and discharge all *taxes rates* including sewers main drainage *assessments and impositions* whatsoever . . . assessed charged or imposed upon or in respect of the said premises or any part thereof on the landlord tenant or occupier. . . ." Money spent by landlord on removing a privy and constructing a water-closet in obedience to a notice which had been served upon him by the local authority under the Public Health (London) Act, 1891,⁴⁶ requiring him to abate a nuisance on the demised premises by executing those works, held recoverable from tenant. Collins, M.R., said that it was clear on the authorities that, where there was a defect, inherent in the structure of the premises at the time of the demise, which was the subject-matter of an obligation imposed by statute on the landlord, the burden of that obligation might nevertheless, by a covenant of the kind in question, be thrown upon the tenant; and that it was also clear on the authorities that a covenant of that kind might, if it contained appropriate words, be construed as being directed, not only to recurring charges such as rates and taxes, but also to charges in the nature of capital expenditure incurred once for all, such as charges in respect of the structural work. And with regard to the nature of the statutory obligation which would come within the meaning of the term "imposition" in such a covenant, he pointed out that underlying the whole matter was the consideration that a contract of demise between landlord and tenant was being dealt with, so that the covenant must be assumed to relate only to matters which might reasonably be supposed to have been contemplated by the parties as being within the purview of such a contract; such a case as that, for instance, of an obligation to pull down and rebuild the premises because they were beyond the building line of a street being so far outside of anything that could possibly be conceived of as being within the contemplation of the parties that it would necessarily be excluded from the meaning of words which might otherwise have been wide enough to include it;

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(38) *Antil v. Godwin* (1899), 63 J. P. 441; 15 T. L. R. 462.

(39) *Wix v. Rutson*, L. R. 1899, 1 Q. B. 474; 68 L. J. Q. B. 298; 80 L. T. 168.

(40) 18 & 19 Vict. c. 120, s. 85; 25 & 26 Vict. c. 102, s. 64.

(41) *Farlow v. Stevenson* (C. A.), L. R. 1900, 1 Ch. 128; 69 L. J. Ch. 106; 81 L. T. 589.

(42) *Weld v. Clayton-le-Moors* U.D.C. (1902), 86 L. T. 584.

(43) See s. 14, *post*, Vol. II., p. 2145.

(44) *Monk v. Arnold*, L. R. 1902, 1 K. B. 761; 71 L. J. K. B. 441; 86 L. T. 580. See also *Shephard v. Barber*, *post*, p. 690, *Horner v. Franklin*, *post*, p. 692, and, with regard to the observation of Channell, J., *Goldstein v. Hollingworth*, *post*, p. 691.

(45) *Foulger v. Arding*, L. R. 1902, 1 K. B. 700; 71 L. J. K. B. 499; 86 L. T. 488.

(46) 54 & 55 Vict. c. 76, s. 40.

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whereas the obligation then in question was one of the very things that the parties would probably contemplate in entering into the covenant, as being a matter which might ordinarily arise as an incident of the relation between landlord and tenant. He further pointed out that the distinction taken between the covenants in *Tidswell v. Whitworth* and *Thompson v. Lapworth*,⁴⁷ was that in the former case there was no reference to any persons upon whom the impositions intended to be covered by the covenant were charged or imposed, whereas in the latter the covenant spoke of them as imposed "on the tenant or landlord of the premises demised in respect thereof," but that later on greater emphasis was laid on the presence of words like "duties" or "outgoings" than on words describing the persons on whom they were imposed. Romer, L.J., expressed regret that the line to which the decision in *Tidswell v. Whitworth* pointed had not been followed in the subsequent cases, the current of which had been in favour of the landlord by giving such an extensive meaning to the term "duties" in covenants of the kind, and not in favour of restricting the meaning of such covenants. And Mathew, L.J., pointed out that the charge in question was not imposed on the premises themselves, but on the landlord personally in respect of them; and that therefore, if it were necessary, for the purpose of transferring the burden to the tenant, to show that there was a charge imposed on the premises, the tenant would escape.

Since this decision, the following cases relating to tenants' covenants have come before the courts:—

Covenant by tenant, in lease for twenty-one years, extended in 1889 to forty-one years, to "pay the rent clear of all land tax sewers rate . . . and all other *taxes charges rates assessments and impositions* whatsoever as well parliamentary as parochial . . . taxed charged rated assessed or imposed upon the said premises," and to "pay and discharge the land tax . . . and other rates assessments and demands." Money spent by landlord on providing means of escape from fire under the Factory and Workshop Act, 1891,⁴⁸ held recoverable from tenant.⁴⁹

Covenant by tenant, in lease for seven and a quarter years, to pay "the sewers rate and all other *taxes rates charges and assessments* whatsoever, parliamentary parochial or otherwise, which may be imposed charged or assessed upon or in respect of the premises, or payable either by the owner or occupier in respect of the same." Money spent by tenant on complying with a notice under sect. 94 to abate a drainage nuisance held not recoverable from landlord.⁵⁰

Covenant by tenant, in lease for three years at rent of £55, to "pay all *taxes rates assessments and outgoings* of every description for the time being payable in respect of the premises as they become due." £83 10s. spent by landlord on complying with drainage nuisance notice under the present Act held recoverable from tenant.⁵¹ *Per* Wright, J.: "It cannot be said that the possibility of the landlord being called upon to put the drainage of his house in order can be regarded as altogether outside the contemplation of the parties. The obligation is one connected with the ordinary occupation of the house, and it is equally so whether the term of the demise is three years or twenty-one."

Covenant by tenant, in lease for three years at rent of £54, to "pay and discharge all *rates taxes assessments and impositions* whatsoever whether parliamentary or parochial." £118 spent by tenant on reconstruction of drains in pursuance of a notice under the Public Health (London) Act, 1891, held not provable in landlord's bankruptcy.⁵²

Covenant by tenant, in tenancy from year to year at rent of £20, to "pay all *rates taxes assessments and outgoings* of every description payable in respect of the premises." £50 spent by landlord on paving and draining the backyard of the premises held not recoverable from tenant, but £8 on providing a water supply to a water-closet held recoverable.⁵³

Covenant by tenant to "pay and bear all present and future *rates and taxes duties assessments and outgoings* charged upon the premises." Expenses were incurred by the lessor in paying her superior lessor under the like covenant

(47) *Ante*, p. 686 (12), (16).

(48) 54 & 55 Vict. c. 75, s. 7. See now Act of 1901, s. 14, *post*, Vol. II., p. 2145.

(49) *Shephard v. Barber* (1902), 1 L. G. R. 157; 67 J. P. 238. But see *Horner v. Franklin*, *post*, p. 692.

(50) *George v. Coates* (1903, C. A.), 88 L. T. 48.

(51) *Stockdale v. Ascherberg*, L. R. 1903,

1 K. B. 873, affirmed in C. A., L. R. 1904, 1 K. B. 447; 73 L. J. K. B. 206; 90 L. T. 111; 68 J. P. 241. But see *Harris v. Hickman*, *post*, p. 691.

(52) *In re Warriner, Brayshaw v. Minns*, L. R. 1903, 2 Ch. 367; 72 L. J. Ch. 701; 88 L. T. 766; 67 J. P. 351; 1 L. G. R. 765.

(53) *Valpy v. St. Leonard's Wharf Co.* (1903), 67 J. P. 402; 1 L. G. R. 305.

expenses charged on him under the Private Street Works Act, 1892. The intermediate lessor brought an action to recover the expenses from her sub-tenant; but the sub-tenant was held by the Court of Appeal not to be liable, on the ground that the covenant was prospective, and the works had been completed before the date of the sub-lease.⁵⁴

Covenant by one landowner with another that a certain road should be wholly and solely maintained by one of them unless and until the same should be taken to by the parish or some other local or public authority, and that the other landowner should not be under any liability to contribute to the maintenance or repair of the said roadway, held not applicable to expenses of making up the road under sect. 150.⁵⁵

Covenant by tenant to "pay all present and future *rates taxes assessments and outgoings* whatsoever in respect of the said premises whether payable by the landlord or tenant." Tenant continued to hold after expiration of three years' lease at rent of £70. £70 spent by landlord on complying with notice to abate a nuisance under the Public Health (London) Act, 1891, held not recoverable from tenant. Wright, J., expressed the opinion that, as the work had been done by the landlord voluntarily, the expense did not amount to an "outgoing," and held that, whether that was so or not, he ought not to presume that a tenant from year to year intended to make himself liable for an expenditure in repairs exceeding his rent.⁵⁶

Covenant by tenant to "pay all *rates taxes and assessments* whatsoever . . . imposed or assessed on the said premises or on the landlord or tenant. . . ." Money spent by landlord on private street works under sect. 150 held not recoverable from tenant on the grounds (1) that the words of the covenant did not apply to such a liability, and (2) that the works had been completed and the expenses had become a charge on the premises before the date of the lease.⁵⁷

Covenant by tenant to "pay all existing and future *taxes rates duties assessments impositions and outgoings* of every description for the time being payable either by landlord or tenant in respect of the said premises." On a complaint to a magistrate by the tenant under the Factory and Workshop Act, 1901,⁵⁸ that a certificate for the use of the premises as a bakehouse could not be obtained unless certain structural alterations were made, and that the landlord ought to bear the expenses of such alterations, the magistrate dismissed the complaint subject to a case. The Divisional Court held that the expenditure came within the covenant, and that the magistrate was justified in refusing to order the landlord to pay any part of the expenses.⁵⁹

In a similar case which came before the Divisional Court shortly afterwards, it was held that the expenses of the structural alterations necessary in order to obtain the certificate came within the covenant. And with reference to the provision in the Factory and Workshop Act, 1901,⁵⁸ that, in the case of a bakehouse, regard is to be had by the court of summary jurisdiction to the terms of any contract between the parties, Lord Alverstone, C.J., said that, where the tenant's covenant applied to the expenses in question, the magistrate would have no jurisdiction to hold that it was not just or equitable to enforce the covenant under the circumstances of the case, "for as was pointed out by both Wills and Kennedy, JJ., in *Goldstein's case*,⁵⁹ where there is in the lease an express covenant by the tenant to pay the expenses, the question of what is just and equitable does not arise."⁶⁰

Covenant by tenant, in lease granted before the passing of the Factory and Workshop Act, 1891, to "pay all the existing and future *taxes . . . rates assessments and outgoings* . . . payable by the landlord or tenant in respect of the said demised premises." Money spent by landlord on providing means of escape in case of fire in pursuance of notices under that Act held not recoverable, and Romer, L.J., considered that, though the county court judge was bound to consider

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(54) *Surtees v. Woodhouse*, L. R. 1903, 1 K. B. 396; 72 L. J. K. B. 302; 88 L. T. 407; 67 J. P. 232; 1 L. G. R. 227. See also *Baker's Case*, post, p. 692.

(55) *Moore v. Todd* (1903, C. A.), 68 J. P. 43; 2 L. G. R. 376. See also *Hill v. Edward*, ante, p. 687.

(56) *Harris v. Hickman*, L. R. 1904, 1 K. B. 13; 73 L. J. K. B. 31; 89 L. T. 722; 68 J. P. 65; 2 L. G. R. 1.

(57) *Lumby v. Faupel* (1904, C. A.), 90

L. T. 140; 68 J. P. 265; 2 L. G. R. 605.

(58) See s. 101 (8), post, Vol. II., p. 2151. This provision is not contained in the clause relating to means of escape from fire; but see *Horner v. Franklin*, post, p. 692.

(59) *Goldstein v. Hollingsworth*, L. R. 1904, 2 K. B. 578; 73 L. J. K. B. 826; 91 L. T. 85; 68 J. P. 383; 2 L. G. R. 879.

(60) *Morris v. Beal*, L. R. 1904, 2 K. B. 585; 73 L. J. K. B. 830; 91 L. T. 486; 68 J. P. 542; 2 L. G. R. 1171.

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the terms of the tenancy, the landlord's only remedy was to apply to that judge under the special provision in the statute.⁶¹

The next case had reference to the expenses of the structural alterations necessary for obtaining a certificate under the Factory and Workshop Act, 1901, for the use of premises as a bakehouse. The covenant was similar to those in the last-mentioned cases, and after the estimated expenses had been apportioned by the magistrate, and the work had been carried out by the landlords at the tenant's request, the landlords brought an action to recover the whole amount actually expended. The tenant paid into court the amount which the magistrate had apportioned on him. Warrington, J., after holding that the expenses came within the covenant, gave judgment for the plaintiff on the ground that the magistrate was wrong in apportioning any part of the expenses on the owners; but the Court of Appeal, considering that there was no sufficient distinction in this respect between the Factory and Workshop Acts of 1891 and 1901, followed the decision in the last cited case, namely, that the action would not lie, and allowed an appeal against the judgment.⁶² In this case Fletcher Moulton, L.J., said that he shared the doubts expressed in the previous case as to whether expenses of the kind then in question came within the terms of the covenant.

Covenant by lessee to pay all "*outgoings* to become payable in respect of the premises." Money spent by lessor on private street works under sect. 150 held recoverable.⁶³

An underlessee, to whom the benefit of the ground landlord's covenant with the lessee, his executors, administrators, "and assigns," to pay rates, etc., has not been assigned or demised, cannot enforce the covenant.⁶⁴

Covenant by tenant to pay all "*rates taxes assessments charges and outgoings.*" Covenant by landlord to keep exterior in repair. Money spent by landlord in complying with order of justices to repair drains held not recoverable, as tenant's covenant was subject to that of landlord, and work in question was necessary to enable landlord to perform his covenant.⁶⁵

Covenant by tenant, in lease for twenty-one years, "to execute all such works as are or may, under or in pursuance of any Act or Acts of Parliament already passed or hereafter to be passed, be directed or required by any local or public authority to be executed at any time during the said term upon or in respect of the said premises, whether by the landlord or the tenant thereof." Money spent by lessee in complying with fire-escape provisions of London Building Act, 1905,⁶⁶ held not recoverable from landlord, as county court judge had found that it was not "just and equitable" that he should contribute, having regard to lessee's covenant, and this finding could not be disturbed.⁶⁷

Covenant by tenant to pay "*outgoings.*" Money spent by landlord on complying with drainage nuisance notice from local authority held not recoverable from tenant, because the lease was taken subject to an offer to put the premises "into reasonable repair inside and out," and this offer had been accepted (though not incorporated in lease) and not performed.⁶⁸

A covenant to pay "taxes" does not include such a new tax as the "Federal" tax in Australia.⁶⁹

Justices may act though members of local authority or liable to contribute.
 P.H., s. 132.
 N.R. 1866, s. 2.
 30 & 31 Vict.
 c. 115.

Sect. 258. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed.

(61) *Horner v. Franklin*, L. R. 1905, 1 K. B. 479, at p. 489; 74 L. J. K. B. 291; 92 L. T. 178; 69 J. P. 117; 3 L. G. R. 423.

(62) *Stuckey v. Hooke*, L. R. 1906, 2 K. B. 20; 75 L. J. K. B. 504; 94 L. T. 723; 70 J. P. 393; 4 L. G. R. 815.

(63) *Greaves v. Whitworth*, L. R. 1906, 2 K. B. 340; 75 L. J. K. B. 633; 70 J. P. 415; 4 L. G. R. 718.

(64) *South of England Dairies, Ltd. v. Baker*, L. R. 1906, 2 Ch. 631; 76 L. J. Ch. 78; 96 L. T. 48.

(65) *Howe v. Botwood*, L. R. 1913, 2 K. B.

387; 82 L. J. K. B. 569; 108 L. T. 767. *Stockdale's Case*, ante, p. 690 (51), distinguished; *Lurcott's Case*, post, Vol. II., p. 1627, applied.

(66) 5 Edw. VII. c. ccix., s. 20.

(67) *Munro v. Lord Burghclere*, L. R. 1918, 1 K. B. 291; 87 L. J. K. B. 366; 118 L. T. 343; 82 J. P. 86; 16 L. G. R. 210.

(68) *Henman v. Berliner*, L. R. 1918, 2 K. B. 236; 87 L. J. K. B. 984; 119 L. T. 312; 82 J. P. 300; 16 L. G. R. 707.

(69) *South Australian Brewing Co. v. Hill*, L. R. 1919 A. C. 519; 88 L. J. P. C. 48; 120 L. T. 450.

Note.		Sect. 258, n.
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Removal of Disabilities.

The Justices Jurisdiction Act, 1742,¹ enables justices to act as such, although rated to borough rates, highway rates, and other parochial cesses, levies, and rates. By the Judicial Proceedings (Rating) Act, 1877,² no judge of the House of Lords, Court of Appeal, or High Court of Justice is to be incapable of acting "by reason of his being, as one of several ratepayers, or as one of any other class of persons, liable, in common with the others, to contribute to or to be benefited by any rate which may be increased, diminished, or in any way affected by such proceeding." "Rate" for this purpose "means any rate, tax, duty, or assessment, whether public, general or local, and also any fund formed from the proceeds of any such rate, tax, duty, or assessment, or applicable to the same, or like purposes to which any such rate, tax, duty, or assessment might be applied."

When three out of five members of the Judicial Committee of the Privy Council were shareholders in the petitioning company, and the respondent was not represented so as to admit of waiver, the hearing was postponed until later in the day, when the attendance of another member, who was not a shareholder, was procured to make up the necessary quorum of three.³

Justices.
Judges.

Personal Interest or Bias.

"A magistrate ought not to sit on the bench during the hearing of proceedings in which he is interested, even although he take no part in the hearing or decision."⁴ "The fact of his not taking part in the hearing of the case would not be sufficient to make matters right."⁵

Any direct pecuniary interest, however small, in the subject-matter, will disqualify a justice from acting judicially therein, but the mere possibility of bias in favour of one of the parties does not *ipso facto* avoid the justice's decision.⁶

As to the effect of the personal interest of members of local authorities on the validity of their proceedings, see the Note to sect. 46 of the Local Government Act, 1894.⁷

Duty of interested justice.
Pecuniary interest.
Member of local authority.

On an information laid under a local Improvement Act, with which a clause of the Public Health Act, 1848, similar to the present section was incorporated, by order of a corporation, who were the local board, for violating a bye-law in deviating from a building plan, it was held that the convicting justices were not disqualified merely because they were members of the corporation.⁸

The chairman of a local board (who had taken an active part in its proceedings in relation to the disposal of the sewage of the district, and in relation to disputes which had arisen with H., the owner of a farm, who had undertaken to dispose of the sewage) sat on the bench with other justices during the hearing of a summons against H. at the instance of the conservators of a river for discharging the sewage into the river, but took no part in the proceedings until the other justices had unanimously determined to convict H., when he proposed a mitigation of the penalties, and he did not sign the convictions. The court held that he had such an interest as might give him a real bias in the matter; that he ought not to have sat as a justice; and that it was immaterial what part he really took in the matter; and made absolute with costs against him a rule calling on him and the other justices to show cause why a writ of *certiorari* should not issue to remove the convictions.⁹

Where the convicting justices were members of a borough council when a resolution was passed to prosecute a person under the present Act in respect of a nuisance, a rule for a *certiorari* to quash the conviction on such prosecution was

(1) 16 Geo. II. c. 18, s. 1. Short title authorised by Act of 1896.

(2) 40 Vict. c. 11, ss. 1, 3.

(3) *Grand Trunk Ry. Co. of Canada v. Robertson* (1908), *Times*, March 13.

(4) *Per* Lord Alverstone, C.J., in *Rex v. Byles*, *post*, p. 698. See also the *Limerick Case*, *post*, p. 697 (46).

(5) *Per* Channell, J., *ibid*.

(6) *Reg. v. Rand* (1866), L. R. 1 Q. B. 230; 35 L. J. M. C. 157; 7 B. & S. 297.

(7) *Post*, Vol. II., p. 2071 (10) (11).

(8) *Harring v. Stockton Cpn.* (1867), 31 J. P. 420.

(9) *Reg. v. Meyer or Myers* (1876), L. R. 1 Q. B. D. 173; 34 L. T. 247; 40 J. P. 645; s.c. *nom. Reg. v. Harrison*, 24 W. R. 392. Applied to licensing appeal in *Rex v. Lancashire JJ.* (1906), 75 L. J. K. B. 198; 94 L. T. 481; 70 J. P. 337; and see *Rex v. Byles*, *supra* (4), and *post*, p. 698 (51).

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made absolute, notwithstanding the present section. Whether these justices had taken any active part in the proceedings of the council in the matter appears to have been in dispute.¹⁰

The fact that certain justices were members of a borough council that had issued an order for the muzzling of dogs under the Dogs Act, 1871,¹¹ was held not to give them such an interest in a prosecution for failing to comply with the order as to prevent them from adjudicating upon it.¹²

It was held that a summons under a local Act containing a provision similar to the present section ought not to have been issued by a member of the corporation on whose behalf their officer laid the information, and that therefore other justices, although not connected with the corporation, could not hear the case.¹³

But in a subsequent case this was disapproved of, and it was laid down that, where an enactment similar to sect. 258 existed, it was not enough to show that an adjudicating justice was a member of the local authority, and as such had a pecuniary interest in the result of the complaint, or that he was a member of the authority charged with the duty of prosecuting the offence, but that it must be established that he had such a substantial interest in the result of the hearing as to make it likely that he had a real bias in the matter.¹⁴

Certain members of an urban sanitary authority, after taking part in a resolution directing building works to be pulled down as being in contravention of the bye-laws in force, took part as justices in an order directing the owner to pay the expenses of pulling down the work. The order was quashed, and costs were given against those justices who had acted in the double capacity.¹⁵

An order for the removal of a pauper which had been made at the instance of a board of guardians was quashed on the ground that one of the adjudicating justices was a member of that board.¹⁶

So also a justice, who, as an *ex-officio* guardian, had taken an active part on the assessment committee in relation to the assessment of a railway company and an appeal made by the company to the committee, was disqualified for hearing their subsequent appeal to the quarter sessions.¹⁷

But another justice was held not to be disqualified for hearing appeals against one assessment committee merely because he was a member of another assessment committee in the same county, though it was suggested that, if he had already dealt with the identical question raised by the appeal in such a manner as to show that he would shut up his mind to any except one conclusion, he might have been disqualified.¹⁸

And justices who were members of the Middlesex County Council, the owners and lessors of certain tramways, were not thereby disqualified for hearing appeals against the rating of the lessees.¹⁹

In an Irish case it was held that the fact that one of the magistrates who had adjudicated at petty sessions took his seat on the bench when an appeal against the conviction was heard, and was questioned as to the number of magistrates who took part in the adjudication and as to their unanimity, but did not otherwise take part in the hearing of the appeal, invalidated the proceedings and entitled the prisoner to be discharged.²⁰

A member of a board of conservators under the Salmon Fishery Acts, having been present at a meeting of the board when their water bailiff was authorised to institute a prosecution, was held to have been disqualified from sitting on the bench before which the case was heard; and the conviction of the defendant was accordingly quashed.²¹

During the hearing of a prosecution for infringement of the bye-laws of an urban district council a note was passed from the bench to the chairman of the council, who was by virtue of his office a justice of the peace, and he sent back an

(10) *Reg. v. Milledge or Weymouth JJ.* (1879), L. R. 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T. 748; 43 J. P. 606.

(11) 34 & 35 Vict. c. 56, s. 3.

(12) *Reg. v. Huntingdon JJ.* (1879), L. R. 4 Q. B. D. 522; 43 J. P. 767.

(13) *Reg. v. Gibbon* (1880), L. R. 6 Q. B. D. 168; 29 W. R. 442.

(14) *Reg. v. Handsley* (1881), L. R. 8 Q. B. D. 383; 51 L. J. M. C. 137; 46 J. P. 119.

(15) *Reg. v. Winchester JJ.* (1882), 46 J. P. 724, n.

(16) *Re Newport Guardians* (1911, Stafford-

shire Q. S.), 46 L. J. Jo. 702; 3 Glen's Loc. Gov. Case Law 146 n.

(17) *Reg. v. Cumberland JJ.* (1888), 58 L. T. 491; 52 J. P. 502.

(18) *Rex (South Metropolitan Gas Co.) v. London JJ.* (1908, C. A.), 98 L. T. 519; 72 J. P. 137; 6 L. G. R. 324.

(19) *Rex (Hendon U.A.C.) v. Middlesex JJ.* (1908, K. B. D.), 72 J. P. 251; 6 L. G. R. 739.

(20) *Ex parte Clarke* (1890), 26 L. R. Ir. 1.

(21) *Reg. v. Henley*, L. R. 1892, 1 Q. B. 504; 61 L. J. M. C. 135; 66 L. T. 675; 56 J. P. 391.

answer; but it was proved that the note and answer did not have, and could not have had, any influence on the decision, and a rule for a *certiorari* to quash the conviction was discharged, but without costs.²³

The fact that one borough councillor had formerly been the owner of certain licensed premises, and that another had been a member of a committee appointed by the council to negotiate the disposal of the premises, which had been purchased by the corporation for the purposes of improvements, was held not to prevent either of these councillors from hearing an application for the renewal of the licence.²⁴ But the Court of Appeal subsequently disapproved of this decision.²⁵

The receipt of a circular letter from the licensing justices of a petty sessional division to the other justices of the county, stating that they had instructed counsel to appear in support of their decision on an appeal against such decision to the quarter sessions, and hoping that it would be convenient for them to attend the hearing, and the attendance of justices in consequence of such circular, did not, it was held, necessarily bias the minds of the justices who attended in favour of supporting the decision of the licensing justices.²⁶

The Court of Appeal made absolute a rule for a *certiorari* to bring up and quash an order confirming the grant of a licence in respect of certain premises, which a borough council had purchased for the purposes of improvements, and with respect to the licence for which the council had entered into an agreement with the owners, a brewery company; the ground of the decision being that some of the justices who confirmed the grant of the licence were borough councillors, and had taken an active part on the council in the matter of the agreement, so that there was a real likelihood of bias on their part.²⁷

A transfer of a licence and its confirmation were upheld by the Divisional Court, although some of the justices on the licensing committee, who also sat as members of the confirming authority, were members of the borough council interested in the transfer (in connection with proposed improvements), and one of them had a pecuniary interest in a brewery carrying on business in the neighbourhood,²⁸ the court holding that, in the circumstances, there was no real likelihood of bias.²⁹

The Court of Appeal have also held that, since the justices were entitled to take or direct their officer or agent to take objection to the renewal of licences, the fact that they had held a preliminary investigation as to the licensed houses in their district did not debar them for hearing the applications for renewal of the licences.³⁰

The possession and expression by the chairman of the petty sessional bench of strong views against motors and their drivers generally were held not to afford sufficient ground for removing by *certiorari* the conviction of the driver of a motor car for driving at a greater speed than twelve miles an hour.³¹

A rule for a *certiorari* was made absolute to quash an order of borough justices appointing a surveyor to survey and assess the value of certain property of the applicant which was required by the corporation for the purpose of widening a street in the borough; the corporation in the case were acting as the local board under the Public Health Act, and the objection to the order was that the justices who made it were interested parties, being ratepayers.³²

A magistrate, having attended a ratepayers' meeting and moved a resolution calling on the persons who had deposited manure on certain waste lands to remove the deposit, was disqualified, both as being a ratepayer and as having taken part in originating the proceedings, from adjudicating on a summons taken out by the surveyor of highways for enforcing the removal of the manure.³³

A litigant in another case, which is similar to the cases before the court, is disqualified from acting as a justice in such cases.³⁴

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(member of
local
authority)—
continued.

Ratepayer.

Litigant.

(23) *Reg. v. Budden* (1896), 60 J. P. 166.

(24) *Reg. v. Stockport JJ.* (1896), 60 J. P. 552.

(25) *Reg. v. Sunderland JJ.*, *infra*.

(26) *Reg. (Kerfoot) v. London JJ.* (1896), 45 W. R. 58; 60 J. P. 726.

(27) *Reg. v. Sunderland JJ.*, L. R. 1901, 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 65 J. P. 598.

(28) As to justices interested in breweries acting under the Licensing Acts, see 10 Edw. VII. and 1 Geo. V. c. 24, s. 40.

(29) *Rex v. Tempest* (1902), 86 L. T. 585; 66 J. P. 472. See also *Rex v. Cheshire JJ.*, L. R. 1906, 1 K. B. 362; 70 J. P. 172; *Leeds*

Cpn. v. Ryder, L. R. 1907 A. C. 420; 71 J. P. 484.

(30) *Rex v. Howard and others, Farnham JJ.*, L. R. 1902, 2 K. B. 363; 71 L. J. K. B. 754; 86 L. T. 839; 66 J. P. 579.

(31) *Ex parte Wilder* (1902), 66 J. P. 761.

(32) *Ex parte Westwick* (1863), 38 L. T. (o.s.) 203.

(33) *Reg. v. Gaisford*, L. R. 1892, 1 Q. B. 381; 61 L. J. M. C. 50; 66 L. T. 24; 56 J. P. 247.

(34) *Reg. v. Great Yarmouth JJ.* (1882), L. R. 8 Q. B. D. 525; 51 L. J. M. C. 39; 46 J. P. 518.

Sect. 258, n.**Bias of justice as witness.**

A magistrate is not disqualified because he has been subpoenaed as a witness on behalf of one of the parties. In a case where it was so held a magistrate, who was a physician, had attended the complainant professionally for injuries sustained in an assault of which complaint was made, and was subpoenaed to prove the nature of such injuries. He had also advised the complainant to settle the matter and not bring it into court, and had taken to him from the defendant a message of apology desiring an amicable settlement; but this was held not to give him sufficient interest in the matter to disqualify him from adjudicating.³⁵

The presence on the bench of a justice, who knew nothing about the case and had been improperly called by the prosecution, was held not to invalidate the proceedings.³⁶

Coroner.

A county coroner may act as a justice, although he is liable to be called on to act as a substitute for the sheriff.³⁷

Member of society.

A justice, who was a subscriber to a society for the prevention of cruelty to animals, was held not to be disqualified on that ground for adjudicating on a prosecution instituted by the society.³⁸

Members of the Incorporated Law Society are not disqualified by such membership from adjudicating on proceedings instituted by that society.^{38a}

The secretary of a local branch of the Independent Order of Rechabites was held to have been biased in a licensing case.³⁹

Bread Act disqualification.

The Bread Act, 1836,⁴⁰ provides that "no person who shall follow or be concerned in the business of a miller, mealman, or baker shall be capable of acting or shall be allowed to act as a justice of the peace under this Act or in putting in execution any of the powers in or by this Act granted." A baker was convicted of an offence against this Act. Sitting on the bench and apparently adjudicating was the president of a co-operative society, part of whose business was selling bread. The baker obtained a rule *nisi* for *certiorari* quashing the conviction on the ground that one of the adjudicating justices was so disqualified. In his affidavit in support he failed to state that he was unaware at the hearing that the justice in question was disqualified. The justice filed an affidavit, stating that he was a boilermaker by trade, that he received no remuneration for acting as president of the society, and that he merely acted as chairman of its committee of management, and also that he had not really adjudicated. It was held (without deciding whether the justice came within the disqualification, as other proceedings were pending) that the rule must be discharged, owing to the omission from the applicant's affidavit. *Per Channell, J.*: "It is the rule of this court not to grant a writ of *certiorari* except upon affidavit which negatives knowledge on the part of the applicant when he was before the court below of the facts on which he bases his objection. . . . When objection to a conviction is taken merely by a member of the public and not by a party more particularly aggrieved the granting of a *certiorari* is discretionary; when the objection is by a party aggrieved, then, as a rule, the writ issues *ex debito justitiæ*; but a party aggrieved may by his conduct preclude himself from taking objection to the jurisdiction of an inferior court."⁴¹

Illwill.

An objection to the presence on the bench of a justice was taken on the ground of his personal illwill towards the defendant, but he insisted on sitting. Such illwill being proved, a rule for *certiorari* quashing the order of the two justices was made absolute, and the biased justice was ordered to pay the costs of the *certiorari* proceedings, though he had not shown cause.⁴²

Speech.

A was summoned for assault. B made a speech before the hearing stating that A had for weeks been organising the disturbance at which the assault took

(35) *Reg. v. Farrant* (1887), L. R. 20 Q. B. D. 58; 57 L. J. M. C. 17; 57 L. T. 880; 52 J. P. 116.

(36) *Rex (Donnelly) v. Tyrone County JJ.* (1910, K. B. D., I.), 44 Ir. L. T. 264; 1 Glen's Loc. Gov. Case Law 84.

(37) *Davis v. Pembrokehire JJ.* (1881), L. R. 7 Q. B. D. 513.

(38) *Reg. (Curling) v. Deal JJ.* (1881), 45 L. T. 439; 30 W. R. 154; 46 J. P. 71.

(38a) *Reg. v. Burton*, L. R. 1897, 2 Q. B. 468; 66 L. J. Q. B. 831; 77 L. T. 364; 61 J. P. 727.

(39) *Rex (Robinson) v. Halifax JJ.* (1912,

C. A.), 76 J. P. 233; 28 T. L. R. 288; 3 Glen's Loc. Gov. Case Law 146. The rule had been refused by K. B. D. Kennedy, L.J., dissented. See also *Rex (Uprichard) v. Armagh County JJ.*, 1913 Ir. K. B. 410; 4 Glen's Loc. Gov. Case Law 125, *re* member of linen trade association.

(40) 6 & 7 Wm. IV. c. 37, s. 15.

(41) *Rex (Phillips) v. Williams or Swansea JJ.*, L. R. 1914, 1 K. B. 608, at p. 613; 83 L. J. K. B. 528; 110 L. T. 372; 78 J. P. 148.

(42) *Rex (Donoghue) v. Cork County JJ.*, 1910 Ir. K. B. 271; 1 Glen's Loc. Gov. Case Law 84.

place. B having adjudicated, the conviction was quashed with costs against B, who had made an affidavit justifying his action, but had not shown cause.⁴³

The presence of justices at a United Irish League meeting, which immediately preceded, and to some extent led to, the commission of the offence in question was held sufficient evidence of bias to disqualify those justices from adjudicating upon that offence. The conviction was quashed with ten guineas costs against the justices.⁴⁴

A conviction by a bench, which included a justice who had committed a corrupt practice, was quashed.⁴⁵

The fact that justices had been canvassed by an applicant for a publican's licence was held not to be sufficient evidence of bias, but Palles, L.C.B., said: "Where there is an imputation of bias against a magistrate, he should retire."⁴⁶

A summons for dangerous driving ended, "the same being your third offence." One of the justices who subsequently adjudicated had signed this summons. Before the hearing of the evidence the defendant's solicitor objected to the above words appearing on the summons, as being likely to bias the justices. The objection was overruled, and the defendant was convicted. A rule *nisi* for *certiorari* quashing the conviction was obtained. The justices filed an affidavit to the effect (1) that they would not have known of the previous convictions if the defendant's solicitor had not himself mentioned them, as the practice in their court was for the clerk to keep such information to himself till after conviction; and (2) that knowing of them in this case did not affect their minds when adjudicating. It was held that the rule must be discharged, as bias had not been proved. *Per* Pickford, J.: "If the summons had been read out in court by the clerk, including the final words, and the objection had been taken then, it might have been successful."⁴⁷

The Crown Solicitor asked a certain justice of the peace to take depositions in a case where a man had been arrested for an indictable offence (assault occasioning bodily harm), and not to allow the other justices to be present. A justice took the depositions in a room in the police station, and excluded the other justices, though application was made to him by the solicitor for the accused that they be admitted. The accused obtained a rule *nisi* for prohibition against this justice dealing further with his case. It was held that the rule must be made absolute, as "a reasonable public might reasonably hold" that his procedure "indicated bias" on the justice's part.⁴⁸

Waiver of Objection to Interested Justice.

The proceedings will not be void even where the justice has a disqualifying interest in the matter if the objection be waived.⁴⁹ And on an application for a *certiorari* to quash an order of justices on the ground of personal interest, it should be shown on affidavit that the party applying, and his solicitor, did not know at the time that the justice was interested in the matter.⁵⁰

At the instance of their chairman, an urban district council took proceedings against a person who had commenced to erect a building in contravention of sect. 3 of the Public Health (Buildings in Streets) Act, 1888. By a majority of four to three the justices convicted. The chairman of the council had been adjudicating in previous cases; but when this case was called he retired to the end of the bench apart from the other justices, had no communication with any of them during the hearing of the case, and did not retire with them at its conclusion. The defendant knew of his presence on the bench, and took no objection thereto. It was held, on cause being shown against the rule *nisi* for *certiorari* quashing the conviction, that the objection had been waived. The rule

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Presence at provocative meeting.

Corrupt practice.

Canvassed justice.

Knowledge of previous conviction.

Taking of depositions.

Waiver.

(43) *Rex (O'Leary) v. Cork County JJ.*, 45 Ir. L. T. 3; 2 Glen's Loc. Gov. Case Law 193. But see *Rex (O'Donoghue) v. Cork County JJ.* (1911, K. B. D., I.), 46 Ir. L. T. 35; 3 Glen's Loc. Gov. Case Law 147.

(44) *Rex (Kingston) v. Cork County JJ.*, 1910 Ir. K. B. 658; 44 Ir. L. T. 216; 1 Glen's Loc. Gov. Case Law 85.

(45) *Rex v. McCourt*, *post*, Vol. II., p. 1845.

(46) *Rex (Beirne) v. Limerick JJ.* (1911, K. B. D., I.), 45 Ir. L. T. 215; 2 Glen's Loc. Gov. Case Law 193.

(47) *Rex (Braham) v. Hankey or Wokingham JJ.* (1910, K. B. D.), 55 Sol. J. & W. R.

77; 1 Glen's Loc. Gov. Case Law 73. See also *Rex v. Sparks* (1909, K. B. D.), 73 J. P. 485.

(48) *Rex (Courtney) v. Emerson*, 1913 Ir. K. B. 377; 5 Glen's Loc. Gov. Case Law 132. See also *Rex (Rea) v. Davison*, 1913 Ir. K. B. 342.

(49) *Wakefield Loc. Bd. of Health v. West Riding and Grimsby Ry. Co.* (1865), L. R. 1 Q. B. 84; 35 L. J. M. C. 69; 13 L. T. 590; 12 Jur. (N.S.) 160; 30 J. P. 628. But see the *Grand Trunk Ry. Case*, *ante*, p. 693.

(50) *Reg. v. Kent JJ.* (1880), 44 J. P. 298. See also *Rex v. Williams*, *ante*, p. 696.

Sect. 258, n. | was accordingly discharged. *Per* Ivory, J. : " I am satisfied that the applicant, if not his solicitor, knew the position occupied by " the magistrate in question, " and distinctly waived the point with a view to having a possible subsequent objection to the proceedings." ⁵¹

Appearance of
local authorities
in legal
proceedings.
San. 1866, s. 48.

Sect. 259. Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

Note.

Authentica-
tion of
documents.

Sect. 266 provides for the authentication of notices, orders, and other such documents by the clerk, surveyor, or sanitary inspector of the local authority.

Actions by
and against
district
councils.

Now that all urban and rural district councils are bodies corporate, they sue and are sued in their corporate names. Formerly local authorities were not all bodies corporate, and the Public Health Act, 1848,¹ therefore provided that actions by and against local boards might be brought and defended in the names of their clerks.²

Appearance
of clerk.

Under the Summary Jurisdiction Act, 1848, a complaint or information may be laid or made by the complainant or informant in person, or by his counsel or solicitor, or other person authorised in that behalf.³ But in the case of a complaint to the justices on behalf of a local authority for an infringement of their bye-laws, it has been held that the justices are not bound to adjudicate unless the clerk of the authority attends the hearing by himself or by his counsel or solicitor.⁴

The provision in the Valuation (Metropolis) Act, 1869,⁵ that an assessment committee may " appear on any appeal " by their clerk, does not give the clerk the right to be heard on their behalf at the quarter sessions. *Per* A. L. Smith, L.J. : " I think it merely provides for the manner in which the assessment committee are to get into court . . . it does not provide that, when there, they may be heard by their clerk." ⁶ And where the clerk to a parish council appeared in person in opposition to a motion for a mandatory order, the court intimated that the council must be represented by counsel and adjourned the motion for a week.⁷

Authority to
prosecute.

A conviction under the Freshwater Fishery Acts was quashed, because the water bailiff who instituted the proceedings did not prove his authority from the conservators, whom the Acts authorised to take such proceedings, and to whom the penalties were payable⁸; and subsequent ratification by the council of the action of their inspector of nuisances, who on his own initiative took summary proceedings in respect of unsound food, was held to be ineffective.⁹

Prosecutions
by police.

A local authority, purporting to act in pursuance of the present section, resolved " that the superintendent and the sergeant or sergeants of the county police for the time being, acting within the district, be authorised, as officers of the board, to institute and prosecute, from time to time, all such proceedings as may be necessary against any person or persons offending against " certain provisions of a local Act, which in general terms applied the powers, etc., of the present Act, and expressly applied sects. 251 and 254; but it was held that they had misapprehended the effect of the present section, and that the superintendent of police had no power to lay an information under the provisions in question.¹⁰ The court has, however, held that the police can institute proceedings for offences

(51) *Rex (Hollidge) v. Byles or Middlesex JJ.* (1912, K. B. D.), 77 J. P. 40; 3 Glen's Loc. Gov. Case Law 146. Further, as to this case, see *ante*, p. 693 (4).

(1) 11 & 12 Vict. c. 63, s. 138.

(2) See *Kendall v. King* (1856), 17 C. B. (O.S.) 483; 25 L. J. C. P. 132; *Hall v. Taylor* (1858), E. B. & E. 107; 27 L. J. Q. B. 311; 23 J. P. 20; *Cobham v. Holcombe* (1860), 8 C. B. (N.S.) 815; *Worral Water Co. v. Lloyd* (1866), L. R. 1 C. P. 719. See also *Saunders v. Slack* (1864), 11 L. T. 484, as to levying execution against goods of public companies by a judgment creditor.

(3) 11 & 12 Vict. c. 43, s. 10; and see *Foster v. Fyfe*, L. R. 1896, 2 Q. B. 104; 65 L. J. M. C. 184; 74 L. T. 784; 60 J. P. 423.

(4) *Ex parte Leamington Loc. Bd.* (1862), 5 L. T. 637; 26 J. P. 84.

(5) 32 & 33 Vict. c. 67, s. 62.

(6) *Reg. (Dewey) v. London JJ.*, L. R. 1896, 1 Q. B. 659; 65 L. J. M. C. 120; 74 L. T. 523; 60 J. P. 420.

(7) *Berney v. Ringland P. C.* (1911, Swinfen Eady, J.), 2 Glen's Loc. Gov. Case Law 173.

(8) *Anderson v. Hamlin* (1890), L. R. 25 Q. B. D. 221; 59 L. J. M. C. 151; 63 L. T. 168; 54 J. P. 757.

(9) *Bowyer Philpotts & Payne v. Martin*, noted with several other cases on this subject, *ante*, p. 231 (46).

(10) *Kyle v. Barbor or Barber* (1888), 58 L. T. 229; 52 J. P. 725.

under the provisions of the Town Police Clauses Act, 1847, which are incorporated with the present Act, independently of the local authority, notwithstanding sect. 253.¹¹

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An inspector under the Weights and Measures Acts may prosecute for offences under those Acts “with the consent of the local authority.”¹² It was held that a general consent was sufficient, and that a particular consent in each case was not necessary.¹³ As to prosecutions by inspectors under the Sale of Food and Drugs Acts, see the case cited below.¹⁴

Although the fact that lands are held for public purposes does not exempt them from seizure under a writ of *elegit*, lands held on a public trust of a special nature cannot be so seized for a debt which is unconnected with such trust; and therefore sewage farm lands, held by a rural sanitary authority, not for the benefit of the sanitary district generally, but for the disposal of the sewage of a particular contributory place, which lands had been acquired by means of borrowed money charged on that contributory place, could only, it was held, be taken in execution for judgment debts exclusively chargeable against that place, and not for the costs of an action which were chargeable against the common fund of the district.¹⁵

Writ of elegit.

Sect. 260. In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.¹⁶

Name of local authority need not be proved.

Sect. 261. Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognisance of such courts.

Demands below 50l. may be recovered in county courts.
L.G. Am., s. 24.

Note.

The extension of the ordinary jurisdiction of the county court by the County Courts Act, 1903,¹⁷ to claims not exceeding £100, does not extend the special jurisdiction conferred on that court by the present section.

Jurisdiction of county court.

Proceedings in the county court are barred by the six months' limitation in the same way as if they had been taken in a summary manner; otherwise (*per* Blackburn, J.) “there would follow this unreasonable and absurd effect, that if the demand were over £20 the limit would be six months, if under £20 it would be twenty years.”¹⁸ But where a local Act enabled a corporation to recover expenses either by summary proceeding before justices, or in the superior courts or any court of competent jurisdiction, this observation of Blackburn, J., was not applicable, and the decisions in the cases under the present Act were distinguished, and one in a case under the Public Health (London) Act, 1891,¹⁹ was overruled by the Court of Appeal.²⁰

Limitation of time.

Proceedings in the county court under the present section are not affected by the exception of goods liable to distress for rates from the protection from seizure afforded by a bill of sale.²¹

Bill of sale.

The county court also has jurisdiction in equity to enforce the “charge on the premises” created by sect. 257. In this case the limit of jurisdiction is £500, and the six months' limitation of time does not apply.²²

Enforcement of charge on premises.

The jurisdiction of the county court extends to the granting of an injunction to restrain a nuisance that causes any damage for which an action can be brought in that court,²³ and also extends to committal for disobeying an interlocutory order.²⁴

Injunction.

(11) *Jobson v. Henderson* (1900), 82 L. T. 260; 64 J. P. 425.
(12) 4 Edw. VII. c. 28, s. 14.
(13) *Tyler v. Ferris*, L. R. 1906, 1 K. B. 94; 75 L. J. K. B. 142; 93 L. T. 843; 70 J. P. 88; 4 L. G. R. 201.
(14) *Worthington's Case*, cited in Note to sect. 19 of Act of 1899, *post*, Part II., Div. II.
(15) *Earl Jersey v. Uxbridge R.S.A.*, L. R. 1891, 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858. And see R.S.C. Order XLIII., Rule 1.
(16) But see *Fearon's Case*, *ante*, p. 655 (30).
(17) 3 Edw. VII. c. 42, s. 3.
(18) *West Ham Loc. Bd. v. Maddams* (1876) L. R. 1 Ex. D. 516, n.; 33 L. T. 809; 40 J. P. 470. *Tottenham Loc. Bd. v. Rowell* (No. 2) (1876, C. A.), L. R. 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. 887.
(19) *Hammersmith Vestry v. Lowenfeld*, L. R. 1896, 2 Q. B. 278; 65 L. J. Q. B. 662; 75 L. T. 182; 60 J. P. 600.
(20) *Blackburn Cpn. v. Sanderson*, L. R. 1902, 1 K. B. 794; 71 L. J. K. B. 590; 86 L. T. 304; 66 J. P. 452. See also *Leeds Cpn. v. Robshaw* (1887), 51 J. P. 441.
(21) *Wimbleton Loc. Bd. v. Underwood*, *ante*, p. 669.
(22) See the Note to s. 257, *ante*, p. 675.
(23) *Martin v. Bannister* (1879, C. A.), L. R. 4 Q. B. D. 491; 28 W. R. 143.
(24) *Richards v. Cullerne* (1881, C. A.), L. R. 7 Q. B. D. 623.

Sect. 262.
Proceedings not
to be quashed
for want of
form.
P.H., s. 137.
N.R. 1855, s. 39.

Sect. 262. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by certiorari or any other writ or process whatsoever into any of the superior courts: Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates.

Note.

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Writ of Certiorari.

**Express
exceptions.**

**Judicial
orders and
proceedings.**

Sect. 246 expressly provides for the removal by *certiorari* of orders for the payment of money made by borough councils, and sect. 247 for the removal in like manner of disallowances made by district auditors.

The writ of *certiorari* is, in the absence of express statutory provision, only granted for the removal of judicial as distinguished from ministerial or administrative proceedings. "It may be a question whether an act which is a judicial act is discretionary or ministerial, but to say that because justices exercised their discretion they therefore performed a judicial act is not to apply the proper test."¹ An order for the payment of money, made by the local board of health of a borough, a provisional order made by a Secretary of State, and a distress warrant, were held not to be removable by *certiorari*.² But the decision of the smallholdings committee of a county council to make an order for the compulsory purchase of land, after holding a local inquiry, was held to be so removable.³

**Order made
without
jurisdiction.**

As to the distinction between "judicial" and "administrative" functions for the purposes of "privilege" in connection with libels, see the case cited below.^{3a}

Though the writ of *certiorari* be taken away by statute, the court may grant it in certain circumstances; for instance, where a justice had acted without jurisdiction in convicting under an illegal bye-law made by a local board⁴; or where, according to the old practice, the writ was issued merely to bring up a case for the opinion of the court from quarter sessions.⁵

Acquittal.

Cockburn, C.J., said that the corresponding section of the Public Health Act, 1848,⁶ did not apply if the local board had acted without jurisdiction. "If they have done anything irregularly, which is nevertheless within their jurisdiction, the section would apply, but here it is said they have made a rate when they had no right to make it."⁷

Certiorari does not lie in respect of an acquittal,⁸ though the dismissal of a summons for payment of an amount surcharged by a district auditor was quashed by *certiorari* on the ground that the decision of the Local Government Board dismissing an appeal against such a surcharge was final.⁹

The court refused a rule for *certiorari* quashing a conviction applied for on the ground that the applicant had since been acquitted on the same evidence by the same bench.¹⁰

**Premature
applications.**

Avory, J., said of an application for *certiorari* to test the validity of an inchoate electricity scheme that it was like asking the court "to decide the legitimacy of a child in embryo."¹¹

(1) *Per* Lord Alverstone, C.J., in *Rex (Saunders) v. Drummond* (1903), 88 L. T. 833; 67 J. P. 300; 1 L. G. R., at p. 568. Appointment of justices' clerk held not "judicial" and *certiorari* refused. Further as to distinction between judicial and ministerial acts, see *Reg. (Wexford C. C.) v. Loc. Gov. Bd. for Ireland*, 1902 Ir. K. B. 349, where decision as to salary of transferred county surveyor was quashed; and *Rex (Quinnell) v. Kerry C. C.*, 1905 Ir. K. B. 299, where decision not to accept lowest tender was held not "judicial" and was not quashed.

(2) *Reg. v. Gloucester Cpn.* (1859), 33 L. T. (O.S.) 145; 23 J. P. 709; *Reg. v. Hastings Loc. Bd.*, *post*, p. 737; and *Ex parte Taunton*, 1 D. P. C. 54, followed in *Reg. v. Webber*, 16 T. L. R. 1.

(3) *Rex (Seor) v. Bedford C. C.*, L. R. 1920, 2 K. B. 465; 89 L. J. K. B. 425; 123 L. T. 50; 84 J. P. 97; 18 L. G. R. 249.

(3a) *Harvey Smith's Case*, *post*, p. 812 (6).

(4) *Reg. v. Wood* (1855), 5 E. & B. 49; s.c. *nom. Reg. v. Rose*, 24 L. J. M. C. 130; 1 Jur. (N.S.) 802; 19 J. P. 676. See also *Reg. v. Gosse* (1860), 3 E. & E. 277; 30 L. J. M. C. 41; 6 Jur. (N.S.) 1369; 3 L. T. 404.

(5) *Reg. v. Dickenson* (1857), 7 E. & B. 831; 26 L. J. M. C. 204; 3 Jur. (N.S.) 1076; 22 J. P. 243.

(6) 11 & 12 Vict. c. 63, s. 137.

(7) *In re Broughton Loc. Bd. of Health* (1865), 12 L. T. 310.

(8) *Rex v. Galway JJ.*, 1906 Ir. K. B. 499; *Reg. v. Unwin* (1839), 7 Dowl. 578.

(9) *Rex (Considine) v. Fermanagh JJ.* (1910, K. B. D., I.), 44 Ir. L. T. 188; 1 Glen's Loc. Gov. Case Law 33.

(10) *Ex parte McVittie* (1914), 5 Glen's Loc. Gov. Case Law 133.

(11) *Rex (London Electricity Joint Committee) v. Electricity Comrs.*, *Times*, Apr. 13, 1923, p. 5, col. iii.

"No writ of *certiorari* shall be granted, issued or allowed to remove any judgment, order, conviction, or other proceeding had or made by or before any justice or justices of the peace of any county, city, borough, town corporate, or liberty, or the respective general or quarter sessions thereof, unless such writ of *certiorari* be applied for within six calendar months next after such judgment, order, conviction, or other proceeding shall be so had or made, and unless it be proved by affidavit that the party suing forth the same has served the order *nisi* or summons six days before the return day of the order *nisi* or summons for the writ on the justice or justices, or on two of them, if more than one, by and before whom such judgment, order, conviction, or other proceedings shall be so had or made, in order that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the granting, issuing, or allowing such writ of *certiorari*." ¹¹ These rules do not bind the Crown. ¹²

As to the form of affidavits in support of applications for this writ, and the discretion of the court to grant it, see the case cited below. ¹³

The applicant must show that he is a "person aggrieved." ^{13a}

When justices have once made an order, by signing and sealing it, meaning it to be an order, they cannot afterwards amend it. ¹⁴ A conviction may, however, be returned to the sessions in a more formal shape, if warranted by the facts, even though a copy has been delivered to the person convicted. ¹⁵

A rule will not be granted pending an appeal to quarter sessions, and if there is such an appeal the court should be told of it on the application for the rule. ¹⁶

There is no appeal against the discharge of a rule for a *certiorari* to bring up a summary conviction. ¹⁷ An order was made by justices directing the defendant to fill up an ashpit so as no longer to be a nuisance, and the Queen's Bench Division having made absolute a rule for a *certiorari* to quash this order, on the ground that it was not warranted by sects. 94 and 96 of the present Act, the Court of Appeal held that, as the order of justices was made in a "criminal cause or matter" within the meaning of sect. 47 of the Supreme Court of Judicature Act, 1873, ¹⁸ an appeal from the judgment of the Divisional Court did not lie. ¹⁹

So also an application for a *mandamus*, requiring a stipendiary magistrate who had made an order for the abatement of a nuisance under sect. 96, to state a case for the opinion of the court, was held to be a proceeding in a "criminal cause or matter" within the meaning of the same section, so that no appeal could be made to the Court of Appeal against the refusal of such an application by the Queen's Bench Division. ²⁰ But there may be such an appeal where the matter is civil and not criminal. ²¹

An appeal from the refusal of a judge in chambers to give leave to issue a writ of attachment for contempt of court in not producing documents after *subpœna* is not made in a "criminal cause or matter," for the object is to compel the witness to produce documents and not to punish him. ²²

The full Court of Appeal (two Lords Justices dissenting) held that an order directing the petitioner in a divorce case, who had disclosed certain details of the trial, which was heard *in camera*, to pay the costs of a motion by the respondent to commit her for contempt of court was an order in a "criminal matter" from

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Limitation
of time.Affidavit
in support.Amendment
of order.

Appeal.

Criminal
cause or
matter.

(11) Crown Office Rules, 1906, r. 21.

(12) See *Amendt's Case*, ante, p. 659.

(13) *Rex v. Williams*, ante, p. 696.

(13a) *Ex parte Stott*, L. R. 1916, 1 K. B. 7; 85 L. J. K. B. 502; 114 L. T. 234; 80 J. P. 169; 14 L. G. R. 972, n. Owner of film not aggrieved by justices' objection to its production.

(14) *Rex v. Cheshire JJ.* (1833), 5 B. & Ad. 439.

(15) *Rex v. Barker* (1800), 1 East 186.

(16) *Rex (Lord Vernon) v. Barnes* (1910), 102 L. T. 860; 74 J. P. 231.

(17) *Reg. v. Fletcher* (1876, C. A.), L. R. 2 Q. B. D. 43; 46 L. J. M. C. 4; 35 L. T. 538.

(18) 36 & 37 Vict. c. 66, s. 47. This section applies to prohibition, *mandamus*, and *habeas corpus*, as well as to *certiorari* proceedings; see *Rex (Sharf) v. Garrett* (C. A.), L. R. 1917, 2 K. B. 99; 86 L. J. K. B. 894; 116 L. T. 398; 81 J. P. 145.

(19) *Reg. v. Whitchurch* (1881), L. R. 7 Q. B. D. 534; 50 L. J. M. C. 99; 45 L. T. 379; 45 J. P. 617; following *Mellor v. Denham* (1880, C. A.), L. R. 5 Q. B. D. 467; 49 L. J. M. C. 89; 42 L. T. 493. See also

the profiteering cases, *Wilson v. Lancs. & Yorks. Ry. Co.* (1920, C. A.), 18 L. G. R. 333. The appeal was afterwards dismissed on its merits, see *Rex (Lancs. & Yorks. Ry. Co.) v. Manchester Profiteering Committee* (1920, C. A.), 89 L. J. K. B. 1089; 123 L. T. 98; 84 J. P. 177; 18 L. G. R. 392; *Provincial Cinematograph Theatres, Ltd. v. Newcastle-upon-Tyne Profiteering Committee* (1921, H. L.), 90 L. J. K. B. 1064; 125 L. T. 651; 85 J. P. 211; 19 L. G. R. 505.

(20) *Ex parte Schofield*, L. R. 1891, 2 Q. B. 428; 60 L. J. M. C. 157; 64 L. T. 780; 56 J. P. 4. See also *Rex v. D'Eyncourt* (1901, C. A.), under the London Building Act, 1894, 85 L. T. 501; and *Seaman's Case*, post, p. 704.

(21) *Reg. v. Pemberton* (1879, C. A.), L. R. 5 Q. B. D. 95; 49 L. J. M. C. 29; 41 L. T. 664; 44 J. P. 184. See also *Hampton Case*, post, p. 704 (59), and the *Foots Cray Case*, post, p. 705 (67).

(22) *Eccles & Co. v. Louisville Ry. Co.*, L. R. 1912, 1 K. B. 135; 81 L. J. K. B. 445; 105 L. T. 928.

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which no appeal lay to that court. The petitioner appealed to the House of Lords. It appearing probable that the respondent would not be represented, the Treasury, on the advice of the Attorney General, who considered the case one of great public importance, provided counsel to argue for the respondent. The House held (1) that the order to hear the case *in camera* was made without jurisdiction; (2) that the order, assuming there was jurisdiction to make it, did not prevent the subsequent publication of the proceedings; (3) that the order was not in a "criminal cause or matter," and that an appeal lay to the Court of Appeal; and (4) that the respondent must pay the costs in the House of Lords and below other than the costs of counsel provided by the Treasury.²³

*Special Case stated by Petty Sessions.*Application
for case.

By the Summary Jurisdiction Act, 1857,²⁴ "After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way . . . either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party . . . shall, within three days after receiving the case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding." The Summary Jurisdiction Act, 1879,²⁵ also contains a provision (which is to be read with that quoted above from the Act of 1857²⁶) for the statement of a special case on the application of "any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction." Subject to the Summary Jurisdiction Rules, 1915 (which require the application for the case to be made to the court of summary jurisdiction within seven clear days after the conviction, etc., and the case to be stated within three months²⁷), the provisions of the above-mentioned Act of 1857 apply to such special cases; the superior court is to determine the questions on the case; and the determination is to be final and conclusive on all parties.²⁸

The Crown Office master refused to issue an order of the Divisional Court allowing an appeal by special case, because the notice of appeal, having been served on the respondent's solicitor only, had not been properly served on the respondent. Application was then made *ex parte* for an order directing the master to draw up the order of the court. The court directed that notice of the application should be given to the respondent, and, if she declined to move, on the Treasury Solicitor. The respondent declined to move, and Treasury counsel supported the action of the master. It was held that, as the solicitor had been given authority to accept service of the notice of appeal on behalf of the respondent, and notice had been given to, and so accepted by, the solicitor, it was valid, and that the master must be ordered to draw up the order of the court.²⁹ But where a case had been set down before written notice of appeal had been given, the court declined jurisdiction to hear the appeal.³⁰

Filing of case.

Where a case was not filed within three months after the date of the application therefor, because, owing to the absence of one of the adjudicating justices, his signature was not obtained till too late, it was held that, as the delay was through no fault of the appellants, the court would grant an extension of time.³¹

As to the time for transmitting a special case to the Crown Office, see the case cited below.³²

Jurisdiction
of state case.

Justices have jurisdiction to state a case in proceedings for the recovery of a rate, although a distress warrant is issuable in the first instance without a preliminary order for payment of the money.³³ When acting as judicial authority

(23) *Scott v. Scott*, L. R. 1913 A. C. 417; 83 L. J. P. 74; 109 L. T. 1.

(24) 20 & 21 Vict. c. 43, s. 2.

(25) 42 & 43 Vict. c. 49, s. 33 (1).

(26) *Stokes v. Mitcheson*, L. R. 1902, 1 K. B. 857; 71 L. J. K. B. 677; 86 L. T. 767; 66 J. P. 615.

(27) See rule 52.

(28) 20 & 21 Vict. c. 43, s. 6.

(29) *Godman v. Croft* (No. 2), L. R. 1914, 3 K. B. 803; 83 L. J. K. B. 1524; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330.

(30) *Hollidge v. Ruislip Northwood U.D.C.* (1913), 77 J. P. 126; 4 Glen's L. G. Case Law 122.

(31) *Macphail v. Jones*, ante, p. 656. See also *Hughes v. Wavertree Loc. Bd.* (1894), 58 J. P. 654, where the provision was held "directory" only.

(32) *Holland v. Peacock*, post, Vol. II., p. 2106 (6).

(33) *Reg. v. London (Lord Mayor)* (1887), 57 L. T. 491; 52 J. P. 70; *Fourth City Mutual Building Soc. v. East Ham (Overseers)*, L. R. 1892, 1 Q. B. 661; 56 J. P. 440.

under the Mental Deficiency Act, 1913, they have no power to state a case.³⁴ Nor have they when determining applications for cinema licences.³⁵ But they have when making orders for the lopping of trees adjacent to a highway.³⁶

Justices may state a case, though they have dismissed the summons under the Probation of Offenders Act, 1907.³⁷

Where a case was stated, and neither party took the point that there was no power to state it, the court sent it back with their opinion, though they doubted the existence of the power.³⁸

Justices cannot refuse to state a case if the application for the case is made by the Attorney General³⁹; and it has been held that, though an application for a case may have been made previously without the Attorney General and refused on the ground that the application was frivolous, yet, if an application is subsequently made by the Attorney General, it cannot be refused.⁴⁰

Duty to state case.

If the appellant does not comply with the preliminary requisites of the statute so as to give jurisdiction to entertain the appeal, the respondent may move to have the case struck out of the paper with costs against the appellant.⁴¹

Where an appellant entered into the necessary recognisance with a surety, and became bankrupt, and his surety died before the special case was delivered up by the magistrate, it was held that a fresh recognisance could not be required.⁴²

The resignation of a metropolitan magistrate before signing a case which he had agreed to state was held not to prevent the High Court hearing the appeal.⁴³

A preliminary objection that no copy of a special case had been served on the respondent was dismissed where a clerk was sent down to the address at which the summons was originally served, and, though two attempts were made, the respondent was not found there, and all information was refused as to her whereabouts. Her solicitor refused information. A copy was served upon him, and also by registered post on the respondent.⁴⁴

It has been held that the refusal of a person to permit the entry of a local authority on his premises is not a ground of complaint within the above-mentioned provisions relating to special cases, and that an application to justices under sect 305 of the present Act, being an application to their discretion, their refusal of an order under that section cannot be "erroneous in point of law," and therefore there is no jurisdiction to state a case.⁴⁵

Where justices had dismissed an information on the ground that it was too late, and no application was made to them to state a case, but a motion was made for a *mandamus*, the rule was refused on the ground that the more convenient remedy would have been by a case stated.⁴⁶

In some cases the prerogative writ of *mandamus* requiring justices to state cases has been granted,⁴⁷ and in others it has been refused,⁴⁸ and in one case a stipendiary magistrate was ordered to state a case fairly so as to enable the parties to raise the points desired.⁴⁹

Mandamus to state case.

Special cases must contain statements of the facts proved, and not of what witnesses say.⁵⁰

Form of case.

They must also contain reasons, *e.g.*, for holding a bye-law unreasonable.⁵¹

(34) 3 & 4 Geo. V. c. 28, ss. 13, 14, 19. *Newman v. Foster* (1916), 80 J. P. 471; 15 L. G. R. 124; 25 Cox C. C. 593.

(35) *Huish v. Liverpool JJ.*, L. R. 1914, 1 K. B. 109; 83 L. J. K. B. 133; 110 L. T. 38; 78 J. P. 45; 12 L. G. R. 15.

(36) *Freke v. Quigley* (1914, K. B. D., I.), 48 Ir. L. T. 221; 5 Glen's Loc. Gov. Case Law 81.

(37) See *Oaten v. Auty*, *ante*, p. 658.

(38) *London City Cpn. v. Wolff* (1916), 86 L. J. K. B. 534; 115 L. T. 830; 80 J. P. 453; 14 L. G. R. 1123, *re* grant of employment agency licence to alien during war.

(39) 20 & 21 Vict. c. 43, s. 4.

(40) *Rex v. Sharpe* (1902, K. B. D.), 67 J. P. 181.

(41) *Great Northern and London and North Western Joint Committee v. Inett* (1877), L. R. 2 Q. B. D. 284; 46 L. J. M. C. 237; 25 W. R. 584.

(42) *Rex v. Kettle and London C.C.*, L. R. 1905, 1 K. B. 212; 74 L. J. K. B. 254; 92 L. T. 59; 69 J. P. 55; 3 L. G. R. 112.

(43) *Grocock v. Grocock*, L. R. 1920, 1 K. B. 1; 88 L. J. K. B. 1068; 121 L. T. 466; 83 J. P. 185; 17 L. G. R. 623.

(44) *Teddington U.D.C. v. Vile*, *ante*, p. 345 (4).

(45) *Diss U.S.A. v. Aldrich* (1877), L. R. 2 Q. B. D. 179; 46 L. J. M. C. 183; 36 L. T. 663; 41 J. P. 549.

(46) *Reg. v. Wisbech JJ.* (1890), 54 J. P. 743.

(47) *Rex (Hardy) v. Allen*, L. R. 1912, 1 K. B. 365; 81 L. J. K. B. 258; 106 L. T. 101; 76 J. P. 95, *re* order directing prosecutor to pay costs on ground that charge was not made in good faith.

(48) *Rex (Lovejoy) v. Hopkins* (1911), 104 L. T. 917; 75 J. P. 340, *re* wild birds "recently" taken (all facts before court as if case stated, and magistrate held right). *Rex (Murphy) v. Cork JJ.*, 1914 Ir. K. B. 249; 5 Glen's Loc. Gov. Case Law 38; *re* improper reception of evidence for defendant who was acquitted. *O'Hare's Case*, *ante*, p. 656 (53), *re* withdrawal of one of two justices on difference of opinion.

(49) See *Griffith's Case*, *ante*, p. 490 (31).

(50) *Gordon v. Hansen*, 1914 S. C. (J.) 131; 51 Sc. L. R. 669; 7 Adam 441; 5 Glen's Loc. Gov. Case Law 140; *Legge v. Tempest* (1923, K. B. D.), 58 L. J. Jo. 294.

(51) *Onions v. Clarke*, *ante*, p. 503 (90).

Sect. 262, n.
Form of case
—continued.

Where they frame their finding in such a way that the High Court cannot tell what they meant to find, the case will be remitted to them with an expression of opinion as to what they ought to have found, but with a direction that if they have already so found, or have already found the other way, the summons is to be dealt with without reference to the opinion expressed by the High Court.⁵²

Where the decision of justices was final, and they stated a case, but did not say that their decision was subject to the case, the appeal was dismissed. *Per* Channell, J.: "If magistrates only give their decision subject to a case agreed to be stated, their decision does not become final until the case stated has been argued and decided."⁵³

Hypothetical
cases,

The court has heard,⁵⁴ and refused to hear,⁵⁵ cases stated when the point is, or has become, "hypothetical."

New trial.

Where justices arrive at a wrong determination in point of law, and decide to convict, the High Court will not, on a case stated, remit the case to the justices for a new trial, unless the justices have either adjourned the case and asked for directions or inserted a request in the case that it be remitted to them in the event of their decision being held to be wrong in law. Neither having been done, the conviction in question was quashed.⁵⁶

Costs.

The costs of an appeal by special case, both in the King's Bench Division and in the Court of Appeal, which succeeded on the ground that evidence had been wrongly rejected by the justices, were ordered to be paid by the local authority, though they were not responsible for such rejection.⁵⁷

Costs are not usually given against a non-appearing respondent,^{57a} but they are sometimes.^{57b}

Appeal to Court of Appeal on Special Case.

A special case stated by justices on an application for a distress warrant to enforce a poor rate was held to be in a "criminal cause or matter," so that no appeal lay to the Court of Appeal.⁵⁸ But such an appeal does lie against the decision of the Divisional Court on a special case stated on an application for an order to enforce payment of a general district rate.⁵⁹

By the Appellate Jurisdiction Act, 1876,⁶⁰ "where by Act of Parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any case from the decision of the High Court of Justice, or of any judge thereof, to [His] Majesty's Court of Appeal." Nor does such an appeal lie in any "criminal cause or matter."⁶¹ A rule having been made absolute for a *certiorari* to quash an order made by justices against a local board to abate a nuisance,⁶² an application was subsequently made by the board for the costs of the rule, but was refused on the ground that it was a criminal matter, and (*semble*) that costs in *certiorari* can only be recovered under the recognisance.⁶³ An appeal does not lie to the Court of Appeal from the decision of the Divisional Court on a special case stated by justices in proceedings for the abatement of a nuisance, such proceedings being quasi-criminal.⁶⁴

(52) *Brockman v. Folkestone Cpn.* (1912, K. B. D.), Loc. Gov. Chron. 63; 76 J. P. Jo. 29; 2 Glen's Loc. Gov. Case Law 170. Further as to obscure findings, see *Bowen v. Jones*, cited in Note to S. F. D. Act, 1875, s. 6, *post*, Part II., Div. II.

(53) *Wills & Sons v. McSherry*, L. R. 1914, 1 K. B. 616; 83 L. J. K. B. 596; 110 L. T. 65; 78 J. P. 120.

(54) *Tydeman v. Thrower*, L. R. 1914, 2 K. B. 494; 83 L. J. K. B. 814; 110 L. T. 1018; 78 J. P. 182; 12 L. G. R. 739, *re* sending children to industrial schools.

(55) *Tindall v. Wright* (1922, K. B. D.), 127 L. T. 149; 86 J. P. 108; 38 T. L. R. 521, argument on one point precluded by recent case and second point being "academic"; *Finchley U.D.C. v. Blyton* (1913, K. B. D.), 77 J. P. Jo. 556; 5 Glen's Loc. Gov. Case Law 31, 32, defendant having died.

(56) *Taylor v. Wilson* (1911), 106 L. T. 44; 76 J. P. 69; 28 T. L. R. 97, *re* using premises for betting.

(57) *Upjohn v. Willesden U.D.C.*, cited in Note to P. H. Am. Act, 1907, s. 31, *post*, Part I., Div. III.

(57a) See *per* Lord Alverstone, C.J., in

Derham v. Strickland, 9 L. G. R. at p. 530. As to this case, see *post*, Vol. II., p. 1671.

(57b) See *Robinson's Case*, *ante*, p. 512 (21); *Usk's Case*, *ante*, p. 682 (52); *Kyle's Case*, cited in Note at commencement of S. F. D. Act, 1875; and *Booth's Case*, cited in Note to s. 6 of that Act, *post*, Part II., Div. II.

(58) *Seaman v. Burley*, L. R. 1896, 2 Q. B. 344; 65 L. J. M. C. 208; 75 L. T. 91; 60 J. P. 772. See also *Robson v. Biggar* (C. A.), L. R. 1908, 1 K. B. 672; 77 L. J. K. B. 203; 97 L. T. 859, *re* excessive distress; and cases cited, *ante*, p. 701.

(59) *Southwark and Vauxhall Water Co. v. Hampton U.D.C.*, *ante*, p. 671 (58). This point was not dealt with in H. L., *ante*, p. 585 (59).

(60) 39 & 40 Vict. c. 59, s. 20.

(61) 36 & 37 Vict. c. 66, s. 47; see *Ex parte Schofield*, *ante*, p. 701.

(62) *Reg. v. Parlby*, *ante*, p. 180 (14).

(63) *Reg. v. Parlby* (1889), 53 J. P. 774. As to costs in criminal matters, see the Act of 1908, *post*, Vol. II., p. 2208.

(64) *Lea Conservancy Bd. v. Tottenham Loc. Bd.* (1891), 64 L. T. 198; 55 J. P. 343.

A decision from which there is no appeal is not binding upon a court of co-ordinate jurisdiction.⁶⁵

Sect. 262, n.

The Court of Appeal can entertain an appeal on a rule for quashing an order of quarter sessions as to the validity of a rate.⁶⁶

Where one of the parties desires the opinion of the Court of Appeal upon the correctness of a decision of the Divisional Court on a special case in respect of which an appeal does not lie, such opinion can sometimes be obtained by an application for the prerogative writ of *mandamus*,⁶⁷ or by the statement of a case by consent under the Quarter Sessions Act, 1849.⁶⁸

Special case stated by arbitrator.

The power of an arbitrator appointed by consent to state a special case for the opinion of the High Court by virtue of the Common Law Procedure Act, 1854,⁶⁹ was held not to apply to the Local Government Board so as to allow them to state a case on the reference of a dispute to them in pursuance of a statute.⁷⁰ But now see the provisions of the Arbitration Act, 1889,⁷¹ under which an award made upon any submission may be stated in the form of a special case; or an interlocutory case may be stated before the award is made.

With regard to appeals to the Court of Appeal from the decision of the High Court on a special case stated by an arbitrator, see the Note to sect. 180.⁷²

Special case under Baines' Act.

A special case may be stated by consent by the parties to an appeal to quarter sessions, before such appeal is heard.⁷³

As to special cases stated by quarter sessions, see the Note to sect. 269.^{73a}

Protection of Justices.

A justice, who issued a distress warrant under a conviction which was afterwards quashed,⁷⁴ was held to be protected by sect. 6 of the Justices Protection Act, 1848.^{74a}

Protection against actions.

If in relation to any proceedings under the present Act any justices refuse to do an act, the King's Bench Division may by rule order them to do it; and thereupon no action shall be brought for having obeyed the rule or done the act thereby required.⁷⁵ This enactment was first held to be of general application.⁷⁶ Then it was held that it only applied where the justices could be under a liability to an action of trespass, and therefore needed protection.⁷⁷ Subsequently a court of three judges was constituted on purpose to consider the point, and decided that orders under the enactment in question and by *mandamus* were concurrent remedies, and that either might be granted at the discretion of the court.⁷⁸

Mandamus, &c., to justices.

"Every application for a writ of *mandamus* to justices to enter continuances and hear an appeal shall be made within two calendar months after the first day of the sessions at which the refusal to hear took place, unless further time be allowed by the court or a judge, or unless special circumstances appear by affidavit to account for the delay to the satisfaction of the court."⁷⁹

Sect. 263. [*False evidence punishable as perjury.*]

P.H., s. 147.

Note.

The present section was repealed by the Perjury Act, 1911,¹ which provides, so far as is within the scope of the present work, as follows ² :—

Perjury.

(65) *London and North Western Ry. Co. v. Skerton Surveyor* (1864), 5 B. & S. 559; 33 L. J. M. C. 158; 10 L. T. 648; *Hall v. Nixon* (1875), L. R. 10 Q. B. at p. 158; *Kruse v. Johnson*, ante, p. 501.

(66) *Walsall Overseers v. London and North Western Ry. Co.* (1878, H. L.), L. R. 4 A. C. 30; 48 L. J. M. C. 65; 39 L. T. 453.

(67) In this way the decision of the K. B. D. in *Leonard v. Hoare & Co.* was overruled in *Rex (Hoare & Co.) v. Foots Cray U.D.C.*, see Note to P. H. Am. Act, 1907, s. 23, post, Part I., Div. III.

(68) As in *Wixon v. Thomas*, ante, p. 587. See 3 Glen's Loc. Gov. Case Law 172 n.

(69) 17 & 18 Vict. c. 125, s. 5; see *Rhodes v. Airedale Drainage Comrs.* (1876, C. A.), L. R. 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46.

(70) *Bexley Loc. Bd. v. West Kent Main Sewerage Bd.*, ante, p. 491.

(71) 52 & 53 Vict. c. 49, ss. 7, 19, ante, p. 490.

(72) Ante, p. 490.

(73) 12 & 13 Vict. c. 45, s. 11, post, p. 719.

(73a) Post, p. 718.

(74) See footnote (14), ante, p. 654.

(74a) 11 & 12 Vict. c. 44, s. 6. *McVittie v.*

Marsden, L. R. 1917, 2 K. B. 878; 86 L. J. K. B. 653; 116 L. T. 629; 81 J. P. 109; 15 L. G. R. 249. See also post, p. 708 (24).

(75) 11 & 12 Vict. c. 44, s. 5.

(76) *Reg. v. Aston* (1850), 1 Lowndes Maxwell and Pollock 491.

(77) *Reg. v. Percy or Cumberland JJ.* (1873), L. R. 9 Q. B. 64; 43 L. J. M. C. 45; 38 J. P. 422. *Re Neath Guardians* (1875), *Times*, Jan. 26.

(78) *Reg. v. Phillimore* (1884), L. R. 14 Q. B. D. 474, n.; 51 L. T. 205; 48 J. P. 774; s.c. nom. *Reg. v. Pilling*, 32 W. R. 593; and see *Reg. v. Biron* (1884), L. R. 14 Q. B. D. 474; 54 L. J. M. C. 77; 51 L. T. 429; 49 J. P. 6.

(79) Crown Office Rules, 1906, r. 68.

(1) 1 & 2 Geo. V. c. 6, s. 17, Sched.

(2) *Ibid.*, ss. 1, 2, 5-7, 13, 15, 16. False statements as to marriages, and births and deaths, are dealt with in ss. 3 and 4; venue, in s. 8; power to direct prosecution, in s. 9; jurisdiction of quarter sessions, in s. 10; Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17, in s. 11; form of indictment (see now Act of 1915), in s. 12; and proof of certain proceedings on which perjury is assigned, in s. 14.

Sect. 263, n.
Perjury—
continued.

“1.—(1) If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury, and shall, on conviction thereof on indictment, be liable to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine. (2) The expression ‘judicial proceeding’ includes a proceeding before any court, tribunal, or person having by law power to hear, receive, and examine evidence on oath. (3) Where a statement made for the purposes of a judicial proceeding is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it shall, for the purposes of this section, be treated as having been made in a judicial proceeding. (4) [Proceedings outside England.] (5) [Sworn statements outside England.] (6) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.”

“2. If any person—(1) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or (2) [as to bills of sale], he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to penal servitude for a term not exceeding seven years or to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.”

“5. If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—(a) in a statutory declaration; or (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest, or verify, by any public general Act of Parliament for the time being in force; or (c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any public general Act of Parliament for the time being in force, he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment, with or without hard labour, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.”

“6. If any person—(a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any public general Act of Parliament for the time being in force of persons qualified by law to practise any vocation or calling; or (b) procures or attempts to procure a certificate of the registration of any person on any such register or roll as aforesaid, by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate, or representation which he knows to be false or fraudulent, he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment for any term not exceeding twelve months, or to a fine, or to both such imprisonment and fine.”

“7.—(1) Every person who aids, abets, counsels, procures, or suborns another person to commit an offence against this Act shall be liable to be proceeded against, indicted, tried and punished as if he were a principal offender. (2) Every person who incites or attempts to procure or suborn another person to commit an offence against this Act shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment, or to a fine, or to both such imprisonment and fine.”

“13. A person shall not be liable to be convicted of any offence against this Act, or of any offence declared by any other Act to be perjury or subornation of perjury, or to be punishable as perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.”

“15.—(1) For the purposes of this Act, the forms and ceremonies used in administering an oath are immaterial, if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question, and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him.³ (2) In this Act—The expression ‘oath’ in the case of persons for the time being allowed by law to affirm or declare instead of swearing,

(3) As to taking of oaths, see *post*, Vol. II., p. 2035.

includes 'affirmation' and 'declaration,' and the expression 'swear' in the like case includes 'affirm' and 'declare'; and the expression 'statutory declaration' means a declaration made by virtue of the Statutory Declarations Act, 1835,⁴ or of any Act, Order in Council, rule or regulation applying or extending the provisions thereof; and the expression 'indictment' includes 'criminal information.' "

" 16.—(1) Where the making of a false statement is not only an offence under this Act, but also by virtue of some other Act is a corrupt practice or subjects the offender to any forfeiture or disqualification or to any penalty other than penal servitude, or imprisonment, or fine, the liability of the offender under this Act shall be in addition to and not in substitution for his liability under such other Act. (2) Nothing in this Act shall apply to a statement made without oath by a child under the provisions of the Prevention of Cruelty to Children Act, 1904,⁵ and the Children Act, 1908.⁶ (3) Where the making of a false statement is by any other Act, whether passed before or after the commencement of this Act, made punishable on summary conviction, proceedings may be taken either under such other Act or under this Act: Provided that where such an offence is by any Act passed before the commencement of this Act, as originally enacted, made punishable only on summary conviction, it shall remain only so punishable."

Sect. 264. [*Notice of action against local authority, etc.*⁷]

Sect. 263, n.
Perjury—
continued.

Sect. 265. No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever; and any expense incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

P.H., s. 139.

Protection of local authority and their officers from personal liability.
P.H., s. 140.
N.R. 1855, s. 42.
P.H. 1872, s. 28.

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

Note.

With reference to a similar provision in the Metropolitan Commissioners of Sewers Act,⁸ it was held that the effect was to absolve from personal liability to an action persons who *bonâ fide* did some act under the direction of the commissioners, which, but for that clause, would have subjected them to an action.⁹

Personal liability of members.

Members of a local authority are not personally liable to compensate a person for damage occasioned to him by their carelessness or want of due regard in the performance of their duty under the Act; but they are liable as a public body to compensate the person so sustaining damage, and to pay the compensation out of the funds over which they have control. Where, however, a member does something not within the scope of his authority as a member, it would seem that the whole body are not liable, but that personal liability would attach to the particular member in respect of the act done.¹⁰

The opinion expressed in the House of Lords by Lord Bramwell, that a corporation aggregate is not capable of being actuated by a malicious motive such as would render it liable to an action for malicious prosecution,¹¹ has not been accepted; but the previous judgment of Fry, J., to the contrary¹² has been followed.¹³ And the Privy Council have held an incorporated company responsible for a libel published by one of its officers when acting within the scope of his employment and in the course of his employment, although he had no authority

Action for malicious prosecution.

Action for libel.

(4) 5 & 6 Wm. IV. c. 62.
(5) 4 Edw. VII. c. 15. Repealed (except s. 27) by Education Act, 1921.
(6) 8 Edw. VII. c. 67.
(7) Repealed, and other provisions restricting actions against local authorities made, by Public Authorities Protection Act, 1893, *post*, Vol. II., p. 1974.
(8) 11 & 12 Vict. c. 112, s. 128.
(9) *Ward v. Lee* (1857), 7 E. & B. 426; 26 L. J. Q. B. 142; 3 Jur. (N.S.) 557; 21 J. P. 179.
(10) *Ruck v. Williams* (1858), 3 H. & N.

308; 27 L. J. Ex. 357. On this point see also *Kendall v. King*, and *Hall v. Taylor*, *ante*, p. 698.
(11) *Abrath v. North Eastern Ry. Co.* (1886), L. R. 11 A. C. 247; 55 L. J. Q. B. 457; 55 L. T. 63.
(12) *Edwards v. Midland Ry. Co.* (1880), L. R. 6 Q. B. D. 287; 50 L. J. Q. B. 281.
(13) *Cornford v. Carlton Bank*, L. R. 1899, 1 Q. B. 392; 68 L. J. Q. B. 196; 80 L. T. 121; affirmed in C. A., L. R. 1900, 1 Q. B. 22; 68 L. J. Q. B. 1020; 81 L. T. 415.

Sect. 265, n.

Liability in respect of ultra vires contract.

Personal liability.

Liability for costs.

Evidence of acting in office.

Service on jury.

Protection of justices.

Compensation and damages.

Audit.

express or implied to write libels or do anything legally wrong.¹⁴ Further as to libel actions, see the Note to Sched. I., rule 2, *post*.

Where a local authority enter into a contract *ultra vires*, and therefore cannot pay the contractor out of the rates which they are authorised to levy, individual members are not personally liable for the debt.¹⁵

In an action which was unsuccessfully defended by a municipal corporation on the ground that the contract in question was not under seal, Bramwell, L.J., said: "If the plaintiff had failed against the corporation, possibly he might have had some remedy against the committee-men for representing that they were invested with an authority which they did not in fact possess."¹⁶ This observation was based on the general principle that persons, who induce others to act on the supposition that they have authority to enter into a binding contract on behalf of third persons, may, on its turning out that they have no such authority, be sued for damages for breach of an implied warranty of authority.¹⁷

On a motion for the committal of certain members of a local board for breach of an undertaking given by the board not to continue or repeat a nuisance, and for a sequestration against the estate of the board, though it was merely sought that the defendants should be ordered to pay the costs, the court directed the board to pay the costs as far as regards the sequestration, not giving costs against the individual members, and holding the application for their committal to be unnecessary and unjustifiable, as they had no intention of acting contumaciously, but had been doing all they could to remedy the nuisance, though it had not been entirely abated.¹⁸

But writs of attachment were granted against several municipal councillors who had held office since a peremptory writ of *mandamus* had, six years previously, been served by handing copies and showing the original to ten out of forty-eight of the then councillors, requiring the corporation to carry out a sewage scheme, the original writ having been handed to one of the councillors in order that the return to it might be indorsed upon it, and having subsequently been lost. No return had been made to the writ until an order of the court with a copy of the original writ had been served on the councillors, requiring a prompt return to be made by the corporation, who thereupon entered into a contract for the execution of one section of the work, after which the return was made. The writs of attachment were, however, directed to lie in the office for a certain period to give the councillors time to take action.¹⁹

According to an Irish Master of the Rolls,²⁰ when a local authority are guilty of misconduct, the individual councillors responsible should be made defendants in order that they may be visited with costs.

Acting in an office is proof of being an officer, and the court will assume that persons who are shown to have done an act within the scope of a public duty were exercising that duty, without proof that they were or had been discharging it at the very time; if it be within a reasonable time it is sufficient.²¹

Where a member of a local authority served on a jury in an unsuccessful action against the authority, a new trial was ordered.²²

Justices of the peace are protected from proceedings in certain cases.²³

If improperly criticised with regard to the performance of their duties, they may proceed for a criminal libel.²⁴

With regard to the compensation payable by the local authority to persons who suffer damage by reason of the exercise of any of the powers of this Act, see sect. 308; and as to actions for damages for negligence and other wrongful acts and omissions against local authorities and their contractors, see the Note to that section.

With regard to the audit of the accounts of local authorities, see sects. 246-248.

(14) *Citizens Life Assurance Co. v. Brown*, L. R. 1904 A. C. 423; 73 L. J. P. C. 102; 90 L. T. 739.

(15) *Bailey v. Cuckson* (1858), 32 L. T. (O.S.) 124; 7 W. R. 16.

(16) *Eaton v. Basker and Grantham Cpn.*, ante, p. 459. For quotation, see L. R. 7 Q. B. D., at p. 532.

(17) *Collen v. Wright* (1857), 8 E. & B. 647; 27 L. J. Q. B. 215; *Richardson v. Williamson* (1871), L. R. 6 Q. B. 276; 40 L. J. Q. B. 145; *Maye v. Sparrow* (1870), 22 L. T. 154; 18 W. R. 400; *Starkey v. Bank of England*, L. R. 1903 A. C. 114; *Yonge v. Toynbee*, L. R. 1910, 1 K. B. 215 (*re solicitor and lunatic*

client); *Fernée v. Gorlitz*, L. R. 1915, 1 Ch. 177 (*re age of "next friend"*).

(18) *Sutton v. Barnet Loc. Bd.*, 1877 W. N. 167.

(19) *Rex v. Worcester Cpn.* (1903), 68 J. P. 130; 2 L. G. R. 51. See also the *Poplar Case*, ante, p. 577.

(20) See *O'Shea's Case*, ante, p. 210 (41).

(21) *Doe d. Peter Hopley v. Young* (1845), 8 Q. B. 63; 15 L. J. Q. B. 9; 9 Jur. 941.

(22) *Atkins v. Fulham B.C.* (1915, K. B. D.), 31 T. L. R. 564.

(23) See ante, p. 705.

(24) *Rex (Morris) v. Russell* (1905, K. B. D.), 93 L. T. 407; 69 J. P. 450; 21 T. L. R. 749.

Sect. 266.

NOTICES.

Sect. 266. Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print; and if the same require authentication by the local authority the signature thereof by the clerk to the local authority or their surveyor or [sanitary inspector] shall be sufficient authentication.

Notices, etc., may be printed or written.
L.G., s. 61.

Note.

Although the present section allows notices, etc., to be signed by any of the three officers mentioned, "it is better upon principle that a notice connected with a particular department should be signed by an officer of that department."¹

A notice, however, which demanded payment of expenses incurred by a local authority under sect. 36 of the present Act, was held to have been sufficiently authenticated by the signature of their rating surveyor, the justices having found that it was in fact part of his duty to prepare, sign, and serve all notices demanding payment of moneys due to the local authority, and to collect and receive payment of such moneys on their behalf.²

In the case of notices under sect. 150, it would seem from Form G, in Sched. IV., that the clerk is the proper person to sign them: compare the conclusion with that of Form A.

Justices dismissed a summons for payment of private street works expenses under sect. 150 because the signature of the clerk to the notice to do the work was in print like the rest of the document; but the Queen's Bench Division held that the signature was sufficiently authenticated under the present section, and doubted if any signature was required at all.³ The Local Government Board, however, did not allow poor-rate collectors to use rubber stamps for signing rate receipts.⁴

Where a person put his name to an objection to a list of voters by stamping it with a stamp on which was a facsimile of his ordinary signature, it was held that the notice had been "signed by the person objecting."⁵ But a document was held not to have been "signed by" a solicitor when his signature had been lithographed,⁶ though another document was held to have been so signed when the solicitor's name had been inserted in the handwriting of a clerk in pursuance of a general authority.⁷

Cockburn, C.J., doubted whether it was an "irregularity" for a registrar of a court to authorise his clerks to use a stamped signature for documents which should have been signed by him personally.⁸

The stamped signature of a judge in chambers was held to be valid.⁹

A notice of appeal by a rural district council to quarter sessions which was given by the clerk, and subsequently ratified by a resolution of the council under seal, was held to be sufficient.¹⁰

Authentica-
tion of
notices.

Stamped
signature.

Sect. 267. Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would

Service of
notices.
P.H., s. 150.
L.G., s. 61.
N.R. 1855, s. 31.

(1) *Per* Lord Alverstone, C.J., in *Willis v. Rotherham Cpn.*, *infra*.

(2) *Willis v. Rotherham Cpn.* (1911), 105 L. T. 436; 75 J. P. 421; 9 L. G. R. 948.

(3) *Brydges v. Dix* (1891), 7 T. L. R. 215.

(4) See 60 J. P. 42.

(5) *Bennett v. Brumfitt* (1867), L. R. 3 C. P. 28; 37 L. J. C. P. 25; 17 L. T. 213.

(6) *Reg. (Rees) v. Cowper* (1890, C. A.), L. R. 24 Q. B. D. 533; 59 L. J. Q. B. 265;

62 L. T. 583.

(7) *France v. Dutton*, L. R. 1891, 1 Q. B. 208; 60 L. J. Q. B. 488; 64 L. T. 793. See also *Reg. v. Kent JJ.*, *post*, p. 717 (27).

(8) *Osgood v. Nelson* (1869), 33 J. P. at p. 262, cols. i. ii.

(9) *Blades v. Lawrence* (1874), L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. 378.

(10) *St. Mellons R.D.C. v. Edwards* (1903, Monmouth Q. S.), 67 J. P. 396.

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be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description.

Note.**Service of documents.**

The present section does not require documents to be served in any of the modes mentioned, or prevent any other mode of service, which would be good at common law, from being effectual.

Service by affixing to premises.

The question whether the place where a notice is affixed is a "conspicuous part of the premises" is a question of fact; and where a county court judge had held that a notice attached to a post, which, according to the measurements, was exactly on the boundary line between a plot of land fronting a private street and land reserved for an approach to other premises on conveyance of the plot, was not on a conspicuous part of the plot (the owner having to take careful measurements to ascertain whether any of the post was on his land or not), the Divisional Court refused to reconsider his decision.¹¹

A notice may be served by affixing it to the premises under the present section, although the owner's address may be known to the local authority.¹²

Service on "inmate."

A notice to a parent to cleanse a verminous child may be served on the child as an "inmate" of the residence.¹³

Service by post.

When the document is served by post, prepayment of the postage must be proved; for service of a notice disputing an amount settled by the surveyor of an urban authority under sect. 257 was held not to have been proved, as there was no evidence that the postage had been prepaid, the defendant having merely sworn that he posted the notice addressed to the chairman of the district council at their offices.¹⁴

Under the Public Health Act, 1848,¹⁵ a notice could be served by post on an owner, but only if his place of abode was not within the district, and it was required in such case to be directed to him by name. *Per* Pollock, C.B.: "The section was merely intended to provide in aid of those who have to serve notices, not to invalidate a notice otherwise perfectly good." *Per* Pigott, B.: "I think that if the justices had found that the notice was delivered to a servant of the respondent, and that the servant afterwards handed it to his master, they would have been bound to find that he had been served."¹⁶

The present section, in providing that notices served by post "shall be deemed to have been served" (omitting the words "and received," which are in sect. 65 of the Valuation (Metropolis) Act, 1869),¹⁷ may have intended to allow proof of non-receipt.¹⁸

Meaning of document.

A summons for a general district rate is a "document" within the present section.¹⁹

Service of order.

It is not enough to serve notice that an order has been made. A copy of the order itself must be served.²⁰

Residence or place of abode.

A merchant's place of business was his "place of abode" within the corresponding section of the Public Health Act, 1848, which used that expression instead of "residence,"²¹ and is his "residence" within the present section.²²

(11) *West Ham Cpn. v. Thomas* (1908, K. B. D.), 6 L. G. R. 1043.

(12) See *Butler's Case*, ante, p. 318 (3), and *Sharpley's Case*, post, p. 711 (27).

(13) *Hope v. Devaney* (1914, K. B. D.), 111 L. T. 571; 78 J. P. 343; 12 L. G. R. 1286.

(14) *Walthamstow U.D.C. v. Henwood*, L. R. 1897, 1 Ch. 41; 66 L. J. Ch. 31; 75 L. T. 375; 61 J. P. 23.

(15) 11 & 12 Vict. c. 63, s. 150.

(16) *Mason v. Bibby* (1864), 2 H. & C. 881; 33 L. J. M. C. 105; 9 L. T. 692; s.c. nom. *Waterloo with Seaforth v. Bibbey*, 10 Jur. (N.S.) 519.

(17) 32 & 33 Vict. c. 67, s. 65.

(18) See *Rex (Woodward & Sons) v. Westminster U.A.C.*, L. R. 1917, 1 K. B. 832; 86 L. J. K. B. 698; 116 L. T. 601; 81 J. P. 93; 15 L. G. R. 199, where such proof was held ineffective because of s. 65. Cf. *Watts v. Vickers, Ltd.* (1917, C. A.), 86 L. J. K. B.

177; 116 L. T. 172; W. C. & Ins. 24; 33 T. L. R. 137, re making of claim under Workmen's Compensation Act.

(19) *Rex (Dowling) v. Braithwaite* (C. A.), L. R. 1918, 2 K. B. 319; 87 L. J. K. B. 864; 119 L. T. 170; 82 J. P. 242; 16 L. G. R. 580.

(20) *Curtis v. Crow* (1916, K. B. D.), 85 L. J. K. B. 947; 114 L. T. 411; 80 J. P. 175; 14 L. G. R. 395, re order by U.A.C. to give particulars of premises. But see *Arlidge v. Hampstead B.C.*, cited in Note to H. W. C. Act, 1890, s. 49, post, Part II., Div. III.

(21) See *Mason's Case*, supra (16), but see also *McVittie's Case*, ante, p. 654 (14).

(22) See *Dowling's Case*, supra (19). Further as to "residence," see *Berks C.C. v. Reading Cpn.*, L. R. 1921, 2 K. B. 787; 90 L. J. K. B. 939; 125 L. T. 410; 85 J. P. 173; 19 L. G. R. 386, re mental defective. See also cases collected, post, Vol. II., pp. 2027-2032.

An objection to the service of the notice of demand for a rate, on the ground that it was neither served personally, nor at the residence of the ratepayer, nor left at the premises rated, but at the ratepayer's principal place of business, was overruled.²³

Where there was a corporate meeting held under the provisions of an Act of Parliament, with a chairman duly authorised to preside over it, a demand made by a collector for payment of poor rates at that meeting was sufficient.²⁴

By sect. 220, in rates made by urban district councils, and by sect. 255, in proceedings under the nuisance clauses of the present Act, the name of the owner (defined by sect. 4) or occupier need not be specified.

In most cases it is advisable to address and serve a notice in the statutory manner, whether or not another notice is addressed to the person by name and served upon him personally.

It has been decided under the Public Health (London) Act, 1891, that a summons for a nuisance may be addressed merely to "the owner," and may be served by being left on the premises.²⁵ Under the London Building Act, 1894, which enables any document the service of which is not provided for by the Summary Jurisdiction Acts, or certain other Acts, to be served, if no person can be found on the premises, by fixing a copy on the premises, it was held that the service of a summons addressed to "the owner" of a building, without naming him, by fixing a copy on the building, was bad in the absence of evidence to show that reasonable inquiry had been made to find out who was the owner.²⁶ Under the present Act, in a case in which the foregoing decision was not cited, the posting of a notice under sect. 150 upon a narrow strip of ground at the side of a street was held to be sufficient service, although the name and address of the owner were known to the surveyor of the local authority.²⁷ And in another case the service of copies of a resolution under the Private Street Works Act, 1892, by delivery to persons on the premises adjoining the street intended to be paved, where the premises were occupied, and by fixing a copy on those on which no person was found, was held to be sufficient service, although the owner's address was well known to the local authority, and the copies of the resolution did not in fact reach him.²⁸ But proceedings to enforce a charge in respect of such expenses cannot be taken against an unknown owner by substituted service.²⁹

Service of a notice at the last known address of a bankrupt was held to be good, though served with the knowledge that he had left that address.³⁰

Service of a notice under sect. 69 of the Public Health Act, 1848, on a person *de facto* receiving the rent, was held to be a service on the "owner" within the meaning of sect. 2 of that Act.³¹

A notice sent by post and having on the back or outside the name and address of the person to whom it was sent, but in order to save an extra halfpenny in the postage, not repeating the address in the notice itself, was held to comply with a provision requiring certain forms to be used and observed, although the prescribed form provided for the address being inserted in the body of the notice.³²

Where notice is served on the wrong person, the defendant may be estopped from raising this as a defence, but, in the case cited below,³³ it was held that there was no such estoppel.

The rule that notice to produce a notice is not required was held not to apply where the notice was served upon a third person.³⁴

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Demand made at meeting.

Description of owner and occupier.

Address of documents.

Person receiving rent.

Estoppel.

Notice to produce.

(23) *Newport Cpn. v. Lang* (1892), 57 J. P. 199.

(24) *Curtis v. Kent Water Co.* (1827), 7 B. & C. 314.

(25) *Reg. v. Mead*, L. R. 1894, 2 Q. B. 124; 63 L. J. M. C. 128; 70 L. T. 766; 58 J. P. 448. See also *ante*, p. 318.

(26) *Reg. v. Mead*, L. R. 1898, 1 Q. B. 110; 66 L. J. Q. B. 874; 77 L. T. 462; 61 J. P. 759.

(27) *Sharpley v. Bear*, *ante*, p. 318 (4).

(28) *Woodford U.D.C. v. Henwood* (1899, K. B. D.), 64 J. P. 148.

(29) *Wealdstone U.D.C. v. Evershed*, *ante*, p. 682.

(30) *In re Follick* (1908, Phillimore, J.), 97 L. T. 645; 52 Sol. J. 13.

(31) *Peek v. Waterloo with Seaforth Loc. Bd. of Health* (1863), 2 H. & C. 709; 33 L. J. M. C. 11; 9 L. T. 338; 9 Jur. (N.S.) 1344; 12 W. R. 252.

(32) *Linforth v. Butler*, L. R. 1899, 1 Q. B. 116; 68 L. J. Q. B. 3; 79 L. T. 498.

(33) See the *Altrincham Case*, *ante*, p. 320 (28).

(34) *Andrews v. Wirral R.D.C.*, *ante*, p. 398 (14).

Sect. 268.

APPEAL.

Appeal in
certain cases to
[Minister of
Health.]
P.H., s. 120.

Sect. 268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the [Minister of Health], stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the [Minister of Health] may make such order in the matter as to the said [Minister] may seem equitable, and the order so made shall be binding and conclusive on all parties.

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the [Minister of Health] may, if [he] thinks fit, by [his] order, direct the local authority to pay to the person so proceeded against such sum as the said [Minister] may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

Note.

Limitation
of time.

It is to be noticed that the time within which an appeal can be made to the Minister of Health under the present section is limited to twenty-one days from the time when the appellant receives notice of the decision of the district council.¹

Procedure.

The appellant is required to deliver a copy of his memorial to the district council, and the Local Government Board required to be furnished with all original notices, each to be indorsed with the date of its receipt, and to be informed when a copy of the appeal was delivered to the council. As to the meaning of "person aggrieved," see the Note to sect. 253.

Mode of
hearing.

For cases dealing with the mode of hearing appeals under the Housing Acts, see the cases referred to below.²

Finality of
decision.

The decision of the Minister on the appeal is made conclusive on all parties, and not only on the district council as under the Public Health Act, 1848.³ The decision, though erroneous on facts which are matters of public record, cannot be questioned by *certiorari*.^{3a}

It is, however, only binding and conclusive with respect to the matters submitted by the appeal,⁴ and if it complies with the "rules of natural justice."^{4a}

The decision of the Minister both as to the amount of the original claims and any claim for interest thereon is final; and the only interest payable beyond the sum awarded by the Minister runs from the time when the amount due is ascertained by that Minister, and not from the time of the first demand of the amount claimed.⁵

The reference of disputes between a local board and any constituted authority or parish to the Local Government Board for decision, which decision it was declared by a local Act should be final and conclusive, was held not to be a "reference by consent" within the meaning of the Common Law Procedure Act, 1854,⁶ and the court refused to hear a special case stated for its opinion by the Local Government Board upon such a reference.⁷

A notice under sect. 150 required an owner to pave as part of a street land which at the time of the notice was alleged to be enclosed private land. It was decided by the Court of Appeal that the only remedy of the person aggrieved was by appeal to the Local Government Board under the present section; for the grievance of the owner was that a wrong order had been made by the sanitary

(1) Decisions so appealable are those under ss. 23, 36, 41, 46, 47, 62, 70, 98, 120, and 150 of the present Act; and ss. 27 and 35 of the P. H. Am. Act, 1890, *post*, Part I., Div. II.; and see s. 8 (2) of the P. H. Am. Act, 1907, *post*, Part I., Div. III., as to the application of the present section to decisions under that Act.

(2) *Rex (Arlidge) v. Loc. Gov. Bd. and Rex (Alhambra Picture House, Ltd.) v. Housing Tribunal of Appeal*, cited respectively in Notes to s. 39 of Act of 1909, and s. 5 of Act of 1919 (Additional Powers), *post*, Part II., Div. III.

(3) 11 & 12 Vict. c. 63, s. 120.

(3a) *Rex (Armagh C.C.) v. L. G. Bd. for Ireland (re excessive superannuation allow-*

ance) (1922, K. B. D., N. I.), 56 Ir. L. T. 98. See also *Rex (Limerick Cpn.) v. L. G. Bd. for Ireland* (C. A., S. I.), 1922 Ir. K. B. 76.

(4) See *Seabrooke v. Grays Thurrock Loc. Bd.*, *ante*, p. 332 (29), and the *Bristol Case*, *ante*, p. 319 (17).

(4a) *Rex (Wycombe Guardians) v. Minister of Health* (1922, K. B. D.), 87 J. P. 37; 20 L. G. R. 778.

(5) *Wallington v. Willes* (1864), 16 C. B. (N.S.) 797; 33 L. J. M. C. 233; 10 L. T. 784; 10 Jur. (N.S.) 906.

(6) 17 & 18 Vict. c. 125, s. 5.

(7) *Bexley Loc. Bd. v. West Kent Main Sewerage Bd.* (1882), L. R. 9 Q. B. D. 518; 51 L. J. Q. B. 456; 47 L. T. 192; 46 J. P. 519.

authority in the first instance, and the justices had no jurisdiction to inquire whether that order was right or not.⁸

In another case arising under sect. 150, an owner, who had not disputed the apportionment made by the surveyor of the urban sanitary authority, appealed to the Local Government Board by memorial within twenty-one days after the service upon him of the demand for payment of the amount apportioned, on the ground that the works were unnecessary and the expenses excessive. The urban sanitary authority applied for a writ of prohibition to prevent the Board from dealing with the appeal; but the Court of Appeal held that the demand for payment constituted a decision of the authority by which the owner was aggrieved, and that the Local Government Board therefore had jurisdiction to entertain the appeal.⁹

With reference to the observations of Lord Esher, M.R. (then Brett, L.J.), in this case, Mathew, J., in a subsequent case, said: "I should have thought that there was much weight in the argument that the Local Government Board could not be treated as a court having exclusive jurisdiction in a case of this kind. It may be that if a party chooses to resort to that tribunal, he should be bound by what it does. But that it should otherwise be conclusive is opposed to all principle. *It is not a court.* No procedure is pointed out."¹⁰

On a special case stated by an arbitrator, to whom a disputed apportionment of private street improvement expenses had been referred under sect. 150, Channell, J., held that an objection that the apportionment included expenses not properly chargeable against the frontagers, such as the expenses of sewerage of the street when the street had already been sewerage to the satisfaction of the council, could only be taken by appeal to the Local Government Board under the present section.¹¹

The present section does not prevent an appeal to quarter sessions against a decision of justices on an objection under the Private Street Works Act, 1892.¹²

If a house owner is required by the local authority to provide his house with a supply of water from a source which is at an unreasonable distance,¹³ or to convert a privy to a water-closet,¹⁴ his remedy is to appeal to the Minister of Health under the present section.

The overseers of a contributory place may appeal, under sect. 229, to the Minister of Health against the apportionment of certain expenses by a rural district council. There is also an appeal to the Minister, under sect. 247, against the auditor's disallowances and surcharges; under sect. 274 against a resolution for the constitution of a local government district; and under sect. 299 if a district council make default in providing for the sewerage or water supply of their district, or in enforcing any provisions of this Act which ought to be enforced by them. As to appeals to the Minister under the Housing Acts, see sect. 39 of the Act of 1909 and Note.¹⁵

Where a local Act gave an appeal to quarter sessions, or to the Local Government Board, "under the provisions of" the present section, the House of Lords held that an appeal lay to the Board only in cases where the local authority were empowered to recover expenses summarily or to declare them to be private improvement expenses.¹⁶

Sect. 269. When any person deems himself aggrieved by any rate made under the provisions of this Act, or by any order conviction judgment or determination of or by any matter or thing done by any court of summary jurisdiction, such person may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to the next court of quarter sessions [for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made:

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Finality of decision—
continued.

Other rights of appeal to Minister of Health.

Local Act.

Appeal to quarter sessions.
P.H., ss. 135, 136.
N.R. 1855, s. 40

(8) *Wake v. Sheffield Cpn.* (1883), L. R. 12 Q. B. D. 142; s.c. *nom. Reg. v. Sheffield Recorder*, 53 L. J. M. C. 1; 50 L. T. 76; 48 J. P. 197.

(9) *Reg. (Penarth Loc. Bd.) v. Local Government Bd.* (1882), L. R. 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L. T. 173; 47 J. P. 228. See also *West Hartlepool Cpn. v. Robinson* (1897, C. A.), 77 L. T. 387; 46 W. R. 218; 62 J. P. 35. But see *Ryall v. Hart*, *post*, p. 749 (4).

(10) *Eccles v. Wirral R.S.A.* (1886), L. R. 17 Q. B. D. at p. 112; 55 L. J. M. C. 106;

50 J. P. 596.

(11) *In re Hanwell U.D.C. and Smith* (1904), 68 J. P. 496; 2 L. G. R. 1350.

(12) *Pierce v. Maidenhead Cpn.*, *ante*, p. 346 (11), explaining *Hayles v. Sandown U.D.C.*, *ante*, p. 351 (2).

(13) *West Lancashire R.D.C. v. Ogilvy*, *ante*, p. 148 (3).

(14) See *Thorpe's Case*, *ante*, p. 111 (25).

(15) *Post*, Part II., Div. III.

(16) *Local Government Bd. v. Street* (1908), 72 J. P. 177; 6 L. G. R. 515.

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(2.) *The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof:*

(3.) *The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow:*

(4.) *Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody]:*

(5.) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeal: Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made:

(6.) *[In the case of other appeals the court of appeal may if it thinks fit adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just:*

(7.) *The decision of the court of appeal shall be binding on all parties: Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court.]*

P.H., s. 136.

Note.

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Jurisdiction of Quarter Sessions.

Repeal.

The italicised portions of the present section were repealed by the Summary Jurisdiction Act, 1884,¹ “so far as relates to an order or conviction of a court of summary jurisdiction,” to which must be added the words “made in pursuance of the Summary Jurisdiction Acts.”² Appeals against such orders and convictions are therefore now governed by the provisions of the Summary Jurisdiction Act, 1879.³ Appeals against rates made under the present Act continue to be governed by the present section.

Right to appeal.

The Public Health Acts Amendment Acts, 1890⁴ and 1907,⁵ give a right to appeal to quarter sessions, not only against convictions and orders of a court of summary jurisdiction, but also against any order, judgment, determination, or requirement of a local authority, or the withholding by them of any order, certificate, licence, consent, or approval, under those Acts, except in cases where under those Acts there is an appeal to the Minister of Health under sect. 268 of the present Act, and except where, by the Act of 1907, an appeal is given to a court of summary jurisdiction—see sects. 42 and 48 of the Act of 1907⁶—and such appeals to quarter sessions are to be “in manner provided by the Summary Jurisdiction Acts.”

In some respects, it will be noticed, there are differences between the procedure under the Summary Jurisdiction Acts and that under the present section, *e.g.*, under those Acts the court is to be the next sessions held not less than fifteen days (instead of twenty-one days) after the order, etc., appealed from was made or given, the notice of appeal is to be given within seven days (instead of fourteen days)

(1) 47 & 48 Vict. c. 43, s. 4, and Sched.
(2) *Ibid.*, s. 4 (proviso 2).
(3) See ss. 31, 32, *post*, pp. 715, 716.
(4) See s. 7, *post*, Part I., Div. II.
(5) See s. 7, *post*, Part I., Div. III.
(6) *Post*, Part I., Div. III.

after the cause of appeal has arisen, and the recognisance is to be entered into within three days (instead of immediately) after the giving of notice of appeal. While the procedure is simple enough as applied to cases of appeals from courts of summary jurisdiction, it is not clear how the condition relating to the recognisance is to be satisfied in the case of appeals from orders, etc., of local authorities. Presumably an intending appellant against an order, etc., of a local authority must go before a court of summary jurisdiction, and enter into a recognisance, or give other security, as if the appeal was from an order of a court of summary jurisdiction.

The above-mentioned provisions of the Act of 1879 are as follows:—Sect. 31 provides that “Where any person is authorised [*by this Act or by any future Act*] to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following: (1) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county borough or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and (2) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal; and (3) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient; and (4) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and (5) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and (6) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and (7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.”

Section 32 provides that “. . . Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county borough or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the

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Right to
appeal—cont.

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decision was given upon which the conviction or order appealed against was founded."

The words in square brackets and italics at the beginning of sect. 31, and the omitted part of sect. 32, were repealed by the Act of 1884.⁷ Sect. 31 (3) has been extended by the Protection of Animals Act, 1911,⁸ as to appeals under that Act.

By sect. 37 (1) of the Criminal Justice Administration Act, 1914,⁹ "any person aggrieved by any conviction of a court of summary jurisdiction in respect of any offence, who did not plead guilty or admit the truth of the information, may appeal from the conviction in manner provided by the Summary Jurisdiction Acts to a court of quarter sessions."

With reference to this section, Avory, J., expressed the opinion that a person who pleads guilty at petty sessions has no right to appeal to quarter sessions "against any part of the conviction," and therefore cannot appeal against sentence only.¹⁰ Salter, J., however, in the same case, in which the proceedings were taken under Regulations made under the Defence of the Realm Act, said that "a person who pleads guilty and receives a heavier sentence than he was prepared for in a prosecution under Regulation 58, and one which he conceives to be unjust, is a person 'aggrieved' by a conviction and has a right to appeal to quarter sessions."¹¹

An appeal lies in respect of an objection to justices under the Private Street Works Act, 1892.¹² An objector who partly succeeds before an assessment committee may appeal to quarter sessions.¹³

Persons
aggrieved.

The owners of the soil of a street, which they alleged was not a "highway or other public place or street" within the meaning of the Metropolitan Streets Act, 1867,¹⁴ were held not to be "aggrieved," so as to be entitled to appeal against the conviction of a person for obstructing the street.¹⁵

A person ultimately liable to pay a rate cannot compel the person actually rated to appeal and may therefore himself appeal as a "person aggrieved."¹⁶

Appeal
against
dismissal.

A local board had been summoned before justices for polluting a river; the offence was a misdemeanour, and the justices dismissed the information. The prosecutor then gave notice of appeal to the quarter sessions against the adjudication of the justices. The board contended that there was no power to appeal against the dismissal of the information, though there was against a conviction, and a rule for a prohibition to the quarter sessions was made absolute.¹⁷ In another case the court refused a *mandamus* to require the quarter sessions to hear an appeal against the dismissal of an information for obstructing a highway, because even if the sessions were to decide that the respondent ought to have been convicted, their decision would be of no effect, as they could not themselves convict him.¹⁸ And where a local Act gave to "any person deeming himself aggrieved" by any order, etc., of the local authority, or by any conviction or order of a court of summary jurisdiction under the Act, a right of appeal to quarter sessions, it was held, on an application for a *mandamus*, that this did not give the local authority a right of appeal against the dismissal of an information in respect of an alleged offence against the Act.¹⁹

Indictment
after
dismissal.

Sometimes an indictment may be laid after the dismissal of summary proceedings.²⁰

Autrefois
acquitted or
convicted.

In some cases the defence of *autrefois acquit* has failed,²¹ in others it has succeeded.²² As to *autrefois convict*, see the case cited below.²³

(7) 47 & 48 Vict. c. 43, s. 4, Sched.

(8) See s. 14 (2), *post*, Vol. II., p. 2228.

(9) 4 & 5 Geo. V. c. 58, s. 37 (1).

(10) *Harris v. Cooke*, *ante*, p. 662. See 16 L. G. R., at p. 853.

(11) See also *Sims v. Greenwood* (1918, Dorset Q.S.), 82 J. P. Jo. 302.

(12) *Pearce v. Maidenhead Cpn.*, *ante*, p. 346 (11).

(13) *Fowler & Co. v. Hunslet U.A.C.*, L. R. 1917, 1 K. B. 720; 86 L. J. K. B. 816; 116 L. T. 562; 81 J. P. 118; 15 L. G. R. 211.

(14) 30 & 31 Vict. c. 134, s. 3.

(15) *Drapers' Co. v. Hadder* (1892, Q. B. D.), 57 J. P. 200. See also Note to s. 253, *ante*.

(16) *Rex v. Brentford U.A.C.* (1907), 96 L. T. 704; 71 J. P. 281; 5 L. G. R. 1188.

(17) *Reg. v. Middlesex JJ.* (1881, Q. B. D.), 45 J. P. 420, n.

(18) *Reg. v. Lancashire JJ.*, *Times*, 2nd July, 1878; and see *Reg. (Fulham Vestry) v. London JJ.* (1890), L. R. 25 Q. B. D. 357;

59 L. J. M. C. 146; 63 L. T. 243; 55 J. P. 56; *Foss v. Best*, L. R. 1906, 2 K. B. 105; 75 L. J. K. B. 575; 95 L. T. 127; 70 J. P. 383.

(19) *Rex (Bradford Cpn.) v. Wright* (1907, K. B. D.), 72 J. P. 23; 6 L. G. R. 89.

(20) *Rex v. Crisp* (1919, C. C. C.), 83 J. P. 121.

(21) *Conlin v. Patterson*, 1915 Ir. K. B. 169 (*re quashing of previous conviction*); *Bannister v. Clarke*, L. R. 1920, 3 K. B. 598; 90 L. J. K. B. 256; 124 L. T. 28; 85 J. P. 12 (*re difference between two charges*). See also *Letheren's Case*, cited in Note to S. F. D. Act, 1899, s. 19, *post*, Part II., Div. II.

(22) *Ryley v. Brown* (1890), 62 L. T. 458; 54 J. P. 486. See also *Blount's Case*, *ante*, p. 231 (48). See also under "*res judicata*" in Index.

(23) *Rex v. Tonks*, L. R. 1916, 1 K. B. 443; 85 L. J. K. B. 396; 114 L. T. 81; 80 J. P. 165.

Where a statute requires "ten days' notice" of an appeal to the sessions, it means one day inclusive and the other exclusive.²⁰ The expression "within so many days" is construed, and the days are reckoned, in the same manner.²¹

The fourteen days mentioned in sub-sect. (2) were held in the case of appeal against an order of justices made under sect. 48 to run from the date of the decision, and not from the service of the order on the local authority on whom it is made.²²

Under the Quarter Sessions Act, 1849²³ (known as Baines' Act), fourteen clear days' notice of appeal at least (that is, before the commencement of the sessions to which the appeal is made) must be given in writing, signed by the person or persons giving the same, or by his or their attorney, and the grounds of appeal must be specified. This, however, does not apply to appeals against summary orders²⁴ or convictions, orders of removal, orders relating to pauper lunatics, in bastardy cases, or under the revenue laws.²⁵

Where justices at quarter sessions refused to hear an appeal by a publican, convicted of permitting drunkenness on his premises, on the ground that his notice of appeal did not strictly follow the form of the conviction, the court refused a *mandamus* directing them to hear the appeal because "as they had so decided and had dismissed the appeal, this court could not by *mandamus* direct them to rehear the case, probably with the like result."²⁶

A notice of appeal signed in the name of the appellant by a clerk to the appellant's attorney, by the authority of the appellant, and afterwards acknowledged by him, was held to be sufficiently signed.²⁷

A railway company appealed against a borough rate made for defraying improvement and sanitary expenses in a borough, part of which was coincident with part of an Improvement Act district, on the ground that the rate should have been made under the Improvement Act, which contained a partial exemption of railways from rates made under it. It was held, by Lush, J.; that notice to the assessment committee of objection to the valuation list²⁸ was not a condition precedent to the right to appeal, the company not being aggrieved by any act of the committee.²⁹

Justices will not be ordered to take recognizances if they are out of time.³⁰ As to recognizances by corporations, see the footnote.³¹

The solicitor, and not the client, is liable to the clerk of the peace for fees connected with the entering, etc., of an appeal at the sessions.³²

Rating appeals.

The court of quarter sessions has by sub-sect. 5 the same powers as in the case of appeals against poor rates. On those appeals they may amend the rate only so far as may be necessary for giving relief.³³ If they see just cause to give relief, they are "to amend such rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any person or persons, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate or assessment;" or the rate or assessment may be wholly quashed if necessary.³⁴ Wills, J., thought that under the present section quarter sessions might amend a rate made by an urban district council, and purporting to be made under a local Act, by adding to the heading a reference to the present Act.³⁵

The court may make similar alterations in the rate or assessment with respect to persons other than the appellant, to whom the appellant has given notice of appeal.³⁶

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Calculation
of time.

Notice
of appeal.

Authentica-
tion of notice.

Notice to
assessment
committee.

Recogniz-
ances.

Entry of
appeal.

Amendment
of rate.

(20) *Reg. v. Yorkshire (W. R.) JJ.* (1833), 4 B. & Ad. 685; 2 L. J. M. C. 93.

(21) *Robinson v. Waddington* (1849), 13 Q. B. 753; 18 L. J. Q. B. 250; 13 Jur. 537. See also Note to L. G. Act, 1894, s. 73, *post*, Vol. II., p. 2102.

(22) *Reg. v. Barnet R.S.A.* (1876), L. R. 1 Q. B. D. 558; 45 L. J. M. C. 105; s.c. *Reg. v. St. Albans R.S.A.*, 35 L. T. 362; 41 J. P. 6.

(23) 12 & 13 Vict. c. 45, s. 1.

(24) 47 & 48 Vict. c. 43, s. 4, and Sched.

(25) 12 & 13 Vict. c. 45, s. 2.

(26) *Reg. v. Lancashire JJ.* (1877, Q. B. D.), 41 J. P. 293.

(27) *Reg. v. Kent JJ.* (1873), L. R. 8 Q. B. 305; 42 L. J. M. C. 112; 37 J. P. 644. See also *France's Case*, *ante*, p. 709 (7).

(28) Under 27 & 28 Vict. c. 39, s. 1.

(29) *London and North Western Ry. Co. v. Walsall Overseers* (1876), 35 L. T. 626; s.c. *nom. Reg. v. London and North Western Ry. Co.*, 46 L. J. M. C. 102.

(30) *Re Grafton Club; Ex parte Ashton* (1912), 76 J. P. 383; 28 T. L. R. 473; 3 Glen's Loc. Gov. Case Law 144.

(31) *Treatise* in 60 J. P. 33, and *Rex v. Antrim JJ.*, 1906 Ir. K. B. 298.

(32) *Langridge v. Lynch* (1876), 34 L. T. 695.

(33) 17 Geo. II. c. 38, s. 6.

(34) 41 Geo. III. (U. K.) c. 23, s. 1.

(35) *Hill v. Crediton U.D.C.* (1898), 78 L. T. 351; 62 J. P. 340. Reversed in C. A. on another point, see *ante*, p. 564.

(36) 41 Geo. III. (U. K.) c. 23, s. 6.

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Costs.

Costs.

The Court of Quarter Sessions has power to award costs,³⁷ but must exercise their discretion "judicially."³⁸ Such costs may be recovered by distress,³⁹ or an order for payment of them (unless made under the Quarter Sessions Act, 1849), may be removed to the King's Bench Division,⁴⁰ and enforced by writ of execution.⁴¹

It would seem that, on an appeal against a decision, etc., of the local authority, that authority would not be "parties" to the appeal, so as to be liable to be required to pay costs, unless they actually opposed the appeal.⁴²

A defendant was convicted by a court of summary jurisdiction for malicious damage to railway property, and was ordered to pay £2 6s. 9d. including costs. He served notice of appeal to quarter sessions. No such appeal lay, as the sum ordered to be paid did not exceed £5, and the notice was served out of time. On this being pointed out to the defendant, he did not enter or prosecute his appeal. The railway company nevertheless appeared at quarter sessions and obtained an order for costs against the defendant. A rule *nisi* quashing such order was refused by the King's Bench Division, but granted by the Court of Appeal. It was held, on cause being shown, that the rule must be discharged.⁴³

Quarter sessions cannot order the personal representatives of an appellant who dies after giving notice of appeal but before the hearing to pay the respondent's costs.⁴⁴

Special Case.

Certiorari
not now
required.

It was formerly necessary to obtain a writ of *certiorari* in order to remove into the Superior Court an order made by the quarter sessions subject to a special case. The necessity for issuing the writ has been obviated by the Summary Jurisdiction Act, 1879,⁴⁵ but it is still necessary to obtain an order of the King's Bench Division in lieu of the writ.

Limitation
of time.

"No special case stated by a court of general or quarter sessions for obtaining the judgment or determination of the High Court upon any order or other determination of a court of general or quarter sessions shall be filed at the Crown Office Department after the expiration of six calendar months from the making of such order or determination, except by leave of the court on special circumstances being shown, either before or after the expiration of such six months."⁴⁶ Where an order was made by the quarter sessions on appeal subject to a special case, the motion for the *certiorari*, which was formerly necessary, to bring up the original order of justices and the consequent proceedings, was required to be made within six months from the making of the order by the quarter sessions, although the special case might not be signed for some time afterwards.⁴⁷

Form of
special case.

It was held that a special case stated by quarter sessions must be in such form as to enable the court finally to dispose of the matter, otherwise the special case would be struck out.⁴⁸

Inferences
of fact.

But now by the Supreme Court of Judicature (Procedure) Act, 1894,⁴⁹ "On the hearing of any appeal from a court of quarter sessions the appellate court may draw any inference of fact which might have been drawn in the court of quarter sessions, and may give any judgment or make any order which ought to have been given or made by that court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on it, with the opinion or direction of the appellate court, for rehearing and determination by the court of quarter sessions, or may remit the case for re-statement." With reference to this enactment, Lord Alverstone, C.J., said that it included "a case in which the real facts are clear upon the evidence or have been agreed between the parties, and

(37) 17 Geo. II. c. 38, s. 4, and 41 Geo. III. (U. K.), c. 23, s. 8; 12 & 13 Vict. c. 45, ss. 4-6.

(38) *Rex (Pitney) v. Notts JJ.* (1909), 73 J. P. 183; *Rex (Fowler & Co.) v. Leeds Recorder*, L. R. 1919, 1 K. B. 671; 88 L. J. K. B. 882; 121 L. T. 189; 83 J. P. 169; 17 L. G. R. 362.

(39) See footnote (37), *supra*, and 8 & 9 Wm. III. c. 30, s. 3.

(40) Under 12 & 13 Vict. c. 45, s. 18.

(41) *Reg. v. Huntley* (1854), 3 E. & B. 172; 23 L. J. M. C. 106; 18 Jur. 745; 2 C. L. R. 246.

(42) *Rex (Amble U.D.C.) v. Northumberland JJ.* (1907), 96 L. T. 700; 71 J. P. 331; 5 L. G. R. 1110; but see *Pope v. Dorchester*

Cpn., *post*, Vol. II., p. 2058.

(43) *Rex (Jay) v. Wiltshire JJ.*, L. R. 1912, 1 K. B. 566; 81 L. J. K. B. 518; 106 L. T. 364; 76 J. P. 169; 10 L. G. R. 353.

(44) *Rex (Buckley) v. Spokes* (1912), 107 L. T. 290; 76 J. P. 354; 28 T. L. R. 420.

(45) 42 & 43 Vict. c. 49, s. 40.

(46) Crown Office Rules, 1906, Rule 25.

(47) *Elliott v. Thompson* (1875), 33 L. T. 339; 24 W. R. 56.

(48) *Reg. or L. & N. W. Ry. Co. v. Sutton Coldfield Overseers* (1874), L. R. 9 Q. B. 153; 29 L. T. 840; 22 W. R. 324; s.c. *nom. Reg. v. L. & N. W. Ry. Co.*, 43 L. J. M. C. 57.

(49) 57 & 58 Vict. c. 16, s. 2 (2).

in which the court of quarter sessions has done nothing except to draw inferences from such facts," and that, where they "have not applied their minds to the real question," the appellate court can draw the inferences which the justices "ought to have drawn."⁵⁰ But this section does not enable the appellate court to draw "an inference contrary to that which the justices in fact drew."⁵¹

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It was held that an appeal did not lie from the decision of a divisional court on a special case stated by a court of quarter sessions under sub-sect. 7, unless the Divisional Court gave leave to appeal.⁵² And now, by the Supreme Court of Judicature (Procedure) Act, 1894, "every case stated by a court of quarter sessions otherwise than under the Acts [mentioned below ⁵³] for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly;"⁵⁴ and "in all cases when there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that court or by the Court of Appeal."⁵⁵

Appeal to Court of Appeal.

Under the Quarter Sessions Act, 1849 (formerly called Baines' Act),⁵⁶ the parties at any time, after giving notice of appeal to quarter sessions, may, by consent and by order of a judge, state the facts of the case in the form of a special case for the opinion of the High Court of Justice, and agree that a judgment in conformity with the decision of such court, and for such costs as the court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall be given; and such judgment when so entered shall be of the same effect in all respects as if it had been given by the quarter sessions upon an appeal duly entered and continued. As to the form of such a case,⁵⁷ and of the order sent with the case,⁵⁸ see the decisions cited below.

Special case by consent.

Where a special case is drawn up by consent of the parties on the order of the court of quarter sessions, such order when drawn up, it has been held, forms a contract between the parties, although the special case may not have been signed by them.⁵⁹

An injunction was granted to restrain a local board from enforcing a rate until its validity had been determined on a special case, where there had been an understanding between the board and several parties liable to the rate, that it should be so determined, but the only magistrate's order actually made had been quashed on appeal on a technical ground, the appellant not proceeding with the case.⁶⁰

As to references to arbitration of the notice of appeal to quarter sessions, see sects. 12 and 13 of the Act of 1849.⁶¹

Arbitration.

(50) *Dairy Supply Co. v. Houghton*, cited in Note to S. F. D. Act, 1899, s. 20, *post*, Part II., Div. II. For quotation, see 10 L. G. R. at p. 215. See also *per* Lord Dunedin in *Cababé's Case*, *ante*, p. 289 (59), 12 L. G. R. at p. 112; *per* Swinfen Eady, L.J., in *Davis & Sons v. Pontypridd U.A.C.* (1916), 80 J. P. at p. 380, col. iii.

(51) See *per* Avory, J., in *Mitchell v. Croydon JJ.* (1914), 111 L. T. 632; 78 J. P. at p. 386; col. ii; 30 T. L. R. 526.

(52) *Reg. (Hinton) v. Swindon New Town Loc. Bd.* (1880, C. A.), 49 L. J. Q. B. 522; 42 L. T. 614; 44 J. P. 505.

(53) 11 & 12 Vict. c. 78, which enables a judge at a trial to state a case for the opinion of the High Court, and 12 & 13 Vict. c. 45, s. 11, *infra*.

(54) 57 & 58 Vict. c. 16, s. 2 (1).

(55) *Ibid.*, s. 1 (5). As to the previous practice, see *Walsall Overseers v. London and North Western Ry. Co.* (1878), L. R. 4 A. C. 30; 48 L. J. M. C. 65; 39 L. T. 453.

(56) 12 & 13 Vict. c. 45, s. 11.

(57) *Peterborough Cpn. v. Thurlby Overseers* (1882), L. R. 8 Q. B. D. 586; *Reg. v. Headington Guardians* (1883), 47 J. P. 756.

(58) *London & N. W. Ry. Co. v. Ampthill U.A.C.* (1905), 94 L. T. 314; 70 J. P. 46; 4 L. G. R. 92.

(59) *Lear v. Botting* (1880, Ex. D.), 44 L. T. 58; 45 J. P. 240.

(60) *Ashworth v. Hebden Bridge Loc. Bd.* (1877), 47 L. J. Ch. 195; 37 L. T. 496.

(61) 12 & 13 Vict. c. 45, ss. 12, 13.

Sect. 270.

PART VIII.

ALTERATION OF AREAS AND UNION OF DISTRICTS.

ALTERATION OF AREAS.

Powers of
[Minister of
Health] in
relation to
alteration of
areas.

P.H. 1872, s. 22,
and see
L.G., s. 77.
L.G. 1863, s. 4.

Sect. 270. The following enactments shall be made as to alteration of areas :

(1.) The [Minister of Health], by provisional order, may dissolve any local government district, and may merge any such district in some other urban or rural district or districts; or [he] may by provisional order declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last-mentioned district; or [he] may by provisional order declare any portion of a local government district immediately adjoining a rural district to be included in such rural district; and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such order; and the remaining part (if any) of the local government district or rural district affected by such order shall continue subject to the like jurisdiction as it would have been subject to if such order had not been made unless and until the [Minister of Health] by provisional order otherwise directs :

(2.) In the case of a borough comprising within its area the whole of an improvement Act district, or having an area co-extensive with such district, the [Minister of Health] by provisional order may dissolve such district and transfer to the council of the borough all or any of the jurisdiction and powers of the improvement commissioners of such district remaining vested in them at the time of the passing of this Act :

(3.) The [Minister of Health] may by order dissolve any special drainage district constituted either before or after the passing of this Act in which a loan for the execution of works has not been raised, and merge it in the parish or parishes in which it is situated, and the [Minister of Health] may by provisional order dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated.

Note.

Alteration
of areas.

The provisions of the present section and sects. 271-275, which relate to the formation of urban districts and the alteration of urban and rural districts, are not expressly repealed; but they are practically superseded, if not impliedly repealed, by the provisions of the Local Government Act, 1888,¹ which empower county councils to make orders, after holding local inquiries on the proposals, for the alteration or definition of the boundary of any such district (other than a borough), or for the division of it, or union of it with any other district, or for the conversion of it or any part of it into an urban or rural district, as the case may be, or for the transfer of the whole or part from one district to another, or for the formation of new districts, also for the division of urban districts into wards, or the alteration of the number or the boundaries of the wards, or the number of members. Appeal may, however, be made against the order of the county council to the Minister of Health by petition of any of the authorities affected, or of a certain number of the county electors.² The order of the county council is in any case, except where it is an order relating to wards or the number of members, to be confirmed by the Minister; but unless a petition is presented against it, the Minister is not authorised to withhold confirmation.

The alteration of counties and county and other boroughs is to be effected by provisional orders of the Minister under the same Act.³

New
boroughs.

New boroughs are created by royal charters issued, upon petition of the inhabitants to the King, on the advice of the Privy Council under the Municipal Corporations Act, 1882.⁴

On the incorporation of a new borough sanitary powers under local Acts will be transferred to the new urban authority : see sect. 310. See also the provisions of

(1) See s. 57, *post*, Vol. II., p. 1930. also ss. 211-218, *post*, Vol. II., pp. 1833-1837;
(2) *Ibid.* See also L. G. Act, 1894, s. 36, School Boards Act, 1885, s. 1, *post*, Vol. II.,
post, Vol. II., p. 2059. p. 1835; L. G. Act, 1888, s. 56, *post*, Vol. II.,
(3) *Ibid.*, s. 54, *post*, Vol. II., p. 1927. p. 1929; L. G. Act, 1894, s. 54, *post*, Vol. II.,
(4) See s. 210, *post*, Vol. II., p. 1833; see p. 2090.

the Municipal Corporations Act, 1882,⁵ under which certain trustees may transfer powers to a town council.

With regard to the duty of the county council to make alterations in boundaries, see sect. 36 of the Local Government Act, 1894,⁶ which requires the county councils to put their powers in force for the purpose of carrying that Act into effect where a parish or rural sanitary district is intersected by the county boundary, or a parish is intersected by the boundary of any sanitary district, and in certain other cases.

Urban or rural districts may be united for certain purposes of the present Act by provisional order under sect. 279.

With regard to the constitution of special drainage districts, see sect. 277. Main sewerage districts and joint sewerage boards may be united or dissolved by provisional order under sect. 323. See also the Note to sect. 211.^{6a}

Sect. 270, n.
Boundaries.

Special drainage districts.

Sect. 271. The [Minister of Health] may, by provisional order, declare any rural district, or any portion of any rural district or districts, to be a local government district; and from and after the commencement of the order, the district or portion of the district or districts therein referred to shall become a local government district, and shall be subject to the jurisdiction of a local board, [to be elected in manner provided by Schedule II. to this Act.]⁷

[Minister of Health] may by provisional order constitute local government district.
P.H. 1872, s. 24.
P.H. 1874, s. 15.

The [Minister of Health] may, by any order constituting a local government district under this section, divide such district into wards for the election of members of the local board.⁸

Sect. 272. The owners and ratepayers of any place situated in any rural district or districts, and having a known and defined boundary, may, by a resolution passed in manner provided by Schedule III. to this Act, declare that it is expedient that such place should be constituted a local government district; and the [Minister of Health] may, if [he] thinks fit, by order made not less than six weeks after the receipt of a copy of such resolution by the said [Minister], declare such place to be a local government district, and from and after the commencement of such order such place shall become a local government district, and be subject to the jurisdiction of a local board to be elected [in manner provided by Schedule II. to this Act.]⁹

[Minister of Health] may by order constitute local government district in pursuance of a resolution of owners and ratepayers.
See L.G., ss. 12-18.
L.G. 1863, s. 2.

A petition may be presented to the [Minister of Health] from any place so situated as aforesaid, and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, and shall be supported by such evidence as the [Minister of Health] may require. The [Minister of Health] may, after local inquiry as to the genuineness of the petition, and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne.

Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary.

Note.

With regard to the constitution of local government districts, see the Note to sect. 270.

A district formed for ecclesiastical purposes¹⁰ was entitled to pass a resolution of its owners and ratepayers (without reference to the proceedings of townships out of which it was formed), as being a place with "a known or defined boundary"¹¹; but a parliamentary borough does not appear to be such a place.¹²

Known and defined boundary.

(5) See s. 136, *post*, Vol. II., p. 1828.
(6) *Post*, Vol. II., p. 2059.
(6a) *Ante*, pp. 592, 593.
(7) Sched. II. (but not above words) was repealed by L. G. Act, 1894, see Note to that Schedule, *post*.
(8) As to constitution of local government districts, see Note to s. 270, *ante*, p. 720. An urban authority was held liable for a nuisance caused by the sewerage system of the super-seded rural authority, see *Taylor v. Friern Barnet Loc. Bd.* (1885, Chitty, J.), W. N. 7.

See also the *Birmingham Case*, *post*, p. 723 (2).
(9) See footnote (7), *supra*.
(10) Under the 6 & 7 Vict. c. 37, s. 9.
(11) *Reg. (Northowram & Clayton Ratepayers) v. Queenshead Churchwardens* (1865), L. R. 1 Q. B. 110; 7 B. & S. 110; 35 L. J. Q. B. 90; 30 J. P. 181.
(12) See *Reg. v. Hardy or Secretary of State* (1868), L. R. 4 Q. B. 117; 38 L. J. Q. B. 9; 9 B. & S. 926; 19 L. T. 352; 33 J. P. 21.

Sect. 272, n.

To entitle a district to adopt the Local Government Act, 1858, as being "a place having a known or defined boundary" within the meaning of sect. 12 of that Act, it was not necessary that it should be a legal district having a legal boundary of the whole enclosed area; it was sufficient if the place had an actual known and defined boundary, or one that was physical, visible, and notorious, so that there might be no mistake as to the limits within which the Act was to apply. Where, therefore, certain small portions of the township of R. lay within, and were surrounded on all sides by, the adjoining township of G., it was held that the township of G., together with these small enclosed portions of the township of R., was a "place having a known or defined boundary."¹³

Finality of order.

A rule for a writ of *certiorari* to quash an order of the Secretary of State for the settlement of the boundaries of a local government district under the Local Government Act, 1858¹⁴ (the order having been confirmed on appeal under sect. 18, but no appeal having been made under sect. 17), on the ground that it extended the boundaries beyond the limits mentioned in the petition and plan, was discharged on the ground that the two months mentioned in sect. 20 had expired before the motion was made and that the order had become binding.¹⁵

Objection to resolution.

L.G., s. 17.
L.G. 1863, s. 3.

Sect. 273. Where not less than one twentieth of the owners and ratepayers of any place (such twentieth to be one twentieth in number of the owners and ratepayers of the place taken together, or the owners and ratepayers in respect of one twentieth of the rateable property in the place,) in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the [Minister of Health] objecting to such resolution, and specifying the grounds of their objection.¹⁶

Such petition shall be subscribed by the owners and ratepayers presenting the same, and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall, where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan.

The [Minister of Health] may after local inquiry make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made.

Appeal to [Minister of Health] in case of alleged invalidity of vote.
L.G., ss. 18, 21.

Sect. 274. Any owner or ratepayer who disputes the validity of the vote for the adoption of the resolution may appeal, within six weeks from the declaration of the decision of the meeting, to the [Minister of Health], setting forth the grounds on which he disputes the validity of the vote; and the [Minister of Health] may, on such appeal, after local inquiry, make such order as to the said [Minister] seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal.

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof, or to any proceedings on which such order was founded, unless the objector gives fourteen days' notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district.¹⁷

General provisions as to orders.

Sect. 275. Every order made by the [Minister of Health] under this Part of this Act shall specify a day on which such order shall come into operation (in this Act referred to as the commencement of the order); and from and after the commencement of the order all the powers rights duties capacities liabilities obligations and property which under this Act are exerciseable by or attaching

(13) *Reg. (Taylor) v. Local Government Bd.* (1873), L. R. 8 Q. B. 227; 21 W. R. 445; S.C. *nom. Reg. v. Grasmere Loc. Bd.*, 42 L. J. Q. B. 131.

(14) 21 & 22 Vict. c. 98, s. 16.

(15) *Ex parte Smith, Re Todmorden District* (1861), 1 B. & S. 412; 30 L. J. Q. B. 305; 4 L. T. 509; 25 J. P. 518.

(16) As to constitution of local government districts, see Note to s. 270. A ratepayer or owner who had concurred in the resolution was, in *Harrup v. Bayley* (1856), 6 E. & B. 218; 25 L. J. M. C. 107; 2 Jur. (N.S.) 882, held unable to appeal against it.

(17) As to finality of Minister's decision, see *Ex parte Bird, post*, p. 735.

to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district: Provided that in the case of the constitution of a new local government district, all the powers rights duties capacities liabilities obligations and property which under this Act are exerciseable by or attaching to or vested in any local authority or authorities having, under this Act, jurisdiction in the area so constituted a local government district, shall continue to be exerciseable by attached to and vested in such authority or authorities, until the day of the first meeting of the local board for the district so constituted.

Any order made in pursuance of this Part of this Act may, if necessary, provide for the settlement of any differences, or the adjustment of any accounts or apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any powers conferred by this Part of this Act, and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and where any local government district is diminished or increased in extent under this Part of this Act, the order shall prescribe the number of members to be elected for the district when altered.

The [Minister of Health] may include in the same order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

Note.

Orders of the Minister are to be binding and conclusive, and are to be published as he directs: see sect. 295.

In 1875 the Birmingham Corporation were restrained by injunction from polluting the Tame with sewage; in 1877 the Birmingham, Tame, and Rea main sewerage district was constituted in the Birmingham sanitary district. In 1880 it was held that no amendment in the pleadings could be made after final judgment, so as to add the new district as defendants, and that such district could only be brought before the court by action.¹ An action was brought accordingly, but was held by the Court of Appeal not to be maintainable.²

Sect. 276. The [Minister of Health] may, on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the *London Gazette* or in such other manner as the [Minister of Health] may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers rights duties capacities liabilities and obligations of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the [Minister] as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attached: Provided that an order of the [Minister of Health] made on the application of one tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

Note.

The Minister of Health may act upon the present section on the application of the county or parish council.³ He may apply urban *provisions* to a rural district, although such provisions do not confer *powers* on the urban authority.

The Public Health Acts Amendment Act, 1890,⁴ applies the present section to the provisions of that Act, which an urban authority may adopt, but which are not in force in a rural district in the absence of an order of the Minister of Health. See also sect. 4 of the Private Street Works Act, 1892.⁵

Sect. 275.

General provisions as to orders—*cont.*

Effect of order.

[Minister of Health] may invest rural authority with powers of urban authority.
P.H. 1872, s. 23.

Application of urban provisions to rural districts.

(1) *A.G. v. Birmingham Cpn.* (1880), L. R. 15 Ch. D. 423; 43 L. T. 77; 29 W. R. 127.
(2) *A.G. v. Birmingham Drainage Bd.* (1881), L. R. 17 Ch. D. 685; 50 L. J. Ch. 786; 44 L. T. 906. See also the *Friern Barnet*

Case, ante, p. 721.
(3) L. G. Act, 1894, s. 25 (7), *post*, Vol. II., p. 2039.
(4) See s. 5, *post*, Part I., Div. II.
(5) *Ante*, p. 337.

Sect. 276, n.

And by the Local Government Act, 1894,⁶ the Minister may also by general order apply to all rural district councils any provisions of any Acts which relate to urban councils or urban districts.

It was the practice of the Local Government Board to put urban powers in force in those parishes only, in which the circumstances showed the powers to be necessary, without regard to any uniformity in the rural district as a whole. They did not put such powers in force for parts of contributory places.

"Contributory place" is defined by sect. 229.

Effect of order.

An order of the Local Government Board under the present section, declaring sect. 150 to be in force as to a certain road in a rural sanitary district and describing the road as a "street," did not prevent the owners from raising the question whether sect. 150 was applicable to the road, notwithstanding the provision of sect. 295 making such orders "binding and conclusive in respect of the matters to which they refer."⁷

An order under the present section conferring certain specified urban powers upon a rural authority does not incidentally confer upon them urban powers of rating for the purposes of carrying out such powers.⁸ It is not retrospective. It can be rescinded, *e.g.*, if the parish council wish to undertake the lighting of their parish.

Power of rural authority to form special drainage districts.

P.H. 1872, s. 25.

Sect. 277. It shall be lawful for a rural authority, by resolution to be approved by the [Minister of Health], but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district, for the purpose of charging thereon exclusively the expenses of works of sewerage water supply or of other works, which by this Act are or by order of the [Minister of Health] may be declared to be special expenses, and thereupon such area shall become a separate contributory place.

Note.

Special drainage districts.

Special drainage districts⁹ were formerly constituted by the sewer authority under the Sanitary Act, 1866,¹⁰ by virtue of the Sewage Utilisation Act, 1867,¹¹ by the Secretary of State under the last-mentioned Act,¹² or by the rural sanitary authority under the Public Health Act, 1872.¹³ Such districts, and also those constituted under the present section are made contributory places by sect. 229, and that section also makes provision with respect to the "special expenses" of rural authorities.

Approval of Minister of Health.

With regard to main sewerage districts and joint sewerage boards, see sect. 323.

The Local Government Board stated that, having regard to the fact that the present Act contemplates that in all ordinary cases the civil parish shall in rural districts be the area upon which special expenses incurred in respect of it shall be charged, it was contrary to their practice to approve of the constitution of a special drainage district under the present section, save in exceptional cases where the circumstances clearly pointed to the desirability of adopting such a course. In this connection the Board pointed out that, when an area is formed into a special drainage district, it becomes a separate contributory place for all the purposes of the Act, and in view of this fact they required in such cases to be satisfied, *inter alia*, that both the area proposed to be formed into the special drainage district and the remainder of the civil parish were areas of such a nature as to be suitable for separate contributory places for the purposes of the Act.

Subject to the above conditions, the Board were prepared to consider applications for their approval of the constitution of a special drainage district in any case where it was proposed to carry out, for the sole benefit of the area comprised in the proposed special drainage district, sanitary works involving a large capital expenditure, but in such cases the Board only considered the application for their approval of the constitution of the district in connection with the application for their sanction to the raising of the loan required to defray the cost of the works. See also the Note to sect. 229.

Although the present section provides for the constitution of a special drainage district for purposes of sewerage, water supply, or other works, the area becomes

(6) See s. 25 (5, 6), *post*, Vol. II., p. 2039.

(7) *Fenwick v. Croydon R.S.A.*, L. R. 1891, 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. 645; 55 J. P. 470.

(8) *Lancashire and Yorkshire Ry. Co. v. Bolton U.A.C.*, *ante*, p. 420.

(9) See Glen's "District Councillor's Guide," Chap. I. § 18.

(10) 29 & 30 Vict. c. 90, s. 5.

(11) 30 & 31 Vict. c. 113, s. 7.

(12) *Ibid.*, s. 8.

(13) 35 & 36 Vict. c. 79, s. 25.

a separate contributory place for all purposes, and therefore the Local Government Board did not give their approval to the formation of the district for particular purposes, such as that of water supply, only.

Sect. 277, n.

The course to be adopted in constituting a special drainage district is as follows : The council should pass a resolution, constituting the district in terms, and referring to a map showing its boundaries. An ordnance map on a scale of not less than six inches to a mile should be used for this purpose, and the boundary of the proposed special drainage district should be indicated by a continuous hard line of colour, carefully drawn with a draughtsman's pen, the outside edge of the line of colour representing the precise boundary intended. The line should be drawn in such a manner as to prevent any doubt hereafter arising as to the inclusion or exclusion of any particular roads, premises, etc. A duplicate of the map should also be prepared, and each copy should be indorsed : "This is the map (or a duplicate of the map, as the case may be) referred to in the resolution passed by the rural district council of _____ in the county of _____, on the _____ day of _____ constituting the _____ special drainage district." This indorsement should in each case be signed by the clerk to the rural district council, and both copies of the map should then be forwarded to the Ministry, accompanied by a copy of the resolution referred to. The Minister should at the same time be furnished with particulars as to the area, population, and assessable value of the parish, and of the parts of the parish which would be respectively within and without the special drainage district. A statement of the grounds upon which the rural district council consider the constitution of the special drainage district to be necessary or desirable should also be submitted.

Procedure.

As to the dissolution of special drainage districts, see sect. 270 (3).

Dissolution.

Sect. 278. On the application of any urban authority (being a local board or improvement commissioners), the [Minister of Health] may, by order after local inquiry, settle any dispute as to the boundaries of the district of such authority; such order shall be published in some local newspaper circulating in the district to which it relates, and from and after its commencement shall be conclusive on the question determined by it.¹

Power to settle disputes as to boundaries of districts.
P.H. 1874, s. 25.

UNION OF DISTRICTS.

Sect. 279. Where on the application of the local authorities of any urban or rural districts, or of any of such authorities, it appears to the [Minister of Health] that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places in any rural district or districts, to be formed into a united district for all or any of the purposes following; (that is to say,) (1.) The procuring a common supply of water; or (2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or (3.) For any other purposes of this Act; the [Minister of Health] may by provisional order form such districts or contributory places into a united district.

Formation of united district.
P.H. 1872, ss. 25, 27; and see S.U. 1867, ss. 10-14.

All costs charges and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act.

Note.

Under the Local Government Act, 1888,² the county council may by order unite urban and rural districts, but where they do so the original districts will no longer have any separate existence, but will be united for all the purposes of the Public Health Acts. Under the present section the original districts remain distinct for all other purposes than those for which the united district is formed; and the united district will, so far only as the purposes for which it was formed are concerned, be under the jurisdiction of a joint board, constituted in the manner determined by the Local Government Board (now Minister of Health). The expenses incurred by the joint board in carrying out these purposes will be defrayed by the constituent districts as provided by sects. 283 and 284 or by the order forming the district. "Contributory place" is defined by sect. 229.

Union of districts.

Two or more district councils may, without obtaining a provisional order, combine in providing a common hospital under sect. 131, or for the purpose of executing

Combined action.

(1) As to settlement of boundaries, see Note to s. 270, ante, p. 720.

(2) See s. 57, post, Vol. II., p. 1930.

Sect. 279, n.

and maintaining works under sect. 285. The councils of adjoining districts may agree under sect. 61 that one of them shall afford a water supply to the other, or under sect. 28 that the sewerage system of one of them shall be used by the other. The Minister of Health may unite districts for the appointment of a single medical officer of health under sect. 286, or, without uniting the districts, may sanction the appointment of a single medical officer for two or more districts under sect. 191. Riparian authorities may be combined for certain purposes under sect. 287. Further, with regard to the merger of districts and alteration of areas, see sect. 270 and the Note thereto. As to joint action under the Housing Acts, see sect. 38 of the Act of 1909, and (as to town planning) sect. 42 (ii.) of the Act of 1919¹; under the Gas Regulation Act, 1920, see sect. 10 (2) (d) of that Act²; and under the Public Health (Tuberculosis) Act, 1921, see sect. 5 of that Act.^{2a} As to combination for superannuation purposes, see sect. 5 of the Act of 1922.^{2b}

Joint tenancies.

The Bodies Corporate (Joint Tenancy) Act, 1899,³ provides for the holding of land by bodies corporate as joint tenants.

Joint committees.

Under the Local Government Act, 1894,⁴ district councils may appoint joint committees for any purposes in respect of which they are jointly interested, and may confer, with or without restrictions, on any such committee any powers, other than those of borrowing money or making rates, which they might themselves exercise if the purposes in question related exclusively to their own respective districts.

The "adoptive Acts" are in certain cases carried out by joint committees appointed by urban district councils and parish councils or parish meetings.⁵

Joint officers.

As to the appointment of joint officers, see the Note to sect. 189.^{5a}

Governing body of united district.
P.H. 1872, s. 28.

Sect. 280. The governing body of a united district shall be a joint board consisting of such ex-officio members and of such number of elective members as the [Minister of Health] may by the provisional order forming the district determine.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any licence in mortmain.⁶

Contents of provisional order forming united district.
P.H. 1872, s. 29.

Sect. 281. The provisional order forming a united district under this Act shall define the purposes for which such united district is formed, and the powers rights duties capacities liabilities and obligations under this Act which the joint board is authorised to exercise or perform, or is made subject to, and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property with respect to which the [Minister of Health] may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts.

Upon the constitution of a joint board the local authorities having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers, or to perform any duties, or to be subject to any liabilities or obligations, which the joint board is authorised to exercise or perform or is made subject to; nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties.

Note.**Provisional orders.**

With regard to the mode in which provisional orders are issued by the Minister of Health, see sects. 297 and 298.

Borrowing powers.

Joint boards may, for the purposes of their constitution, borrow money under the same conditions as local authorities: see sect. 244.

Concurrent jurisdiction.

With regard to the exercise of powers by local authorities within areas of joint boards, see sect. 1 of the Public Health (Prevention and Treatment of Disease) Act, 1913.⁷

(1) *Post*, Part II., Div. III.

(2) *Ante*, p. 415.

(2a) *Post*, Part II., Div. I.

(2b) *Ante*, p. 520.

(3) *Post*, Vol. II., p. 2089.

(4) See s. 57, *post*, Vol. II., p. 2091.

(5) *Ibid.*, s. 53 (2), *post*, Vol. II., p. 2087.

(5a) *Ante*, p. 514, and *post*, p. 729.

(6) District councils may change their names with the consent of the county council, but a joint board cannot do so without a further provisional order—see Note to s. 7, *ante*, p. 46.

(7) *Post*, Part II., Div. I.

Sect. 282. Meetings of any joint board shall be held and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the order forming the joint board) in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.

Sect. 282.

Meetings and proceedings of joint boards.
P.H. 1872, s. 28.

Sect. 283. Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the rateable value of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being.

Expenses of joint board.
P.H. 1872, s. 30.

Note.

The Local Government Board stated that they were disposed to consider that the reasonable travelling expenses of the members of a joint board incurred in attending meetings might be defrayed as part of the expenses of the joint board. It would, however, in the first instance rest with the district auditor at his audit of the accounts to decide as to the legality and reasonableness of any charge made.

Travelling expenses.

The valuation list in force is the last list approved by the assessment committee, subject to such alterations as may have been made in it by any subsequent supplemental or substituted list.¹

Valuation list.

"Rateable value" here means the full rateable value appearing in the valuation list, and not the value on which the rates will ultimately be levied, with allowances for land, etc.²

Sect. 284. For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board, or to such person as the joint board may direct.

Payment of contributions to joint board.
P.H. 1872, s. 31.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly, such contribution in the case of a rural authority being deemed to be general expenses.

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a summary manner as in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the sum due.

For the purpose of obtaining payment from contributory places of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof.

Note.

The contributions of the component districts may be recovered either by action in the King's Bench Division of the High Court or the county court, according to their amounts, under the second clause of the present section, or in the manner prescribed by sect. 292 for raising sums due in the district of a defaulting authority.

Recovery of contributions.

With regard to the expenses of rural district councils and with regard to the issue of precepts by such councils to the overseers of contributory places, see sects. 228 and 230.

The present section is applied to the contributions of local authorities to the expenses of hospital committees under the Isolation Hospitals Act, 1893.³

Isolation hospitals.

(1) 25 & 26 Vict. c. 103, s. 28. And see *Phillips' Case*, post, Vol. II., p. 1233 (4).
(2) *Darenth Valley Main Sewerage Bd. v.*

Dartford Guardians (1887), L. R. 19 Q. B. D. 270; 56 L. J. Q. B. 615; 57 L. T. 233.
(3) See s. 18, post, Part II., Div. I.

Sect. 285.

Power to execute works in adjoining districts, and to combine for execution of works.

L.G., ss. 27, 28.
S.U. 1865, s. 9.

Sect. 285. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof. All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

Note.**Limits of jurisdiction.**

On an application for an injunction to restrain a local board from making a sewer through the plaintiff's land without their district, the court held that, in the absence of specific directions to the contrary in the Public Health Act, 1848, and the Local Government Act, 1858 (which did not contain provisions like those of the present Act for the construction of sewers without the district), the power and jurisdiction of the board was confined to their district.² Chitty, J., however, held that a local authority might establish a small-pox hospital within the district of an adjoining authority without having obtained the consent of the latter authority under the present section; and with regard to the question of the limits of jurisdiction generally, he said: "The right practical method of interpretation is not to sweep every section which is silent as to district into one and the same class, but to consider each of these sections, with its context, separately, with a view to ascertain whether it is or is not intended to be confined to the district."³

See also sects. 16 and 32-34, under which a local authority may construct sewerage works and carry sewers without the limits of their district, and sect. 54, which gives them a similar power for carrying water mains; sect. 22, under which drains from premises without the district may be made to communicate with the sewers of the local authority; sect. 48, as to the cleansing of ditches, etc., on or near to the boundaries of districts; and sects. 108 and 118, as to the abatement of nuisances arising beyond the limits of the district.⁴

The consent of the council of an adjoining district under sect. 285 does not allow a district council to carry sewers or water mains through private lands in that district under sect. 16 of the Act without complying with sects. 32-34.⁵

Joint action.

As to the combination of local authorities for various purposes, see sect. 279. See also sect. 57 of the Local Government Act, 1894,⁶ as to the formation of joint committees for purposes in which two or more councils are jointly interested.

After the formation of a joint sewerage committee by a local board and the local board of a district which had been severed from the original district of the former board, the first-mentioned board were held not to be liable to proceedings under the Lea Conservancy Act for discharging sewage into the river, as they had ceased to have control over the sewage works, although the works remained their property.⁷

The Local Government Board considered that, under the present section, an urban district council may enter into an agreement with a neighbouring urban district by which they will acquire a right to the services of the neighbouring council's fire brigade, and to the use of their apparatus, on terms including a reasonable payment for such right.

Two highway authorities in Scotland agreed that one of them should repair 500 yards in length of a highway 1,000 yards long, and that the other should repair the remainder. The boundary between the two districts ran along the centre of the highway. An accident having been caused by a heap of stones, it was held that the two authorities were jointly and severally liable in damages to the person injured.⁸

(2) *Haywood or Hayward v. Lowndes* (1859), 4 Drewry 454; 5 Jur. (N.S.) 185; 28 L. J. Ch. 400. See also *Hornsey Cpn. v. Birkbeck Land Soc.*, ante, p. 321 (1).

(3) *Withington Loc. Bd. v. Manchester Cpn.*, L. R. 1893, 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. 330; 57 J. P. 340.

(4) Also *Reg. v. Cotton*, ante, p. 197 (24).

(5) *Jones v. Conway and Colwyn Bay Joint*

Water Bd., L. R. 1893, 2 Ch. 603; 62 L. J. Ch. 767; 69 L. T. 265; 57 J. P. 501.

(6) *Post*, Vol. II., p. 1930.

(7) *Lea Conservancy Bd. v. Tottenham Loc. Bd.* (1891), 64 L. T. 198; 55 J. P. 343.

(8) *Gray v. Fifehire C.C.*, 1911 S. C. (S.) 266; 48 Sc. L. R. 409; 2 Glen's Loc. Gov. Case Law 118.

Sect. 286. Where it appears to the [Minister of Health], on any representation made to [him], that the appointment of a medical officer of health for two or more districts situated wholly or partially in the same county would diminish expense, or otherwise be for the advantage of such districts, the [Minister of Health] may by order unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives) which, in the opinion of the said [Minister], require regulation for the purposes of this section; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts :

Provided that no urban district containing a population of twenty-five thousand and upwards, or (in the case of a borough) having a separate court of quarter sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such district or borough.

Not less than twenty-eight days notice that it is proposed to make an order under this section shall be given by the [Minister of Health] to the local authority of any district proposed to be included in the union, and if within twenty-one days after such notice has been given to any such authority they give notice to the [Minister of Health] that they object to the proposal, the [Minister of Health] may include their district in the union by a provisional order but not otherwise.

There may be assigned by the [Minister of Health] to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to the medical officer of health appointed for the united districts as the said [Minister] may think fit; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional remuneration to be paid by the local authority or authorities of the district or districts within which his duties under this section are performed as those authorities may, with the approval of the [Minister of Health], determine.

Note.

It will be noticed that a united district may be formed for the purposes of the present section by an order which does not require confirmation by Parliament like the order made under sect. 279, unless the council of any district proposed to be included objects to the arrangement, in which case that district can only be included in the combination by means of a provisional order. No urban district, however, which contains a population of more than 25,000, and no borough having a separate court of quarter sessions, can be included in any combination under the present section, by provisional order or otherwise, without the consent of the council of such district or borough.

Further, with regard to medical officers of health, see sect. 191; also the Note to sect. 189, and the Sanitary Officers Order, 1922.⁹

Sect. 286.

Districts may be united for appointing a medical officer of health.

Union of districts.

(9) *Post*, Vol. II., Part V.

Sect. 287.

PORT SANITARY AUTHORITY.

Constitution of
port sanitary
authority.
P.H. 1872, s. 20.
P.H. 1874, ss. 12,
14.

Sect. 287. The [Minister of Health] may, by provisional order, permanently constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port in England, or the waters of such port, or any conservators commissioners or other persons having authority in or over such port or any part thereof, (which local authority conservators commissioners or other persons are in this Act referred to as a "riparian authority,") the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority").

The [Minister of Health] may also by provisional order permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and may prescribe the mode of their joint action; or by forming a joint board consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district. Moreover the [Minister of Health] may by provisional order permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

In any case in which the [Minister of Health is] by this section authorised permanently to constitute by provisional order a port sanitary authority, the said [Minister] may, if [he] thinks fit, until such order has been made and confirmed by Parliament, temporarily constitute by order any such authority, and may from time to time renew any such last-mentioned order, and may by any order so made or renewed make any such provisions as [he] is by this section empowered to make by provisional order.

Any order constituting a port sanitary authority may assign to such authority any powers rights duties capacities liabilities and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid; and where such order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a provisional order forming a united district under this Act.

A port shall mean a port as established for the purposes of the laws relating to the customs of the United Kingdom.

Note.

Constitution
of port
sanitary
authorities.

By sect. 3 of the Public Health (Ships, etc.) Act, 1885,¹ "In any case in which the [Minister of Health is by the present] Act authorised permanently to constitute a port sanitary authority by provisional order, [he] may permanently constitute a port sanitary authority by order. Every order made under this section shall specify a day on which it shall come into operation in the event of its not becoming a provisional order as hereinafter provided, and at least four weeks before such day a copy of it shall be sent by the [Minister of Health] to every riparian authority which is by the order or otherwise required to contribute to the expenses of the port sanitary authority, and if before such day notice in writing shall be received by the [Minister of Health] from any such riparian authority objecting to the order, and such notice is not withdrawn before such day, the order shall be deemed to be a provisional order duly made by the [Minister of Health] under the [present] Act, and in the event of its being confirmed by Parliament shall come into operation on such day as may be provided in that behalf in the Act confirming it. Any order made under this section may, if the same has not become a provisional order, be repealed, altered, or amended by any subsequent order made by the [Minister of Health]."

In addition to the powers mentioned in the fourth paragraph of the present section, under sect. 1 of the Public Health (Ports) Act, 1896,² the Minister of Health "may by order assign to any port sanitary authority any powers, rights, duties, capacities, and obligations under the Infectious Disease Prevention Act, 1890,³ with the necessary modifications." On the 14th July, 1920, the Minister

(1) 48 & 49 Vict. c. 35, s. 3. For ss. 1, 2, and the Schedule of this Act, see *ante*, p. 214.

(2) 59 & 60 Vict. c. 20, s. 1. By s. 2, this

Act "shall be construed as one with the" present Act.

(3) See the Order of 1912 quoted in Note to s. 5, *post*, Part II., Div. I.

of Health issued the Port Sanitary Authorities (Infectious Diseases) Regulations, and Regulations as to grants in aid.⁴

Where an island was within the district of a port sanitary authority, and also within that of a rural district council, the island had to contribute to the general expenses of the rural district, although all the powers of a sanitary authority were exercised by the officers of the port sanitary authority.⁵

So far as powers are given to a port sanitary authority under the present section, those powers are taken from the councils of the component districts.

With regard to provisional orders, see sects. 297 and 298; and with regard to the formation of joint boards, see sects. 279-281. The expenses of port sanitary authorities are provided for by sect. 290, and borrowing powers are conferred upon them by sect. 244.

As to the Port of London, see the Note to sect. 291. For the provisional order constituting a port sanitary authority for the port of Plymouth, see the work referred to below.⁶

The Local Government Board considered that a port sanitary authority, to whom they had applied sect. 189 of the present Act by an order made under sect. 287 and the Public Health (Ships, etc.) Act, 1885, were a "local authority" within the meaning of the Local Government Act, 1888,⁷ so as to be entitled to repayment from the county fund in respect of the salaries of medical officers of health and inspectors of nuisances, but that they were not a "local authority" within the meaning of the Public Health and Local Government Conferences Act, 1885.⁸

Reference should also be made to the provisions of sect. 110, with respect to the abatement of nuisances on ships; to those of sects. 124 and 125, with respect to the removal of persons suffering from dangerous infectious disorders from ships to a hospital; to those of sects. 130 and 134, with respect to the prevention of the spread of infectious and epidemic diseases on inland waters, and on the sea within three miles of the coast; and also to those of sects. 120, 121, 124-126, 128, and 131-133, relating to infectious diseases and hospitals, which are applied to ships by the operation of sect. 110 as amended by the Public Health (Ships, etc.) Act, 1885.⁹ See also the provisions respecting quarantine in the Note to sect. 134.

As to the appointment, duties, etc., of medical officers of health and sanitary inspectors of port sanitary authorities, see the Sanitary Officers Order, 1922.¹⁰

Port medical officers of health have certain duties in relation to dangerous drugs.^{10a}

As to rats and mice, see the Act of 1919.^{10b}

As to alien immigration and the expulsion of undesirable aliens, see the Acts of 1914 and 1919.¹¹

Ports may be established by Treasury warrant for the purposes of the customs laws and of the Acts for the regulation and protection of ports and harbours, under the Customs Laws Consolidation Act, 1876.¹²

The meaning of the expression "within the limits of the said port" in the Carnarvon Harbour Act, 1793,¹³ was discussed in a case in which it was held by the Court of Appeal, affirming Kekewich, J., that certain docks and quays, constructed above high-water mark in private land, and used for private purposes, to which the sea had artificial access, were "within the limits" of the port of Carnarvon, and that therefore dues could be charged under the above Act on vessels loading at these docks and quays, though they were four miles from Carnarvon.¹⁴

Sect. 288. The order of the [Minister of Health] constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole or such portions of the district within the jurisdiction of any riparian authority as may be specified in the order.¹⁵

Sect. 289. A port sanitary authority may, with the sanction of the [Minister of Health], delegate to any riparian authority within or bordering on their district

(4) Set out, with accompanying Circular on "Port Sanitary Administration," in 18 L. G. R. (Orders) 275-286.

(5) *Clark v. Rochford R.D.C.* (1897), 13 T. L. R. 371.

(6) *Glen's Loc. Gov. Orders* 258.

(7) See s. 24 (2, c), *post*, Vol. II., p. 1913.

(8) *Ante*, p. 640.

(9) See s. 2, *ante*, p. 214.

(10) *Post*, Vol. II., Part V. See also Act of 1921, s. 3 (2), *ante*, p. 530; and M. H. Circular, Jan. 10, 1922, 20 L. G. R. (Orders) 17-20.

(10a) See M. H. Circular, Dec. 1, 1920, 20 L. G. R. (Orders) 282.

(10b) *Post*, Vol. II., p. 2340, and "Addendum" to that page.

(11) 4 & 5 Geo. V. c. 12; 9 & 10 Geo. V. c. 92. Act of 1905 (5 Edw. VII. c. 13) repealed as from Apr. 12, 1920, by P. C. Order (No. 448).

(12) 39 & 40 Vict. c. 36, s. 11.

(13) 33 Geo. III. c. 123.

(14) *Assheton Smith v. Owen* (C. A.), L. R. 1906, 1 Ch. 179; 76 L. J. Ch. 181; 94 L. T. 42.

(15) See Note to s. 287.

Sect. 287, n.
Constitution of port sanitary authorities—*continued.*

Sanitary provisions as to ships.

Sanitary officers.

Drugs.

Rats.

Aliens.

Meaning of port.

Jurisdiction of port sanitary authority.
P.H. 1872, s. 21.

Delegation of powers by port sanitary authority.
P.H. 1872, s. 20.

Sect. 289.

the exercise of any powers conferred on such port sanitary authority by the order of the [Minister of Health], but, except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port sanitary authority by the order of the [Minister of Health] within the district of such port sanitary authority.¹⁵

Expenses of
port sanitary
authority.
P.H. 1872, s. 21.

Sect. 290. Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the [Minister of Health] thinks just.

Such port sanitary authority, if itself a local authority under this Act independently of its character of a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act.

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept, to pay the amount therein mentioned to such port sanitary authority, or to such person as such port sanitary authority may direct.

Any contribution payable by a riparian authority to such port sanitary authority shall be a debt due from them, and may be recovered accordingly, such contribution in the case of a rural authority being deemed general expenses of that authority. If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed in the summary manner in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

P.H. 1874, s. 13.

Where several riparian authorities are combined in the district of one port sanitary authority the [Minister of Health] may by order declare that some one or more of such authorities shall be exempt from contributing to the expenses incurred by such authorities.¹⁶

P.H. 1872, s. 20.

Sect. 291. [*Provision as to port of London.*]

Note.

Port sanitary
authority of
London.

The present section was repealed by the Public Health (London) Act, 1891,¹⁷ as respects the whole of the Port of London, and re-enacted by the same Act in the following terms: "The Mayor, Commonalty, and Citizens of the City of London shall continue to be the port sanitary authority of the Port of London, as established for the purposes of the laws relating to the customs of the United Kingdom, and shall pay out of their corporate funds all their expenses as such port sanitary authority."¹⁸ "The [Minister of Health] may by order assign to the port sanitary authority of the Port of London any powers, rights, duties, capacities, liabilities, or obligations of a sanitary authority under this Act, or of a sanitary authority under the Public Health Act, 1875, and any Act extending or amending the same respectively, with such modifications and additions (if any) as may appear to the [Minister] to be required, and the order may extend to the said port a bye-law made under this Act otherwise than by the port sanitary authority, and any such bye-law until so extended shall not extend to the said port; and the said port sanitary authority shall have the powers, rights, duties, capacities, liabilities, and obligations assigned by such order in and over all waters within the limits of the said port, and also in and over such districts or parts of districts of riparian authorities as may be specified in any such order, and the order may extend this Act, and any part thereof, and any bye-law made thereunder, to such waters and districts and parts of districts when not situate in London."¹⁹ "The said port sanitary authority may acquire and hold land for the purposes of their constitution without any licence in mortmain."²⁰ "The said port sanitary authority may, with the sanction of the [Minister of Health],

(15) See Note to s. 287.

(16) As to mode of raising money to meet general expenses of urban district councils, see s. 207; and of rural district councils, ss. 229, 230. As to raising of sums for payment of debts in district of defaulting authority, see s. 292. As to grants in aid, see

footnote (4), *ante*, p. 731.

(17) 54 & 55 Vict. c. 76, s. 142, and Sched. IV.

(18) *Ibid.*, s. 111.

(19) *Ibid.*, s. 112 (1).

(20) *Ibid.*, s. 112 (2).

delegate to any riparian authority the exercise of any powers conferred on the port sanitary authority by the order of the [Minister], but except in so far as such delegation extends no other authority shall exercise any powers conferred on such port sanitary authority by the order of the [Minister] within the limits of the Port of London.”²¹ “ ‘ Riparian authority ’ in this section means any sanitary authority under this Act and any sanitary authority under the Public Health Act, 1875, whose district or part of whose district forms part of or abuts on any part of the said port, and any conservators, commissioners, or other persons having authority in or over any part of the said port.”²²

Sect. 291, n.

Order of Local Government Board.

Limits of Port of London.

In pursuance of the above-quoted provisions the Local Government Board and Minister of Health issued orders assigning to the London Port Sanitary Authority many of the powers and duties which attach to a sanitary authority.^{22a}

The Port of London (Consolidation) Act, 1920,²³ gives the same limits of the Port of London as those in the Act of 1908, which it repeals,²⁴ and these will be found in the Note to sect. 18 of the Rivers Pollution Prevention Act, 1876.²⁵

Sect. 292. Where any port sanitary authority joint board or other authority are authorised, in pursuance of this Act, to proceed in a summary manner to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority.

Proceedings for raising a sum for payment of debt within district of a defaulting authority.

P.H. 1872, s. 54.

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers, the authority so authorised as aforesaid shall have power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied by the officer of the defaulting authority for the payment of the expenses of that authority; and where the defaulting authority have power to raise moneys due for their expenses by issuing precepts, or otherwise requiring payments from any other authorities, the authority so authorised as aforesaid shall have the same power as the defaulting authority would have of issuing precepts, or otherwise requiring payment from such other authorities.

Any precepts issued by the authority so authorised as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority.

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs charges and expenses (including compensation to any persons they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs charges and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

Note.

Joint boards are authorised by sect. 284, and port sanitary authorities by sect. 290, to proceed in a summary manner to raise debts due to them within the districts of defaulting authorities.

Defaulting authorities.

Expenses of district councils.

Expenses incurred in performing the duty of a local authority under sect. 299 may if necessary be levied within the district of such authority under sect. 300.

With regard to the expenses of urban district councils, see sect. 207; with regard to the general district rates leviable by them, sect. 210, and the recovery of such rates, sect. 256. With regard to the expenses and precepts of rural district councils, see sects. 229 and 230; and with regard to those of joint boards, sects. 283 and 284.

(21) 54 & 55 Vict. c. 76, s. 112 (3).

(22) *Ibid.*, s. 112 (4).

(22a) They are respectively dated Mch. 25, 1892; Dec. 29, 1894; June 30, 1898; and July 18, 1922. The last-mentioned order will be found in “ Loc. Gov. 1922,” p. 420.

(23) 10 & 11 Geo. V. c. clxxiii., s. 2, Sched. I.

(24) *Ibid.*, s. 3, Sched. III.

(25) *Post*, Vol. II., p. 1758.

Sect. 293.

PART IX.

[MINISTER OF HEALTH.]

INQUIRIES BY [MINISTER].

Power of
[Minister] to
direct inquiries.

L.G., s. 79.
21 & 22 Vict.
c. 97, s. 3.

Sect. 293. The [Minister of Health] may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as [he sees] fit in relation to any matters concerning the public health in any place, or any matters with respect to which [his] sanction approval or consent is required by this Act.

Note.

Inquiries in
relation to
public health.

The Privy Council were formerly authorised ¹ "from time to time to cause to be made such inquiries as they might see fit in relation to any matters concerning the public health in any place or places, and to the observance of the regulations and directions issued by them under this Act," and these powers were transferred to the Local Government Board in 1871,² and are now by virtue of the Ministry of Health Act, 1919,³ vested in the Minister of Health.

For subject-matters of such inquiries under the present Act, see sects. 33, 53, 176 (4), 234 (3), and 279 (2).

Other Acts.

Provisions as to inquiries by the Minister are contained in the Housing Acts,⁴ the Local Government Acts, 1888,⁵ and 1894,⁶ the Public Health Acts Amendment Act, 1907,⁷ and the Small Holdings and Allotments Act, 1908.⁸ See also sect. 13 of the Gas and Water Works Facilities Act of 1873.¹¹

Privilege.

The Local Government Board used to claim that it would be against the interests of the public service that reports made to them by their inspectors, after local inquiries or otherwise, should be either disclosed to persons interested or produced in court. In a case where this privilege was claimed,⁹ Farwell, J., said: "I respectfully protest that it is rather hard that I should be denied a sight of the documents by the gentleman in charge of them, and that I should not be allowed to know what their own report is, and what their opinion is. I protest that I am not to have all the best material that is available for me." Some such reports, however, are printed and published,¹⁰ and in one case this is required by statute.¹¹

Orders as to
costs of in-
quiries.

L.G., s. 81.
San. 1869, s. 9.

Sect. 294. The [Minister of Health] may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said [Minister] under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

Note.

Rules of
court.

By sect. 18 of the Judgments Act, 1838,¹² the rules of court above mentioned "shall have the effect of judgments in the superior courts of common law," and the persons to whom the costs are payable "shall be deemed judgment creditors within the meaning of this Act," "and all remedies hereby given to judgment creditors are in like manner given to persons to whom any moneys, or costs, charges, or expenses, are by such orders or rules respectively directed to be paid." As to "interest" under this Act, see the footnote.¹³ Orders under

(1) By 21 & 22 Vict. c. 97, s. 3, repealed by S. L. R. Act, 1893.

(2) By Loc. Gov. Bd. Act, 1871, s. 2, *post*, Vol. II., p. 2307.

(3) *Post*, Vol. II., p. 2305.

(4) Acts of 1890, s. 85 (2); 1903, Sched. (5) (8); 1909, s. 63; 1919 (H. T. P.), ss. 11 (2), 47 (1), *post*, Part II., Div. III.

(5) See s. 87 (1). This enactment is applied to inquiries by the Minister under other Acts, see the Note thereto, *post*, Vol. II., p. 1952.

(6) See ss. 9 (8), 10 (1), *post*, Vol. II., pp. 2008, 2010.

(7) See s. 5 (1) (2), *post*, Part I., Div. III. Inquiries by the Secretary of State are pro-

vided for by *ibid.*, s. 5 (3).

(8) See s. 39 (7), *post*, Vol. II., p. 1515.

(9) *A.G. v. Nottingham Cpn.*, *ante*, p. 255 (25). For quotation, see 2 L. G. R. at p. 701.

(10) *E.g.*, those of medical inspectors who have inspected districts with a view to making recommendations as to their sanitary requirements.

(11) See G. & W. Facilities Act of 1873, s. 13 (5), *post*, Vol. II., p. 1248.

(12) 1 & 2 Vict. c. 110, s. 18.

(13) *Ibid.*, ss. 17, 18. *Ashover Fluor Spar Mines, Ltd. v. Jackson*, L. R. 1911, 2 Ch. 355; 80 L. J. Ch. 687; 105 L. T. 334.

the present section will provide, not only for the costs of the Minister, but also for those of the parties.¹⁴ **Sect. 294, n.**

Sect. 295. All orders made by the [Minister of Health] in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that [Minister] may direct.

Orders of
[Minister of
Health] under
this Act.
L.G., s. 81.
P.H. 1872, s. 48.

Note.

Upon an application for a *mandamus* raising a question already decided upon an appeal to the Secretary of State, the Court of Queen's Bench refused a rule, holding that the principle on which the decision of the court of quarter sessions is final; unless the justices state a case for the opinion of the court, applied to an order of the Secretary of State under the Public Health Acts. *Per* Lord Campbell, C.J., where the Legislature says that the decision of the Secretary of State is to be final, it means that it is to be final in law and in fact; and *per* Hill, J., there is no machinery in the statute by which the order can be made a rule of court; if there were, possibly it might be quashed, if bad on the face of it.¹⁵ Sect. 294 expressly enacts that every such order as there mentioned may be made a rule of one of the superior courts of law (High Court of Justice) on the application of any party named therein.

**Finality
of orders.**

The order of the Minister, however, is not necessarily conclusive as to all matters recited or incidentally referred to in it.¹⁶

As to the proof of official documents, see the Note to sect. 135.¹⁷

The Minister cannot generally state a case for the opinion of the court,¹⁸ but can, and may be compelled to do so, when acting as arbitrator.¹⁹

**Proof of order.
Special case.
Mandamus.**

The present section was applied by the London Government Act, 1899,²⁰ to the determination by the Local Government Board of the amount of the contributions payable between the county council and the borough councils on the transfer of powers, etc., by or under that Act; and upon an application for a *mandamus* to the Board to hear and determine a question of contribution by the county council to one of the borough councils, which they had purported to determine "otherwise than as arbitrators," the court declined to interfere, as the Board had not declined jurisdiction, and there was nothing to show that they had decided the matter in a manner contrary to law, or that they had not considered it on the merits.²¹

Sect. 296. Inspectors of the [Minister of Health] shall, for the purposes of any inquiry directed by the [Minister], have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

Powers of
inspectors of
[Minister of
Health.]
P.H. 1872, s. 15.

Note.

The present section is applied by the Local Government Act, 1888,²² the Isolation Hospitals Act, 1893,²³ the Local Government Act, 1894,²⁴ the Public Health Acts Amendment Act, 1907,²⁵ and the Small Holdings and Allotments Acts, 1908,²⁶ to inquiries held under those Acts respectively.

**Application of
enactment.**

The Local Government Board Act, 1871,²⁷ empowered the Local Government Board to appoint such inspectors as they might, with the sanction of the Treasury, determine. This provision was repealed by the Ministry of Health Act, 1919,²⁸

**Appointment
of inspectors.**

(14) M. H. decisions.

(15) *Ex parte Bird* (1859), 5 Jur. (N.S.) 1009; 28 L. J. Q. B. 223; 1 E. & E. 931; 23 J. P. 691. See also cases cited *post*, Vol. II., pp. 2056 (2), 2067, 2068, and *per* Stewart, V.-C., in *A.G. v. Manchester Bishop* (1867), L. R. 3 Eq. at p. 455; 15 L. T. 646; 31 J. P. 516; *per* Kekewich, J., in *A.G. v. Hanwell U.D.C.*, L. R. 1900, 1 Ch. at p. 56, affirmed in C. A. on other grounds, see *ante*, p. 472; and *Rex (N. Dublin R.D.C.) v. Loc. Gov. Bd. for Ireland*, 1917 Ir. K. B. 454.

(16) See *Fenwick v. Croydon R.S.A.*, *ante*, p. 724.

(17) *Ante*, p. 261.

(18) See *Bexley Loc. Bd. v. West Kent*

Main Sewerage Bd., *ante*, p. 491 (34).

(19) *Re Kent C.C. v. Sandgate Loc. Bd.*, *post*, Vol. II., p. 1943 (6).

(20) 62 & 63 Vict. c. 14, s. 28.

(21) *Rex (Hackney B.C.) v. Local Government Bd.* (1908, K. B. D.), 72 J. P. 211; 6 L. G. R. 665.

(22) See s. 87 (1), *post*, Vol. II., p. 1951.

(23) See s. 11, *post*, Part II., Div. I.

(24) See ss. 9 (8), 10 (1), 72 (3), *post*, Vol. II., pp. 2008, 2010, 2102.

(25) See s. 5, *post*, Part I., Div. III.

(26) See s. 57 (1), *post*, Vol. II., p. 1523.

(27) 34 & 35 Vict. c. 70, s. 3.

(28) See s. 11, Sched. II., *post*, Vol. II., p. 2313.

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under which the Minister may, subject to the consent of the Treasury as to number, appoint such officers and servants as he may determine.²⁷

Powers of inspectors.

The following are the provisions of the Poor Law Board Act, 1847,²⁸ with respect to the powers of poor law inspectors to summon witnesses, etc. :—

“The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the [Minister of Health], or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purposes as aforesaid shall be obeyed by all persons as if such summons had been the summons and order of the [Minister], and the non-observance thereof shall be punishable in like manner; and the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first-recited Act²⁹ are now payable: Provided always that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode.” As to perjury, see the Act of 1911 quoted in the Note to sect. 263.³⁰

Privilege.

As to the privileged character of the reports of inspectors, see the Note to sect. 293.

PROVISIONAL ORDERS BY [MINISTER].

As to provisional orders made by [Minister of Health.]

P.H. 1873, s. 45.

Sect. 297. With respect to provisional orders authorised to be made by the [Minister of Health] under this Act, the following enactments shall be made :—

(1.) The [Minister of Health] shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :

(2.) Before making any such provisional order, the [Minister of Health] shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :

(3.) The [Minister of Health] may submit to Parliament for confirmation any provisional order made by [him] in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament :

(4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills :

(5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any provisional order made by the [Minister of Health] and confirmed by Parliament :

(6.) The [Minister of Health] may revoke, either wholly or partially, any provisional order made by [him] before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament :

(7.) The making of a provisional order shall be *prima facie* evidence that all

(27) See s. 6, *post*, Vol. II., p. 2311.

(28) 10 & 11 Vict. c. 109, s. 21.

(29) 4 & 5 Wm. IV. c. 76, s. 14.

(30) *Ante*, pp. 705-707. This Act repealed s. 26 of the Act of 1847 on this subject.

the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with : **Sect. 297.**

(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

Note.

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Making Provisional Orders.

The present section and sect. 298 are applied to provisional orders under the Local Government Act, 1888,¹ the Isolation Hospitals Act, 1893,² the Metropolis Water Act, 1902,³ and the Mental Deficiency Act, 1913.⁴ The present section only is applied to provisional orders under the Rivers Pollution Prevention (Border Councils) Act, 1898.⁵ Sub-sects. (1) and (2) of the present section were applied by the Local Government Act, 1894,⁶ to inquiries in connection with the acquisition of land for allotments or for the purposes of a parish council, but the Small Holdings and Allotments Act, 1908,⁷ contains special provisions as to the compulsory purchase and hiring of lands for allotments.

Provisional orders under other Acts.

It is necessary that applications for provisional orders should be made either before Parliament meets or early in the session; otherwise there will be great delay in the order being confirmed by Parliament; for by an annual resolution of the House of Lords it is ordered that no Bill confirming any provisional order shall be read after a day named. With regard to the time and mode of making the application, see the Instructions issued annually by the Minister of Health.

Application for provisional order.

Jurisdiction of the Court.

A provisional order of the Secretary of State, under the Local Government Act, 1858,⁸ was held not to be one that could be removed by *certiorari* for the purpose of being quashed. *Per* Cockburn, C.J. : "The inquiry instituted by the Secretary of State is intended to supersede the expensive proceedings preliminary to the passing of a private Bill, where it is not fit that so extravagant an outlay should be incurred. The object of that inquiry is to guide the Legislature in determining whether the proposed measure should pass into a law. The provisional order has no effect until it is converted into law. Therefore we should usurp functions which do not belong to us if we stepped in between the provisional order and the exercise of the parliamentary will; it would be beyond our proper scope of action to quash that order." ⁹

Certiorari.

And it was decided that, in holding an inquiry as to the propriety of making a provisional order under the Public Health (Ireland) Act, 1878,¹⁰ the Local Government Board were not acting in a judicial capacity, and that therefore a writ of prohibition could not be granted to prohibit them from holding such inquiry.¹¹

Prohibition.

Nevertheless, it would appear that a local authority may be restrained by injunction from promoting a scheme by provisional order,¹² though Hall, V.-C., refused an injunction, notwithstanding that *mala fides* on the part of the local authority in promoting a sewerage scheme was alleged.¹³

Injunction.

An injunction to restrain a local authority from dropping certain agreed clauses in a private Bill, because the House of Lords made an amendment undesired by the defendants, was refused.¹⁴

(1) See s. 87 (2), *post*, Vol. II., p. 1951.

(2) See s. 11, *post*, Part II., Div. I.

(3) 2 Edw. VII. c. 41, s. 26 (4).

(4) 3 & 4 Geo. V. c. 28, s. 29 (4).

(5) See s. 2, *post*, Vol. II., p. 1750.

(6) See ss. 9 (8), 10 (1), *post*, Vol. II., pp. 2008, 2010.

(7) See ss. 38, 39, *post*, Vol. II., p. 1514.

(8) 21 & 22 Vict. c. 98, s. 77.

(9) *Reg. (Frewen) v. Hastings Loc. Bd.* (1865), 6 B. & S. 401; 34 L. J. Q. B. 159; 12 L. T. 346; 11 Jur. (N.S.) 670; 29 J. P. 711.

(10) 41 & 42 Vict. c. 52, s. 214.

(11) *In re Local Government Bd.; Ex parte Kingstown Comrs.*, 16 L. R. Ir. 150; affirmed on appeal (1885), 18 L. R. Ir. 509. See also *ante*, p. 700.

(12) See *Telford v. Metropolitan Bd. of Works* (1872), L. R. 13 Eq. 574; 41 L. J. Ch. 589; 26 L. T. 150.

(13) *Barker v. King's Norton R.S.A.*, *ante*, p. 95 (6).

(14) *Levenshulme U.D.C. v. Manchester Cpn.* (1908, Leigh Clare, V.-C.), 72 J. P. 470.

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Standing Orders.

In connection with the procedure for obtaining the confirmation of provisional orders it is necessary to refer to the Standing Orders of the Houses of Parliament, which are issued at the commencement of every Session. As they may be altered from time to time, and failure to comply with any such order may be fatal, the following note must be taken merely as a guide to the kind of procedure which has to be followed.

Deposit of plans, &c.

An order already quoted ¹⁵ provides for the deposit of duplicate plans, sections, books of reference, and maps, in the office of the Clerk of the Parliaments and Private Bill Office, when plans, etc., are deposited with any public department or county council in connection with an application for a provisional order or provisional certificate.¹⁶

First reading.

"No Bill, originating in this House, for confirming a provisional order or provisional certificate shall be read the first time after Whitsuntide."¹⁷

Non-compliance with Standing Orders.

"Every memorial complaining of non-compliance with the Standing Orders [of the House] in respect of any Bill referred to the Examiners after first reading . . . shall, together with two copies thereof, be deposited in the office of the Clerk of the Parliaments [Private Bill Office], before twelve o'clock on the day preceding that appointed for the examination [of any such . . . Bill by the Examiner ¹⁸: and the Examiner shall be at liberty to entertain such memorial, although the party (if any) who may be specially affected by the non-compliance with the Standing Orders shall not have signed the same]."¹⁹ See also the orders requiring the deposit of statements and plans relating to working-class houses,²⁰ and the provisions on this subject in the Housing of the Working Classes Act, 1903.²¹

Petition in opposition.

"Every Provisional Order Confirmation Bill . . . shall, after the first reading, be referred to the Examiners, but in respect of such standing orders only as have not been previously inquired into."²² And "no Provisional Order Confirmation Bill shall be read a second time until the Examiner has certified whether the Standing Orders have or have not been complied with."²³

The following Standing Orders relate to petitions against Provisional Order Confirmation Bills:—

"No petition praying to be heard upon the merits against any . . . Provisional Order Confirmation Bill originating in this House shall be received by this House unless the same is presented by being deposited in the Private Bill Office before three o'clock in the afternoon . . . on or before the seventh day after the day on which such Bill has been read a second time."²⁴

"No petition praying to be heard upon the merits against any . . . Provisional Order Confirmation Bill brought from the House of Commons shall be received by this House, unless the same be presented by being deposited in the Private Bill Office before three o'clock in the afternoon on or before the seventh day after the day on which such Bill has been read a first time."²⁵

"No petition for additional provision shall be presented to this House without the sanction of the Chairman of Committees, and no petition for additional provision shall be received in the case of a Bill brought from the House of Commons."²⁶

"It shall be competent to the Referees on Private Bills to admit the petitioners, being the municipal or other authority having the local management of the Metropolis, or of any town or district, or the inhabitants of any town or district alleged to be injuriously affected by a Bill, to be heard against such Bill, if they shall think fit."²⁷

Locus standi of local authorities.

"The municipal or other local authority of any town or district alleging in their petition that such town or district may be injuriously affected by the provisions of any Bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such Bill."²⁸

(15) *Ante*, p. 474.

(16) H. L. 39, [H. C. 39].

(17) H. C. 193A.

(18) As to "proceedings of, and in relation to, the Examiners," see H. C. 69-78.

(19) H. L. 75 [H. C. 232].

(20) H. L. 38; H. C. 38.

(21) See s. 3, and Sched., *post*, Part II.,

Div. III.

(22) H. L. 70A.

(23) H. L. 88.

(24) H. L. 92.

(25) H. L. 93.

(26) H. L. 94.

(27) H. C. 129.

(28) H. C. 130.

"It shall be competent to the Referees on Private Bills to admit the petitioners, being the council of any administrative county or county borough, or being a joint committee of councils of administrative counties or county boroughs, the whole or any part of which is alleged to be injuriously affected by a Bill, to be heard against such Bill, if they think fit." ²⁹

"The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected (A) by the provisions of any Bill relating to the water supply of any town or district, whether situate within or without such county, or (B) by the provisions of any Bill proposing to authorise the construction or reconstruction of any tramway along any main road, or along any other road to the maintenance and repair of which the county council contributes, within the administrative county, shall be entitled to be heard against such Bill." ³⁰

"Every . . . Provisional Order Confirmation Bill which is opposed shall be referred to a Select Committee of five." ³¹

"Every petition against any . . . Bill to confirm any provisional order or provisional certificate, which shall have been deposited in the Private Bill Office not later than seven clear days after notice shall have been given of the day on which the Bill will be examined, or which shall have been otherwise deposited in accordance with the Standing Orders of the House, and in which the petitioners shall have prayed to be heard, by themselves, their counsel or agents, shall stand referred to the Committee on such Bill, and such petitioners, subject to the rules and orders of the House, shall be heard upon their petition accordingly, if they think fit, and counsel heard, in favour of the Bill, against such petition." ³²

"No petition against a . . . Bill to confirm any provisional order or provisional certificate, shall be taken into consideration by the Committee on such Bill, which shall not distinctly specify the ground on which the petitioners object to any of the provisions thereof; and the petitioners shall be only heard on such grounds so stated; and if it shall appear to the said Committee that such grounds are not specified with sufficient accuracy, the Committee may direct that there be given in to the Committee a more specific statement in writing, but limited to such grounds of objection so inaccurately specified." ³³

"No petitioners against any . . . Bill to confirm any provisional order or provisional certificate, shall be heard before the Committee on the Bill, unless their petition shall have been prepared and signed in strict conformity with the rules and orders of this House, and shall have been presented to this House by having been deposited in the Private Bill Office, in the case of . . . Bills originating in this House to confirm any provisional order or provisional certificate, not later than seven clear days after notice shall have been given of the day on which the Bill will be examined, except where the petitioners shall complain of any matter which may have arisen during the progress of the Bill before the said Committee, or of any proposed additional provision, or of the amendments as proposed in the filled up Bill deposited in the Private Bill Office. . . ." ³⁴

With regard to the costs of parties appearing before a Committee of either House, see sect. 298 and Note.

The following Standing Orders are also important with reference to applications for Parliamentary powers in respect of sanitary matters :—

"In the case of any Bill [of all Bills] whereby any municipal corporation, district council [improvement commissioners], joint board or joint committee, or other local authority in England or Wales, are authorised to borrow money for any purpose [matter] within the jurisdiction of the Board of Trade or the [Minister of Health], estimates showing the proposed application of the money for permanent works shall, except so far as the exercise of the borrowing power is made subject to the sanction of the [Board or Minister], be recited in the Bill as introduced into Parliament and proved before the Committee [the Select Committee to which the Bill is referred]." ³⁵

"Every Report made on any Bill by or under the authority of any Public Department shall stand referred to the Committee on the Bill." ³⁶

"All Reports made under the authority of any Public Department upon a

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Select
committee.

Costs.

Estimates
for loans.

(29) H. C. 131.

(30) H. C. 132. H. C. 133 and 134 relate respectively to petitions by owners of rivers and forests, commons, etc.

(31) H. L. 96.

(32) H. C. 210.

(33) H. C. 122.

(34) H. C. 123.

(35) H. L. 134 [H. C. 172].

(36) H. L. 106A.

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Private Bill, or the objects thereof, laid before the House, shall stand referred to the Committee on the Bill." ³⁷

Any Committee of the House of Commons may administer an oath to the witnesses examined before such Committee, and any person so examined who wilfully gives false evidence will be liable to the penalties of perjury.³⁸

*Postage on Addresses and Petitions.***Postage.**

The Post Office Act, 1908,³⁹ provides that "members of each House of Parliament may receive by post petitions and addresses to His Majesty, and petitions addressed to either House of Parliament, not exceeding 32 ounces in weight, exempt from postage, provided those petitions and addresses are sent without covers, or in covers open at the sides."

Costs of provisional orders.

P.H. 1872, s. 47.

Sect. 298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the [Minister of Health], whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the [Minister of Health], the local authority may contract a loan for the purpose of defraying such costs.

Note.**Application of section.**

The present section is applied to the costs of inquiries held under other Acts: see the commencement of the Note to sect. 296.

Expenses of local authorities.

As to the mode of defraying expenses incurred under this Act in urban districts, see sect. 207; in rural districts, see sects. 229 and 230. As to loans, see sects. 233-243, and the Local Loans and Public Works Loans Acts of 1875.⁴⁰

Costs of parliamentary proceedings.

As to payment of the costs of promoting or opposing Bills in Parliament at the cost of the rates, see the Note to sect. 210, and the Borough Funds Act, 1872.⁴¹

A district council's costs of opposing a Bill in Parliament for the confirmation of a provisional order are not subject to the requirements of the Borough Funds Act, 1872, such costs coming within the exception in sect. 8 of that Act.⁴²

By the Parliamentary Costs Act, 1871,⁴³ "any Select Committee of either House of Parliament to which any Bill for confirming or giving effect to provisional orders has been referred, in relation to any provisional order therein contained, may award costs, in like manner and under the same conditions under which costs may be awarded by any Select Committee under the [Parliamentary Costs Act, 1867]; and the provisions of the said Act, so far as they are applicable, shall have effect accordingly." For the purposes of this enactment "the words 'Provisional Order' shall include provisional certificates, schemes, and orders in the nature of provisional orders, made under the authority of any statute, and requiring to be confirmed, sanctioned, or carried into effect by Act of Parliament."⁴⁴

The Parliamentary Costs Act, 1865,⁴⁵ provides as follows:—"1. When the committee on a private Bill shall decide that the preamble is not proved, or shall insert in such Bill any provision for the protection of any petitioner, or strike out or alter any provision of such Bill for the protection of such petitioner, and further unanimously report, with respect to any or all of the petitioners against the Bill, that such petitioner or petitioners has or have been unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the Bill, such petitioner or petitioners shall be entitled to recover from the promoters of such Bill his or their costs in relation thereto, or such portion thereof as the committee may think fit, such costs to be taxed by the taxing officer of the House as hereinafter mentioned, or the committee may award such a sum for costs as they shall think fit, with the consent of the parties affected."

"2. When the committee on a private Bill shall decide that the preamble is proved, and further unanimously report that the promoters of the Bill have been vexatiously subjected to expense in the promotion of the said Bill by the opposition of any petitioner or petitioners against the same, then the promoters shall be entitled to recover from the petitioners, or such of them as the committee shall think fit, such portion of their costs of the promotion of the Bill as the committee may think fit, such costs to be taxed by the taxing officer of the House as hereinafter

(37) H. C. 212.

(38) See Act of 1911 quoted, *ante*, p. 705.

(39) 8 Edw. VII. c. 48, s. 5 (2).

(40) *Post*, Vol. II., pp. 1711, 1725.

(41) *Post*, Vol. II., p. 1698.

(42) *Brooks Jenkins & Co. v. Torquay Cpn.*

and *Newton Abbot R.D.C.*, L. R. 1902, 1 K. B. 601; 71 L. J. K. B. 109; 85 L. T. 785; 66 J. P. 293.

(43) 34 Vict. c. 3, s. 2.

(44) *Ibid.*, s. 4.

(45) 28 & 29 Vict. c. 27, ss. 1, 2.

mentioned, or such a sum for costs as the committee shall name, with the consent of the parties affected; and in their report to the House the committee shall state what portion of the costs, or what sum for costs, they shall so think fit to award, together with the names of the parties liable to pay the same and the names of the parties entitled to receive the same : Provided always that no landowner who *bonâ fide* at his own sole risk and charge opposes a Bill which proposes to take any portion of the said petitioner's property for the purposes of the Bill shall be liable to any costs in respect of his opposition to such Bill."

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The same Act provides for the taxation and recovery of the costs,⁴⁶ and for payment of such costs out of the deposit made by the promoters⁴⁷; and the expression "private Bill" extends to and includes any Bill for a Local and Personal Act.⁴⁸

Taxation and recovery of costs.

The mode of taxing and recovering the costs of proceedings in relation to private Bills is prescribed by the House of Lords Costs Taxation Act, 1849,⁴⁹ and the House of Commons Costs Taxation Act, 1847,⁵⁰ the latter of which is extended to proceedings in relation to provisional orders or certificates, and confirmation Bills, by the House of Commons Costs Taxation Act, 1879.⁵¹

An urban district council applied to the Minister of Health in 1922 for his sanction under the present section of the costs of opposing a provisional order. They had been taxed by the clerk of the peace under sect. 249. The Minister required taxation by the Parliamentary taxing officer.

POWER OF [MINISTER] TO ENFORCE PERFORMANCE OF DUTY BY DEFAULTING LOCAL AUTHORITY.

Sect. 299. Where complaint is made to the [Minister of Health] that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the [Minister of Health], if satisfied, after due inquiry, that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the [Minister of Health] may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the [King's Bench Division], and be enforced in the same manner as if the same were an order of such court.

Proceedings on complaint to [Minister] of default of local authority.

San. 1866, s. 49.
P.H. 1874, s. 20.

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as herein-after provided) the powers of levying rates; and the [Minister of Health] may from time to time by order change any person so appointed.

S.U. 1867, s. 2.

San. 1869, s. 8.

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Duty of District Council.

By an unrepealed clause of the Housing of the Working Classes Act, 1885,¹ "it shall be the duty of every local authority entrusted with the execution of laws relating to public health and local government to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under the control of such authority."

Duty to secure sanitary conditions.

By sect. 1 of the Public Health (London) Act, 1891, "it shall be the duty of every sanitary authority to put in force the powers vested in them relating to

Meaning of default.

(46) 28 & 29 Vict. c. 27, ss. 3-7.

(47) *Ibid.*, s. 8.

(48) *Ibid.*, s. 10.

(49) 12 & 13 Vict. c. 78.

(50) 10 & 11 Vict. c. 69.

(51) 42 & 43 Vict. c. 17.

(1) 48 & 49 Vict. c. 72, s. 7. Repealed as to London by Act of 1891, s. 142,

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public health and local government, so as to secure the proper sanitary condition of all premises within their district." By sect. 100 of the same Act power is given to the London County Council to institute proceedings when the sanitary authority are in default. A sanitary authority refused to take proceedings against certain persons who had established a new offensive trade in their district without their consent under sect. 19 of the Act of 1891. The London County Council obtained a conviction against such persons. It was held that they were entitled to sue the sanitary authority for all costs not recovered from the defendants in those proceedings, as the imposition of the penalty for this particular offence was "for the preservation of the public health."²

Complaint to Minister of Health.

Exclusion of other remedies.

Although the complaint under the present section is made to the executive branch of the Government, and as pointed out by Mathew, J.,³ the Local Government Board was not a "court," it was held by the House of Lords that, for a breach of the statutory duties referred to in the section, the course which it prescribes is the only remedy available, and that a person injured by the breach of such a duty by the local authority is therefore not entitled to bring an action for a *mandamus* to compel them to perform it.⁴

The Court of Appeal had previously held that, even if a local board had been guilty of neglect to perform the statutory duty to construct sewers, which was cast on them as the sanitary authority of a particular district, an action for a mandatory injunction could not be maintained. The local board were liable, just as any other owner of a sewer, for an unlawful use of it to the injury of any other person, but the statute imposed on them no duty to any particular individual, and there was no precedent in the practice of the Court of Chancery for granting a mandatory injunction to compel a public body to do something for the benefit of an individual. *Per* Cotton, L.J.: "It would be contrary to the course of the court to make a decree in the nature of a decree for specific performance of the duties imposed on them by Act of Parliament against the defendants, unless the court is satisfied that there is some particular mode by which they can carry into effect this system of drainage, and in that way exercise the powers of this Act of Parliament."⁵ A suggestion of the court in this case that the plaintiff might have had a remedy by way of *mandamus* was disapproved by the House of Lords in the case previously cited.

In an action for an injunction to restrain a local authority, who were themselves doing no act to cause a nuisance, from permitting sewage (other than that as to which there was a prescriptive right) to flow into a brook adjoining the relator's land so as to be a nuisance, the Court of Appeal pointed out that, if a landowner, having a sewer running through his land, could not stop up the sewer against persons having a prescriptive right of draining into it, he could not do so against persons having no such right, but must bring his action for an injunction. That would not, however, entitle another person to bring an action against the landowner to compel him to bring his action for the injunction.⁶

Where an injunction had been granted in 1872, restraining a local board from discharging sewage into a brook, without any objection to the jurisdiction of the court to grant such an injunction having been raised, the objection was not allowed to be raised on a supplementary writ being issued in 1889 for damages for breach of the injunction.⁷

The Court of Appeal had also held, mainly on the same ground, that no action for damages lay for breach of the statutory duty.⁸

The Court of Appeal has upheld a distinction between the duty of the local authority in respect of the "maintenance" of existing sewers mentioned in the present section, and their duty under sect. 19 to keep such sewers so that they shall not be a nuisance or injurious to health, and to see that they are properly cleansed and emptied. *Per* Lord Halsbury, L.C.: "Sect. 299 does not, in my

(2) 54 & 55 Vict. c. 76, ss. 1, 19, 100. *London C.C. v. Bermondsey B.C.*, L. R. 1915, 3 K. B. 305; 84 L. J. K. B. 1699; 113 L. T. 743; 79 J. P. 449; 13 L. G. R. 987.

(3) In *Eccles v. Wirral R.S.A.*, ante, p. 713 (10).

(4) *Pasmore v. Oswaldtwistle U.D.C.*, L. R. 1898 A. C. 387; 67 L. J. Q. B. 635; 78 L. T. 569; 62 J. P. 628.

(5) *Glossop v. Heston and Isleworth Loc. Bd.* (1879), L. R. 12 Ch. D. 102; 49 L. J. Ch.

89; 40 L. T. 736; 44 J. P. 36. See also *Jones v. Barking U.D.C.*, ante, p. 80 (8), also reported in 15 T. L. R. 92.

(6) *A.G. v. Dorking Guardians* (1882), L. R. 20 Ch. D. 595; 51 L. J. Ch. 585; 46 L. T. 573.

(7) *Warwick and Birmingham Canal Co. v. Burman* (1890), 63 L. T. 670.

(8) *Robinson v. Workington Cpn.*, L. R. 1897, 1 Q. B. 619; 66 L. J. Q. B. 388; 75 L. T. 674; 61 J. P. 164.

opinion, touch the duty of the local authority to use proper diligence in the management of existing sewers." It was therefore held that the present section and the cases decided with reference to it did not take away the right of action of a person who had sustained injury from the nuisance arising by reason of the neglect of an urban district council to cleanse an open sewer which was vested in them and discharged into a pond on his land.⁹

Neglect of a local authority to make regulations, as required by an Irish statute, for the letting of labourers' cottages giving a preference to agricultural labourers, was held to give such a labourer who had been improperly passed over a right of action for damages, and it was also held that his remedy was not *mandamus* to make the regulations or complaint to the Local Government Board under the enactment corresponding to the present section.¹⁰

In connection with these cases it may be observed generally that the creation of a statutory duty does not necessarily confer a right of action on a person who is injured by the non-performance of the duty: whether it does so or not depends upon the intention disclosed by the terms of the statute.¹¹

The Court of Appeal also, before the exclusive nature of the remedy under the present section was established, refused a *mandamus* to compel a local board to make such sewers as might be necessary for draining part of their district, on the ground that the board had exercised their discretion and considered that they had provided an outfall for effectually draining it.¹²

Bacon, V.-C., held that obtaining an order from the Local Government Board under the present section directing a local authority to carry out works to remedy a nuisance did not preclude an action to restrain the same nuisance.¹³

The existence of a right to "appeal" to the Minister does not necessarily take away the jurisdiction of the justices,^{13a} or the right to appeal from them to quarter sessions.^{13b}

As a general rule, a body corporate may be indicted for breach of a duty imposed upon it by law, in the absence of any special remedy prescribed in respect of the breach,¹⁴ "disobedience to an Act of Parliament" being an "indictable offence."¹⁵

In making a complaint to the Minister of Health, the rules relating to correspondence with that Ministry should be observed.¹⁶

The county council may cause a representation to be made to the Minister, if it appears to them, from the report of a medical officer of health sent to them in pursuance of the Local Government Act, 1888,¹⁷ that the present Act has not been properly put in force within the district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied.

And under the Local Government Act, 1894,¹⁸ on the initiative of the parish council or parish meeting in a rural district, the duty of the district council, as regards the provision or maintenance of sewers, the provision of a supply of water, the maintenance of any highway, or the enforcement of the present Act, may, after a local inquiry, be either taken over by the county council or enforced by them instead of by the Minister of Health in the manner provided by the present and three following sections.

Where a district council have refused or failed to take any proceedings upon a representation made to them by the parish council or parish meeting that a public right of way has been unlawfully stopped or obstructed, or that there has been an unlawful encroachment on any roadside waste, the county council may resolve to take over the powers and duties of the district council in the matter.¹⁹

(9) *Baron v. Portslade U.D.C.*, ante, p. 82 (1). See also the *Chertsey Case*, ante, p. 96 (12); *Dent's Case*, post, p. 767 (48); and *Hewinson v. Cheltenham U.D.C.* (1903), *Times*, July 8.

(10) *Tevlin v. Lisnaskea R.D.C.*, post, Vol. II., p. 1510.

(11) *Atkinson v. Newcastle and Gateshead Water Co.*, ante, p. 154 (7); *MacColla v. Clacton-on-Sea Gas and Water Co.*, post, Vol. II., p. 1224 (5); *Saunders v. Holborn Bd. of Works*, post, p. 765 (22); *Johnston v. Toronto Gas Co.*, L. R. 1898 A. C. 447; 67 L. J. P. C. 33; 78 L. T. 270; and *Snushall v. Kaikoura C.C.*, L. R. 1923 A. C. 459.

(12) *Reg. v. Tottenham Loc. Bd.*, ante, p. 61 (12).

(13) *Whitefield v. Newquay Loc. Bd.* (1882), 72 L. T. Jo. 349.

(13a) See *Ryall v. Hart*, post, p. 749 (4).

(13b) See the *Belfast Case*, cited in Note to P. H. Am. Act, 1907, s. 19, post, Part I., Div. III.

(14) See *Reg. v. Tyler*, L. R. 1891, 2 Q. B. 588; 61 L. J. M. C. 38; 60 L. T. 662; and the cases cited in the judgment of Bowen, L.J. See also the Note on the definition of "person," ante, p. 14.

(15) *Reg. v. Walker* (1875), L. R. 10 Q. B. 355; 39 J. P. 438. Here the disobedience was to an order of the Epping Forest Commissioners under the Epping Forest Amendment Act, 1873 (35 & 36 Vict. c. 95), s. 5.

(16) *Ante*, p. 554.

(17) See s. 19, post, Vol. II., p. 1908.

(18) See ss. 16, 19 (8), post, Vol. II., pp. 2018, 2024.

(19) *Ibid.*, ss. 26 (4), 19 (8). See also Act of 1878, s. 10, post, Vol. II., p. 1770.

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Exclusion of
other
remedies—
continued.

Indictment.

Correspondence.

Complaint
by county
council.

Complaint
by parish
council.

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Mandamus
to Minister
of Health.

The court refused a *mandamus* to compel the Local Government Board to make an order limiting a time for carrying out works of sewage disposal by a local board, who had assured the Local Government Board that they would proceed with the works with all practicable despatch, no obligation being imposed on the Local Government Board until they were satisfied of the culpable neglect of the local authority.²⁰

Order of Minister of Health.

Form of order.

An order of the Secretary of State under the provisions of the Sanitary Act, 1866,²¹ which corresponded to the present section, recited that the sewer authority had "made default in providing a proper system of main drainage," and proceeded: "I do hereby make order on the said authority to do its duty . . . and begin to set about the works for the purpose within the month from the date of this order, and proceed therewith until completion"; after the month, the sewer authority having done nothing, the Secretary of State made a second order appointing J. B. "to perform the said duty of the sewer authority in respect to sewerage as he shall be directed by me." The court held that these two orders were justified by the enactment.²²

On the other hand, an order made by the Secretary of State, after stating that complaint had been made to him that a town council had made default in providing a proper sewage outfall and means of sewage disposal, and that an inquiry had been held, ordered "That the time within which the Town Council of Darlington shall set about the performance of its duty in the matter of the said complaint, by furnishing me with a plan and estimate for effecting this object and acquiring either by compulsory purchase, lease, or other method, the land necessary for a sewage irrigation farm, shall be on or before the 31st of October." The town council's objections to the order were that, as the responsibility of performing the duty rested with them, the Secretary of State had no power to prescribe the manner in which it was to be done, or to require the work to be done under his superintendence, or a plan and estimate to be furnished to him, and much less a plan and estimate for acquiring land for a sewage irrigation farm, which farm the town council were under no obligation to establish, and that the limit of the time for furnishing such plan and estimate was not a limit of the time for the performance of the duty of the town council in the matter of the complaint. The Attorney General, for the Secretary of State, admitted that he could not support the order, and consented to a rule being made absolute to quash it.²³

By an order of the Local Government Board under the present section a local authority were required to execute works of sewerage "for the part of the City of Rochester known as the village of Borstal." It appeared that the area thus described was sufficiently defined and well known, and the order was enforced by *mandamus*.²⁴

A provisional order declaring it to be the duty of a certain corporation within a specified time "to proceed to carry out and execute works for the disposal of the sewage of the borough approved by the Local Government Board" was held to afford no defence to an action for an injunction to restrain the corporation from carrying on works approved by the Board so as to cause a public and private nuisance.²⁵

Enforcement of Order.

Sufficiency
of previous
inquiry.

Under the present section the Minister is to be satisfied "on due inquiry" whether there has been default by the local authority; and the court are not, on an application for a *mandamus*, to exercise an appellate jurisdiction on the question of what is due inquiry, though they might interfere if there had been no inquiry in point of law. Nor will the court go into the question whether the place has sufficient sewers, but must issue the *mandamus* if the Minister is satisfied that it has not such sewers, unless there has clearly been some legal error, or some omission to comply with legal form or procedure. If the order were made without due inquiry or beyond the jurisdiction of the Minister, the proper remedy would be to remove such order by *certiorari* into the King's Bench Division.²⁶

(20) *Reg. v. Local Government Bd.*, 8th Annual Report of Local Government Board, 1878-79, p. cviii.

(21) 29 & 30 Vict. c. 90, s. 49.

(22) *Reg. v. Cockerell* (1871), L. R. 6 Q. B. 252; 40 L. J. M. C. 153; 35 J. P. 693.

(23) *Darlington Cpn. v. Secretary of State*, Q. B., 25th November, 1870.

(24) *Reg. v. Rochester Cpn.*, 1892 Loc. Gov. Chron. 1015.

(25) *A.G. v. Dorchester Cpn.* (1905, C. A.), 94 L. T. 682; 70 J. P. 281; 4 L. G. R. 675.

(26) *Reg. v. Staines Guardians, and Reg. v. Staines Loc. Bd.* (1893), 62 L. J. Q. B. 540; 69 L. T. 714; 58 J. P. 182.

The court refused an application for a *mandamus* to a local board of health to make a sewer to carry off sewage from certain works, remarking that the demand which had been made by the applicants might be open to objection, and that if the duty to make such a sewer existed on the part of the board the proper course was to make a simple demand that it be discharged.²⁷

The term of office of a local pension committee having expired, the county council appointed a new committee, though this business was not specified on the agenda. It was held that the committee had not been validly appointed, and that there was, therefore, no "existing office" from which anyone could be removed by *quo warranto*, but that the proper remedy was *mandamus* directing the county council to hold a proper election.²⁸

In a case in which a corporation had failed to comply with a peremptory writ of *mandamus*, issued at the instance of the Local Government Board, and requiring the corporation to carry out a sewerage scheme in accordance with the requirements of a local Act, writs of attachment were issued against certain members of the council, but were ordered to lie in the office for a certain period²⁹; and at the expiration of that period, on application for a further stay of execution, when it appeared that the required works were being carried out with due diligence, the matter was, with the consent of the Local Government Board, ordered to stand over generally, with liberty to apply.³⁰

It was not the practice of the Local Government Board to adopt the alternative procedure of appointing some person to do the work in respect of which the default had been committed.³¹

Expenses.

The three following sections contain provisions for raising the money to meet the expenses ordered to be paid by the defaulting authority; a loan may be raised for the purpose. The term "expenses" includes any sums ordered to be paid under these provisions—see sect. 302.

See also sect 292, with regard to proceedings in other cases for raising sums for payment of debts within the districts of defaulting authorities.

Sect. 300. Any sum specified in an order of the [Minister of Health] for payment of the expenses of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the [Minister of Health] may by order empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the order) as may, in the opinion of the [Minister of Health], be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the nonpayment of such debt.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any, (the amount to be ascertained by the [Minister of Health],) to or to the order of the defaulting authority.³²

Sect. 301. The [Minister of Health] may from time to time certify the amount of expenses that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said [Minister] under this Act to perform the duty of a defaulting local authority; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or

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Mandamus.

Attachment.

Appointing
person to do
work.

Further pro-
vision for
recovery of
expenses.
San. 1868, s. 8.

Power of
[Minister] to
borrow to
defray expenses
of performing
duty of default-
ing authority.
San. 1869, ss. 4, 5.

(27) *Ex parte Parsons* (1858), 22 J. P. 68.
(28) *Rex (Fitzgerald) v. McDonald*, 1913 Ir. K. B. 55; 46 Ir. L. T. 224, 277; 3 Glen's Loc. Gov. Case Law 33. See also, on agenda point, *Longfield P.C. v. Wright*, post, Vol. II., p. 2021.
(29) *Rex v. Worcester Cpn.* (1903), ante, p. 708 (19).
(30) *Rex v. Worcester Cpn.* (1905), 69 J. P. 296; 3 L. G. R. 468. See also the *Poplar*

Case, ante, p. 577 (77).
(31) But see *Cockerell's Case*, ante, p. 744 (22).
(32) The term "expenses" includes all sums payable, under this Part of the Act, by or by order of the Minister of Health or the person appointed by him: see s. 302. As to rates applicable to payment of expenses of U.D.Cs., see s. 207; of R.D.Cs. ss. 229 and 230.

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are estimated as about to be incurred; and the certificate of the said [Minister] shall be conclusive as to all matters to which it relates.

Whenever the [Minister of Health] so certifies a loan to be required, the Public Works Loan Commissioners may advance to the [Minister of Health], or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security; and the [Minister of Health], or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.³³

Recovery of
principal and
interest.

San. 1969, ss. 6, 7.

Sect. 302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the [Minister of Health], be paid to or to the order of the defaulting authority.

San. 1869, s. 10.

“Expenses,” for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the [Minister of Health], or the person appointed by that [Minister].

POWERS OF [MINISTER] IN RELATION TO LOCAL ACTS, ETC.

Power to repeal
and alter local
Acts.

L.G., s. 77.

P.H. 1872, s. 33.

P.H. 1874, s. 18.

P.H. 1874, s. 16.

Sect. 303. The [Minister of Health] may, on the application of the local authority of any district, by provisional order, wholly or partially repeal alter or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject-matters as this Act.

Any such provisional order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district.

Note.

Provisional
orders.

Alteration
of local acts.

With regard to the mode of obtaining provisional orders of the Minister of Health, see sects. 297 and 298.

The power of the Minister to repeal or alter local Acts by provisional order under the present section extends to cases in which the local Act is in force in more than one district, and the application for its repeal or amendment is only made by the local authority of one of the districts interested. The section also enables the Minister, when amending a local Act by provisional order in such a way as to extend or diminish the area of its operation, to determine what local authority shall have jurisdiction in the area thus included or excluded. See also sect. 270, and Note, with regard to the alteration of sanitary districts.

It was not the practice of the Local Government Board to amend a local Act by provisional order in such a manner as to confer powers for the compulsory purchase of land for the purposes of such Act, or to extend the time fixed by the Act for the exercise of powers of compulsory purchase.

Local and personal Acts may also be amended by any scheme or order made by the Minister or a county council, and laid before or confirmed by Parliament, under the Local Government Act, 1888.¹ See also sect. 3, sub-sect. (1) of the Public Health Acts Amendment Act, 1907.²

(33) As to loans, see ss. 233 *et seq.*, and Notes.

(1) See s. 59 (6), *post*, Vol. II., p. 1935.
(2) *Post*, Part I., Div. III.

An enactment in one of the Church Building Acts, providing that, wherever the commissioners should purchase for the cemetery of a new parish a piece of ground outside the bounds of the parish, the ground so purchased should thenceforth be deemed to be part of the parish, was held to be a "local and personal" enactment, which the county council could amend under the Local Government Act, 1888,¹ by retransferring the cemetery to the parish to which it originally belonged, whether, having regard to the scope of the Church Building Acts, those Acts were general or local and personal.³

An Inclosure Act could not be repealed by provisional order under the present section. And Lindley, J., said that the present section was not intended to authorise amendments to local Acts which conferred "powers or privileges on any persons or person for their or his pecuniary benefit."⁴

But if a local Act partly relates to "the same subject-matters as this Act," it seems that the Minister will alter by provisional order parts of the Act which do not directly relate to such matters; thus, the Worthing provisional order contains provisions as to defences from the encroachments of the sea.⁵

The effect of the saving clause in the present Act (sect. 334) on an amendment of a local Act under the present section was discussed in the case cited below.⁶

With regard to the relation between the present and other general Acts and local Acts, see also sects. 340 and 341, and the Note to the latter of those sections.

Under the Explosives Act, 1875,⁷ a provisional order may be made by the Secretary of State on the application of any urban authority for repealing, altering, or amending any Act of Parliament, charter, or custom respecting the manufacture, keeping, conveyance, importation, exportation, or sale of an explosive as defined by that Act, or the powers of such authority for regulating the same, or otherwise in relation to an explosive.

By sect. 1, sub-sect. (1) of the Special Acts (Extension of Time) Act, 1915,⁸ "Where the time within which a duty is to be performed or a power may be exercised under any special Act is limited, an application may be made to an appropriate Government Department for an order under this Act extending that time; but only in cases where the time is due to expire within twelve months of the date of the application." By sect. 2, sub-sect. (1),⁹ "In this Act the expression 'special Act' means a local or private Act, and includes any public Act of a local or private nature, and any certificate or order having the force of an Act or confirmed by Act." By sect. 2, sub-sect. (3),¹⁰ "This Act shall have effect only where the application under the Act is made during the continuance of the present war or a period of six months thereafter." By sect. 16 of the Ministry of Transport Act, 1919,¹¹ "The period of three years and six months from the passing of this Act" (which was the 15th August, 1919) "shall be substituted for the period specified in" the last-quoted sub-section "with respect to all undertakings of which possession is retained or taken under this Act." And sect. 1 and Sched. I. of the War Emergency Laws (Continuance) Act, 1920,¹² substituted "twelve" for "six" months in sect. 2, sub-sect. (3) of the Act of 1915. The Act is not mentioned in the Expiring Laws Act, 1922, or in the Expiring Laws Continuance Act, 1923, so that it has now expired; and accordingly sub-sects. (2) to (5) of sect. 1, as to applications and orders, are omitted. See, however, sect. 3 of the Act of 1920,¹³ as to the effect of the expiration of emergency legislation.

The expression "Public Bill" in the Parliament Act, 1911,¹⁴ which renders unnecessary, in certain cases, the sending up of Bills to the House of Lords, "does not include any Bill for confirming a Provisional Order."

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Alteration of
local acts—
continued.

Explosives.

Extension of
time.Parliament
Act, 1911.

Sect. 304. On the application of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act, or any provisional order made thereunder, or on the application of any person affected by such transfer, the [Minister of Health] may by order settle

Settlement of
differences
arising out of
transfer of
powers or
property to
local authority.
P.H. 1872, s. 39.
P.H. 1874, s. 17.(1) See s. 59 (6), *post*, Vol. II., p. 1935.(3) *Reg. v. London C.C.*, L. R. 1893, 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580.(4) See *Monmouth Cpn. v. Monmouth Overseers*, *ante*, p. 563 (14). For quotation, see 38 L. T. at p. 618, col. ii. See also the *Tyne-mouth Case*, *ante*, p. 589 (10).

(5) 39 & 40 Vict. c. cci.

(6) *Bessemer & Co. v. Gould*, *post*,

p. 798 (10).

(7) 38 Vict. c. 17, s. 103.

(8) 5 & 6 Geo. V. c. 72, s. 1 (1).

(9) *Ibid.*, s. 2 (1).(10) *Ibid.*, s. 2 (3).

(11) 9 & 10 Geo. V. c. 50, s. 16.

(12) 10 Geo. V. c. 5, s. 1, Sched. I.

(13) *Ibid.*, s. 3.

(14) 1 & 2 Geo. V. c. 13, s. 5.

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any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be provisional only until it has been confirmed by Parliament.

Any settlement or adjustment under this section may be included in any provisional order which gives rise to the same.

Note.**Public Health Act, 1907.**

Sect. 95 of the Public Health Acts Amendment Act, 1907,¹⁵ where it is in force, applies the present section to the settlement of disputes, to which one of the parties is a local authority, arising under agreements in relation to the purchase of land.

Transfer of powers.

With regard to the transfer of powers, etc., referred to in the present section, see sects. 275 and 310.

Powers, property, liabilities, etc., are transferred to local authorities under this Act by sects. 10-12, 322, and Sched. V., Part III. Power to adjust accounts and liabilities is also given by sects. 275 and 323.

Orders of Minister of Health.

Orders under the present section are binding and conclusive in respect of the matters to which they refer: see sect. 295.

With regard to the manner in which provisional orders are issued, see sect. 297, and the Note thereto.

Adjustments under Local Government Acts.

Any scheme or order of the Minister of Health or a county council under the Local Government Act, 1888, or Part III. of the Local Government Act, 1894, may make any requisite administrative and judicial arrangements¹⁶ and adjustments of property and liabilities may also be made by the councils or authorities affected by either of the Acts, or by such schemes or orders, by agreement or by arbitration.¹⁷

(15) *Post*, Part I., Div. III.

(16) See L. G. Act, 1888, s. 59; and L. G. Act, 1894, ss. 36 (10), 69, *post*, Vol. II.,

pp. 1934, 2061, 2101.

(17) L. G. Act, 1888, s. 62; L. G. Act, 1894, s. 68, *post*, Vol. II., pp. 1938, 2100.

PART X.

Sect. 305.

MISCELLANEOUS AND TEMPORARY PROVISIONS.

MISCELLANEOUS.

Sect. 305. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises for the purpose of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them.

Entry on lands
for purposes
of Act.
P.H., s. 143.
S.U. 1865, s. 5.

If no sufficient cause is shown against the application the court may make an order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

Note.

On an application for an order under the present section authorising the local authority to enter premises and execute works under sect. 36, the justices have jurisdiction to consider the sufficiency of the notice given to the owner or occupier under that section.¹

Jurisdiction
of justices.

The refusal of the court to make an order under the present section, being within their discretion, cannot be made the subject of a special case.²

The owner of a meadow received notice from a rural sanitary authority that they intended to enter and make a sewer under his meadow, and this being objected to the authority entered forcibly. An action for trespass and for an injunction being brought by the owner of the meadow on the ground that the sewer would create a nuisance, it was ruled by Cockburn, C.J., at *nisi prius*, that the necessity for an order of justices under sect. 305 did not apply when proceedings were taken under sect. 16.³

Entry on
lands.

The words "if no sufficient cause is shown against the application," at the commencement of the second paragraph of the present section, do not entitle the owner of premises, when an application is made under the section for an order for entry on his premises to make a sufficient water-closet thereon in pursuance of sect. 36, to give evidence as to the condition of the premises and the sufficiency of the existing accommodation, those matters being for the local authority to decide, subject only to appeal to the Minister of Health under sect. 268.⁴

See also sect. 41, as to entry on premises for examining drains, etc.; sect. 58, for testing or removing water meters; sect. 85, for inspecting a common lodging-house; sects. 98 and 102, for abating nuisances; sect. 119, for seizing unsound meat, etc.; sect. 137, for prevention of epidemic diseases; and sect. 306, for the execution of works by the owner of the premises; and sects. 105 and 106, as to the powers of police officers to enter premises in certain cases.

The following Acts also contain powers of entry for the purposes thereof:—Sect. 84 of the Lands Clauses Act, 1845,⁵ sect. 13 of the Petroleum Act, 1871,⁶ sect. 5 of the Canal Boats Act, 1877,⁷ sect. 7 of the Public Health (Water) Act,

(1) *Sutcliffe v. Sowerby Bridge U.D.C.* (1909, K. B. D.), 100 L. T. 967; 73 J. P. 385; 7 L. G. R. 822. See also the *Wimbledon Case*, ante, p. 202 (1), and *Ryall's Case*, infra (4).

80 L. T. 262; 63 J. P. 341. But see *Ryall v. Hart*, cited in Note to H. T. P. Act, 1919, s. 28, post, Part II., Div. III., where the existence of an appeal to the M. of H. was held not to oust the jurisdiction of the justices to consider the reasonableness of a notice under that section.

(2) *Diss U.S.A. v. Aldrich*, ante, p. 703 (45).
(3) *Lamacraft v. St. Thomas R.S.A.* (1880), 42 L. T. 365; 44 J. P. 441. See also *Wheatcroft v. Matlock Loc. Bd.* (1885), 52 L. T. 356.

(5) *Post*, Vol. II., p. 1584.

(4) *Robinson v. Sunderland Cpn.* (No. 2), L. R. 1899, 1 Q. B. 751; 68 L. J. Q. B. 330;

(6) *Post*, Vol. II., p. 1693.

(7) *Post*, Vol. II., p. 1765.

Sect. 305, n. 1878,⁸ sect. 9, sub-sect. (3) of the Housing Act of 1885,⁹ sect. 17 of the Infectious Disease (Prevention) Act, 1890,¹⁰ sect. 17, sub-sect. (2), and sect. 36, sub-sect. (3) of the Public Health Acts Amendment Act, 1890,¹¹ sect. 102 of the Factory and Workshop Act, 1901,¹² sect. 36 of the Housing Act of 1909,¹³ and sect. 1 of the Unemployment (Relief Works) Act, 1920.¹⁴

As to obstruction of the right to enter, see sect. 306; and as to the authentication and service of notices, see sects. 266 and 267.

Penalty on obstructing execution of Act.

P.H., s. 148.

N.R. 1855, ss. 36, 37.

Sect. 306. Any person who wilfully obstructs any member of the local authority, or any person duly employed in the execution of this Act, or who destroys pulls down injures or defaces any board on which any byelaw notice or other matter is inscribed, shall, if the same was put up by authority of the [Minister of Health] or of the local authority, be liable for every such offence to a penalty not exceeding five pounds.

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding five pounds.

Note.

Obstruction of local authority.

A person who had stood in his doorway and refused to admit the scavengers of the local authority when they came to remove his house refuse, in pursuance of the duty of the local authority under a bye-law made by the London County Council, was held to have been guilty of obstructing them in the execution of the Public Health (London) Act, 1891, although he had used no force, and although the county council had made no bye-laws as to the duties of the occupiers of houses in relation to the removal of such refuse.¹⁵ But interference by the occupier of certain private premises with members and officers of a local authority who had made their way into the premises to examine as to the existence of a nuisance without asking for or obtaining permission from the occupier, and his refusal to admit other members to the premises, was held not to constitute the offence of obstructing the execution of the Act, so as to render the occupier liable to penalties under the present section.¹⁶ There must be a *mens rea*.¹⁷

Obstruction of owner.

The Divisional Court held that an enactment similar to the second clause of the present section and contained in the Public Health (London) Act, 1891,¹⁸ would not have enabled the owner of premises to obtain an order requiring the occupier to permit him to comply with the provisions of a bye-law made under that Act; and on that ground a bye-law imposing an obligation on the landlord of a house let in lodgings or occupied by members of more than one family to cause the house to be cleansed periodically was held to be bad and unenforceable, for the landlord might not be able to comply with the bye-law without trespassing.¹⁹

Obstruction of police.

Warning motor-car drivers of a police trap was held to amount to obstructing the police within sect. 2 of the Prevention of Crimes Act, 1885.²⁰

(8) *Post*, Vol. II., p. 1270.

(9) *Ante*, p. 174.

(10) *Post*, Part II., Div. I.

(11) *Post*, Part I., Div. II.

(12) *Post*, Vol. II., p. 2151.

(13) *Post*, Part II., Div. III.

(14) *Post*, Vol. II., p. 2350.

(15) *Borrow v. Howland* (1896), 74 L. T. 787; 60 J. P. 391. See also the *Canterbury Case*, *ante*, p. 396 (2). But see *Gunn's Case*, *ante*, p. 166 (7); *Swallow's Case*, *ante*, p. 235 (20); *Baker's Case*, *post*, Vol. II., p. 1678 (1); *French's Case*, cited in Note to S. F. D. Act, 1875, s. 17, *post*, Part II., Div. II.; *Arlidge's Case*, *infra* (19); and police court cases cited

in 3 Glen's Loc. Gov. Case Law 53 n.

(16) *Consett U.D.C. v. Crawford*, L. R. 1903, 2 K. B. 183; 72 L. J. K. B. 571; 88 L. T. 836; 67 J. P. 309; 1 L. G. R. 558.

(17) See *Taylor v. Nixon*, 1910 Ir. K. B. 94, and other cases cited in Note to S. F. D. Act, 1899, s. 16, *post*, Part II., Div. II.

(18) 54 & 55 Vict. c. 76, s. 116.

(19) *Arlidge v. Islington B.C.*, L. R. 1909, 2 K. B. 127; 78 L. J. K. B. 553; 100 L. T. 903; 73 J. P. 301; 7 L. G. R. 649. See also *Reg. v. Davey*, *ante*, p. 244 (16).

(20) 48 & 49 Vict. c. 75, s. 2; *Betts v. Stevens*, L. R. 1910, 1 K. B. 1; 79 L. J. K. B. 17; 101 L. T. 564; 73 J. P. 486; 7 L. G. R.

A person charged under the Public Health Act, 1848,²¹ with obstructing the works of a local board of health was not necessarily entitled to have the case dismissed by the justices because the obstruction took place in the assertion of a private right; nor were the justices warranted in refusing as frivolous an application to state a special case.²²

Sect. 306, n.

Claim of right.

The present section imposes a penalty for destroying or defacing the board on which the notice, etc., is inscribed; but where Part III. of the Public Health Acts Amendment Act, 1890,²³ has been adopted, the section is extended to destroying, pulling down, injuring, or defacing any advertisement, placard, bill, or notice put up by, or under the direction of, a local authority. Copies of bye-laws are to be hung up in the office of the district council under sect. 185.

Penalties.

Penalties for obstructing the execution of the Act are also imposed by sects. 85, 103, 118, 119, 124, 130, and 140; and for wilfully damaging works or property, by sects. 60 and 307. As to the recovery of penalties, see sect. 251.

As to the larceny of, and malicious damage to, things fixed in public places, see the Note to sect. 164.²⁴

On a prosecution under sect. 52 of the Malicious Damage Act, 1861,²⁵ for wilfully and maliciously damaging certain notice boards, which belonged to a rural district council and had been affixed by permission to lamp posts set up by a parish council on a highway repairable by the inhabitants at large, the defendants claimed that they had "acted under a fair and reasonable supposition that they had a right to do the act complained of" within the meaning of the proviso to that section. On each of the boards was a notice requesting persons to refrain from playing golf on or across the highway which led over a common. The defendants were members of, and acted under the instructions of, an incorporated golf club that had obtained rights to form and use golf courses on the common from the conservators of the common and from the lord of the manor, but had subsequently conveyed such rights to the conservators in trust for the purposes of a statutory scheme for the regulation of the common, and had received a licence from them to play golf on the courses. After notice to the district council, they removed the notice boards. It was held that the claim of right failed, because there could be no right in law to trespass on the property of the parish council; and assuming the notices to amount to a slander of the title of the golf club or its members, the defendants could have no right to treat them as if they constituted physical obstruction, or a pestilent nuisance on premises, which must for the sake of the public health be abated without delay.²⁶

In an action for damages by the Mersey Docks and Harbour Board for the disablement for some weeks of a steam sandpump dredger by the negligence of the persons in charge of a vessel, the House of Lords reversed the Court of Appeal, who had held that the board, being a corporation which did not exist for the purpose of making profits, could not recover damages in the absence of some tangible proof of actual loss.²⁷

Damages.

Sect. 307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act, be liable to a penalty not exceeding five pounds.²⁸

Penalty on damaging works, etc. of local authority.

Sect. 308. Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

L.G., s. 66. San. 1866, s. 45. Compensation in case of damage by local authority. P.H., s. 144. S.U. 1865 s. 8.

1052; distinguishing a decision to the contrary in *Bastable v. Little*, L. R. 1907, 1 K. B. 59; 76 L. J. K. B. 77; 96 L. T. 115; 71 J. P. 52; 5 L. G. R. 279. As to "picketing," see *Despard v. Wilcox* (1910, K. B. D.), 102 L. T. 103; 74 J. P. 115; 26 T. L. R. 226.

(21) 11 & 12 Vict. c. 63, s. 148.

(22) *Reg. v. Pollard* (1866), 14 L. T. 599.

(23) See s. 48, *post*, Part I., Div. II.

(24) *Ante*, p. 428.

(25) 24 & 25 Vict. c. 97, s. 52.

(26) *Croydon R.D.C. v. Cowley* (1909, K. B. D.), 100 L. T. 441; 73 J. P. 205; 7 L. G. R. 603.

(27) *The Greta Holme*, L. R. 1897 A. C. 596; 66 L. J. P. 166; 77 L. T. 231. Applied in *Mersey Docks and Harbour Bd. v. Owners of the Marpessa*, L. R. 1907 A. C. 241; 76 L. J. P. 128; 97 L. T. 1.

(28) See Note to sect. 306, *supra*, opposite marginal note "Penalties."

Sect. 308, n.

Note.

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Person Entitled to Compensation.

Owner when works completed.

The person, who is to receive the compensation, is the person who has sustained the damage; the purchaser of land through which a local board had carried a sewer was not entitled to compensation, the work having been completed before the land was conveyed to him, and when he had no interest in it.¹

Thus, in a case arising under the Lands Clauses Act, the claimant's predecessor in title had taken a building lease of land adjoining other land which belonged to the same owner, and in respect of which a railway company had given notice to treat. After the date of the lease the owner agreed to sell the land comprised in the notice to treat for a certain sum to include all damages sustained by him by severance or otherwise injuriously affecting his other property. On the company's works injuriously affecting the claimant's premises she claimed compensation, and having proceeded to arbitration obtained an award. In an action on the award it was laid down by the Court of Appeal, and affirmed by the House of Lords, that "it must be regarded as a settled rule of law as between landowner and railway company that there can be but one proceeding for compensation, and that, after notice to treat, no onerous interest, either in the land taken or in that injuriously affected, can be created by the owner to the prejudice of the railway company."²

Assignee.

In an action upon a verdict and judgment for compensation under sect. 41 of the Regulation of Railways Act, 1868, by the assignee of premises injured by the works of a railway company, to whom the assignor of the premises had purported to assign all sums which he might be entitled to recover from the company by way of compensation in respect of the premises, it was held by the Court of Appeal that compensation for injurious affecting of the premises was not in the nature of damages for a tort, but that the claim was a legal chose in action, which could be assigned under sect. 25 of the Judicature Act, 1873, and the action therefore could be maintained.³

Person interested.

As to the meaning, with reference to a claim for compensation, under sect. 9, sub-sect. (9) of the Corn Production Act, 1917,⁴ of the expression "person interested," see the case cited below.⁵

Landowner with restricted rights.

The freeholder of land containing brick earth was held to be entitled to compensation upon a sewer being laid through the land by the local authority, although he was not at liberty to disturb the surface of the ground without the consent of the grantees of the surface lands, whose rights the authority had bought up, the brick earth being a "mineral."⁶

A sewer having been laid under a road made in 1800 by a road company under a special Act, the company claimed compensation as owners of the subsoil, as well as the surface, though they did not prove any conveyance of the land to them. As the land had belonged to a limited owner, who could only have sold it under the special Act as a whole, that is, including the subsoil, a lost grant of the land was presumed, and the company's claim was upheld.⁷

Claimant himself in default.

A person who sold meat which was in fact unsound was held by the Court of Appeal to have been "himself in default," so as to be unable to recover compensation in respect of proceedings unsuccessfully taken against him under sect. 117.⁸ But when a local authority executed sanitary work on an owner's default, and also certain other work not specified in the notice which they had served upon him, and he claimed compensation for injury sustained in consequence of that other work, it was held that he was not "himself in default."⁹

(1) *Helmors v. East Ham Loc. Bd.* (1893, Kennedy, J.), *Times*, Dec. 13, p. 13, col. vi.

(2) *Mercer v. Liverpool St. Helens and South Lancashire Ry. Co.*, L. R. 1904 A. C. 461; 73 L. J. K. B. 960; 91 L. T. 605; 68 J. P. 533. But see the *Cardiff Case*, ante, p. 480 (8).

(3) *Dawson v. Great Northern and City Ry. Co.*, L. R. 1905, 1 K. B. 260; 74 L. J. K. B. 190; 92 L. T. 137; 69 J. P. 29.

(4) 7 & 8 Geo. V. c. 46, s. 9 (9).

(5) *Re Todd and Yorkshire (N.R.) Agricultural Executive Committee* (C. A.), L. R.

1921, 1 K. B. 281; 90 L. J. K. B. 228; 124 L. T. 407; 85 J. P. 89; 18 L. G. R. 790.

(6) *Earl of Jersey v. Neath R.S.A.* (1889, C. A.), L. R. 22 Q. B. D. 555; 58 L. J. Q. B. 573; 53 J. P. 404.

(7) *Northam Bridge Proprietors v. South Stoneham R.D.C.* (1907, C. A.), 71 J. P. 345; 23 T. L. R. 476.

(8) *Hobbs v. Winchester Cpn.*, ante, p. 233 (4).

(9) *Place v. Rawtenstall Cpn.*, ante, p. 111 (24).

Exercise of Powers of the Act.

It is to be observed that the present section confines the damage in respect of which compensation can be recovered under it to damage “by reason of the exercise of any of the powers of this Act,” and an action based on the present section in respect of the exercise of powers conferred by another Act was accordingly dismissed.¹⁰

It is not a condition precedent to the right to enter upon lands to execute works that the damage, which will be sustained, shall first be measured and ascertained. With reference to a somewhat similar provision in the Highway Act, 1835,¹¹ it was held that the words in that Act do not make payment for the damage a condition precedent, for the duty to pay does not arise until after the justices have at their special sessions settled the amount.¹² So, again, where the Thames Embankment Act, 1862, authorised the Metropolitan Board of Works to execute certain works in connection with the embankment, “making compensation to all persons having any interest in any wharves, jetties, quays, or other property taken for, or injuriously affected by such works, or other the exercise of the powers of the Act,” it was held that the payment, ascertaining, or depositing the amount of compensation in such case was not a condition precedent to the commencement of the works which occasioned the damage.¹³

The district council need not obtain compulsory powers for the purchase of the property, which will be injured by their works, before they execute such works, where the injury to it will be the subject of compensation.¹⁴

As to the assessment of compensation where land is purchased compulsorily under the present Act, see the Acquisition of Land (Assessment of Compensation) Act, 1919.¹⁵ “Land” in that Act “includes water and any interests in land or water and any easement or right in, to, or over land or water.”¹⁶

The question whether work was done “in the exercise of powers of this Act” came before the court in the following cases. In a case in which the owners of houses claimed compensation for injury sustained by the raising of the level of the adjacent highway,¹⁷ it was held that, as the highway was vested in the board, no action for trespass could have been maintained by the plaintiffs, even if more materials had been placed on the road than a surveyor of highways could justify; that the plaintiffs had no right to have the road maintained at the level to which it accidentally and recently sank; and that the works of the defendants were not done “in exercise of any of the powers of the Act” within the meaning of the present section—which means powers created by the Act, and not simply powers transferred by sect. 144 from the surveyor to the local board—but were done, if not strictly in pursuance of their duty as surveyors of highways, at all events in exercise of such powers as surveyors of highways have, and, consequently, that the plaintiffs were not entitled to compensation.

So also an attempt to obtain compensation under the present section for loss of school fees in consequence of the local authority having ordered a school to be closed on an outbreak of measles taking place was unsuccessful, because the order was in fact made under the Education Acts.¹⁸

Even if a part only of the injury has been caused under the powers of a statute, the persons injured cannot have their remedy for that part—at any rate, by action at law.¹⁹

The existence of a provision for compensation in an Act of Parliament may have some effect in determining whether something, which has been done, was done in the exercise of the powers of the Act.²⁰

Thus, in an old case an action was held to lie against paving commissioners in the metropolis for altering the level of the footpath of a street so as to injure

Sect. 308, n.
Application of enactment.

Exercise of powers before payment of compensation.

Compulsory purchase.

Work executed under other Acts.

Effect of compensation clause.

(10) *Roberts v. Falmouth U.S.A.*, *infra*.
(11) 5 & 6 Will. IV. c. 50. s. 67.
(12) *Peters v. Clarkson* (1844), 7 Man. & G. 548; 13 L. J. M. C. 153; 8 Jur. 648.
(13) *Macey v. Metropolitan Bd. of Works* (1864), 33 L. J. Ch. 377; 10 L. T. 66; 10 Jur. (N.S.) 333. See also *Bentley v. Manchester, etc., Ry. Co.*, L. R. 1891, 3 Ch. 222; 60 L. J. Ch. 641; 65 L. T. 22; and *A.G. v. Parish*, *ante*, p. 365 (20).
(14) *Roderick v. Aston Loc. Bd.*, *ante*, p. 62 (5). See also *Swanston v. Twickenham Loc. Bd.*, *ante*, p. 39 (12), applied in *Metrop. Water Bd. v. London Brighton & S. C. Ry. Co.*, L. R. 1914, 3 K. B. 787; 83 L. J. K. B. 1491; 111 L. T. 627; 79 J. P. 10; 12 L. G. R. 1240.
(15) *Post*, Vol. II., p. 2334.
(16) See s. 12 (2), *ibid.*, p. 2338.
(17) *Burgess v. Northwich Loc. Bd.* *ante*, p. 303 (7). See also *Graham v. Newcastle-upon-Tyne Cpn.*, *ante*, p. 275 (75).
(18) *Roberts v. Falmouth U.S.A.* (1888, Q. B. D.), 52 J. P. 741.
(19) *Per Littledale, J.*, in *Reg. v. North Midland Ry. Co.* (1840), 2 Ry. Cas. at p. 6.
(20) See *Price's Patent Candle Co. v. London C.C.*, *ante*, p. 70 (17).

Sect. 308, n.
Effect of
compensation
clause—*cont.*

the plaintiff's house, they having no express power for the purpose, and there being no provision for the payment of compensation.²¹

The absence of a compensation clause was one of the grounds on which the House of Lords held that the Metropolitan Poor Act, 1867, did not authorise the managers of the metropolitan asylum district to establish a small-pox hospital at a spot where it would cause a nuisance to the neighbours.²²

The intention of authorising persons to take private property without compensation cannot be attributed to the Legislature, unless it be expressed in unequivocal terms.²³

With reference to the right of support for a canal, the Court of Appeal held that, where an express statutory right is given to make and maintain something requiring support, the statute, in the absence of a controlling context, must be taken to mean that the right of support shall accompany the right to make and maintain; that if the Act does not provide any means of obtaining compensation for the loss occasioned to the landowner by his having to leave support, this is a strong argument against the Legislature having intended to give such right; but that, if it contains provisions under which compensation can be obtained, it needs a strong context to show that the right to support is not given.²⁴

Sect. 16 of the present Act originally imposed on landowners through whose land a sewer was made an obligation to preserve to such sewer subjacent support, and gave a right to immediate compensation under the present section for the loss of free power to work subjacent mines.²⁵ This right to support for their sewers is, however, no longer to be acquired by sanitary authorities unless they give notice to the landowners that they will require such support to be left, in which case alone compensation for the right will be payable by them.²⁶

If the statute contains no machinery providing compensation to persons who may sustain damage in consequence of the exercise of the powers of such statute, those persons have no claim for compensation which they can enforce by action or otherwise so long as the local authority causing the damage act without negligence and within the limits of their statutory powers.²⁷ As, for instance, where the Commissioners of Sewers for the City of London, and in another case where a metropolitan vestry, injured premises by raising the level of a street.²⁸

The Public Health Act, 1848,²⁹ like sect. 150 of the present Act, expressly authorised local boards to cause the soil of a street to be raised or lowered as they might think fit; and not only was it held that if in so raising or lowering a street the board caused private injury the person injured had no right of action, but it was said that he could not claim compensation for the injury; for though a private inconvenience might be sustained, it must yield to the public good, and the court had no right to grant compensation for a private injury when it was not provided for by the Act.³⁰ In this case, however, the provision³¹ that full compensation should be made out of the general district rates to all persons sustaining any damage by reason of the exercise of any of the powers of the Act appears to have been overlooked; and it was subsequently held that, although the owner of a house might be bound to pay his proportion of the cost of altering the level of a street, he might still be entitled to compensation out of the general district rate for the special damage which he had sustained in order that his neighbours and the district generally might be benefited.³² Compensation for damage caused by alteration of the level of a street was also allowed under the Public Health Act, 1848, in a case in which the level of the footpath of a turnpike road had been

(21) *Leader v. Moxon* (1773), 2 W. Bl. 924; 3 Wils. 461; approved in *Reg. v. Chelsea Vestry*, *post*, p. 755 (34).

(22) *Metropolitan Asylum District Managers v. Hill*, *ante*, p. 254 (20).

(23) See *Public Works Comr. (Cape Colony) v. Logan*, L. R. 1903 A. C. 355; 72 L. J. P. C. 91; s.c. *nom. Smart v. Logan*, 88 L. T. 779. But see the *Musselburgh Case*, *post*, p. 787 (30).

(24) *London and North Western Ry. Co. v. Evans*, L. R. 1893, 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630; approved by the House of Lords in *Clippens Oil Co. v. Edinburgh and District Water Trustees*, L. R. 1904 A. C. 64; 73 L. J. P. C. 32; 89 L. T. 589.

(25) *In re Dudley Cpn. and Earl Dudley's Trustees*, *post*, p. 798 (3).

(26) See Act of 1883 quoted *ante*, p. 63.

(27) See *Dixon v. Metropolitan Bd. of Works* (1881), L. R. 7 Q. B. D. 418; 50 L. J. Q. B. 772; 45 L. T. 312; 46 J. P. 4. Distinguished in *Price's Candle Co. Case*, *ante*, p. 72 (11). See also *London Brighton and S. C. Ry. Co. v. Truman*, *ante*, p. 182 (33); *East Freemantle Cpn. v. Annois*, L. R. 1902 A. C. 213; 71 L. J. P. C. 39; 85 L. T. 732; 67 J. P. 103.

(28) *Ferrar v. London Comrs. of Sewers* (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102; 21 L. T. 295; *Baker v. St. Marylebone Vestry* (1876), 35 L. T. 129; 24 W. R. 848.

(29) 11 & 12 Vict. c. 63, s. 68.

(30) *Bold v. Williams* (1857), 21 J. P. 84, n.

(31) 11 & 12 Vict. c. 63, s. 144.

(32) *Reg. v. Wallasey Loc. Bd.* (1869), L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 21 L. T. 90; 33 J. P. 677; 10 B. & S. 428.

altered by a local board under an agreement with the turnpike trustees,³³ and in another case³⁴ to which the Lands Clauses Consolidation Act, 1845, was applicable.³⁴

In the *Todmorden Case* cited below ³⁵ it was held that the possibility of stench arising from the sewer was to be considered in awarding compensation; but in the *Dudley Case*,³⁶ the landowner was held not to be entitled to compensation for any risk incurred of percolation of sewage into the subjacent mines, which could only be caused by wrongful workings of their own, having regard to the then applicable right of support; but see now the Act of 1883.³⁷

One section of a special Act enacted that the mud and earth taken out of rivers cleansed by the middle level commissioners should, where the rivers were embanked, be laid in such place as the commissioners thought proper, and where the rivers were not embanked be laid impartially on the banks as they might direct; and another section authorised the commissioners to enter any lands adjoining the rivers, and take earth therefrom and do such other acts as might be necessary to carry out the purposes of the Act, making satisfaction to the parties injured thereby. It was held that, in the case of a river not embanked, the commissioners had no compulsory power to deposit the mud under the former section, but had such power on payment of compensation under the latter section.³⁸

Again, the compensation is only to be paid for damage which is caused by acts authorised by the statute. Thus, a local board, in the construction of a sewer, diverted and diminished the supply of water to a mill belonging to the riparian proprietor of the river on which it was situated. On a *mandamus* to make compensation for injuries done in the exercise of the powers of the board, it was held that the acts complained of constituted an injuriously affecting of the river which the prosecutor would have been entitled by law to prevent, or to be relieved against, and were therefore not authorised; that the injuries might still have been the ground of an action at law; and that, therefore, the injury did not form the subject of compensation.³⁹ If the statute giving the power contains conditions precedent which are not complied with, an action lies.⁴⁰

The conservators of the river Lee, being “ authorised and empowered from time to time at their discretion ” to remove obstructions to the navigation, were held not liable to an action by the owner of a barge, which had been injured by coming into contact with an obstruction, though the jury found that the obstruction was dangerous, and that the commissioners ought to have been aware that it was likely to become dangerous, and neglected their duty.⁴¹

A statute gave power to make and keep open ditches, drains, and watercourses in land adjoining any street or road in a certain district, and provided that the local authority should make compensation to the owners and occupiers of any lands for any damage which they might sustain through the exercise of any of the powers so conferred. A drain having been made by the local authority, an owner or occupier injuriously affected was held entitled to compensation, to be assessed once for all, both for present damage and prospectively for future damage, and without regard (so far as procedure was concerned) to the question whether the powers had been exercised properly or negligently.⁴²

Where a public body seek to escape from a claim for compensation on the ground that the proper remedy is an action for negligence, the burden of proving negligence lies on them.⁴³

Nature of the Damage.

A person who sustains injury from the execution of works authorised by a statute is not, generally speaking, entitled to compensation under the compensation clauses of the statute unless the injury sustained is such as, had the works not been authorised by the statute, would have given such person a right of action. Therefore, where a company in the execution of works authorised by a local Act

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Unauthorised acts.

Burden of proof.

Actionable damage.

(33) *Nutter v. Accrington Loc. Bd.*, ante, p. 303 (6).

(34) *Reg. v. Chelsea Vestry* (1871), L. R. 7 Q. B. 148; 40 L. J. Q. B. 81; 25 L. T. 914; and see *Wedmore v. Bristol*, ante, p. 362 (36).

(35) *Uttley v. Todmorden Loc. Bd. of Health*, post, p. 757 (13).

(36) *In re Dudley Cpn.*, ante, p. 754 (25), and post, p. 798 (3).

(37) *Ante*, p. 63.

(38) *Re Moulton and Middle Level Comrs.* (1907, Bray, J.), 97 L. T. 391; 71 J. P. 402; 5 L. G. R. 961.

(39) *Reg. v. Darlington Loc. Bd.* (1865), 6 B. & S. 562; 35 L. J. Ex. 45; 29 J. P. 419.

(40) *Dominion Iron Co. v. Burt*, L. R. 1917 A. C. 179; 86 L. J. P. C. 97; 116 L. T. 261. See also *Shugar's Case*, post, p. 788 (37).

(41) *Forbes v. Lee Conservancy Bd.* (1879). L. R. 4 Ex. D. 116; 48 L. J. Ex. 402; 27 W. R. 688.

(42) *Colac President, etc. v. Summerfield*, L. R. 1893 A. C. 187; 62 L. J. P. C. 64; 68 L. T. 769.

(43) See *St. James and Pall Mall Electric Light Co. v. Regem*, post, p. 760 (47).

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Actionable
damage—
continued.

which incorporated the Waterworks Clauses Act, 1847, intercepted water from percolating underground into a well, and also abstracted, from the well, water which had already so percolated into it, it was held that, inasmuch as, apart from the statute, no action would have lain against the persons who executed the works in respect of either the interception or the abstraction of such water (see the Note to sect. 332), the statute gave no right to compensation in respect of either.¹

A decision of the Court of Appeal, to the effect that the word "damage" does not include every inconvenience, but only such as would give a right of action had there been no Act of Parliament, was given in a case in which it was held that the removal by certain drainage commissioners of shoals which were merely casual obstructions to the flow of a river, was not actionable, or a matter for compensation at the instance of a person whose land had been flooded in consequence of the removal of the shoals, though it would have been otherwise if the shoals had become part of the natural bed of the river.²

An action having been brought on an award compensating the owner of houses, which had been built within twenty years on old foundations in the place of much lighter buildings, and which were found to be cracked and injured after the local board of health had made a sewer in the adjoining street, Blackburn, J., left it to the jury to say whether the making of the sewer caused the plaintiff's land to give way, independently of any extra weight put upon it within the preceding twenty years; and ruled that, if the jury thought the damage would not have been caused unless the extra weight had been put on the land, they must find for the defendants. They did so find, and the judge's ruling was upheld on the ground that the board were only liable to pay compensation for damage which would have been actionable if they had not been acting under the statute; and a distinction which he had drawn between the language of the compensation clause of the Public Health Act, 1848, and that of the Lands Clauses Consolidation Act, 1845,³ to which the same principle had previously been applied,⁴ was overruled.⁵

Injury to a foot-passenger caused by shock at seeing an electric tram driven at an excessive speed round a dangerous bend was held to be actionable.⁶

Non-action-
able damage.

Under the compensation clauses of the Railways Clauses Act, 1845,⁷ and the Lands Clauses Acts, if a person is entitled to any compensation at all by reason of a portion of his land having been taken, then he is entitled to be compensated for all damage that he may sustain by reason of a depreciation of the value of his remaining land, and not merely for such damage as would have been actionable if done without statutory powers.⁸ The Divisional Court, however, declined to extend this principle to a case in which a tramway company took compulsorily a portion of the forecourt of a house for the purpose of widening (under special powers) the street in which their tramway was to be laid, and the lessee and occupier of the house claimed compensation for depreciation in the value of the house by the running of trams, not on the land so taken, but along the original part of the street.⁹

The fact that a sewer constructed through a person's land is connected with a pumping station, reservoir, and outfall sewer on neighbouring land not belonging to him does not entitle him to claim compensation in respect of damage sustained by him by reason of the construction of the works on the neighbouring land, in addition to the compensation payable to him in respect of the construction of the sewer on his own land.¹⁰

Prospective
damage.

Under the Lands Clauses Consolidation Act, 1845, the first inquiry as to damage in respect of which compensation is claimed must include all damage present and

(1) *New River Co. v. Johnson* (1860), 2 E. & E. 435; 29 L. J. M. C. 93; 1 L. T. 295; 6 Jur. (N.S.) 374.

(2) *Rhodes v. Airedale Drainage Comrs.* (1876), L. R. 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46.

(3) See s. 68, *post*, Vol. II., p. 1578.

(4) *In Caledonian Ry. Co. v. Ogilvy* (1856), 2 Macq. H. L. Cas. 229.

(5) *Hall v. Bristol Cpn.* (1867), L. R. 2 C. P. 322; 36 L. J. C. P. 110; 15 L. T. 572; 31 J. P. 376.

(6) *Brown v. Glasgow Cpn.*, 1922 S. C. (S.) 527.

(7) 8 Vict. c. 20, ss. 6, 16. For s. 16, see *post*, Vol. II., p. 1604.

(8) *Re London and Tilbury Ry. Co. and Gower's Walk Schools* (1889, C. A.), L. R. 24 Q. B. D. 326; 59 L. J. Q. B. 162; 62 L. T. 306; *Cowper Essex v. Acton Loc. Bd.*, *ante*, p. 479 (1); *Blundell v. Regem*, L. R. 1905, 1 K. B. 516; 74 L. J. K. B. 91; 92 L. T. 53.

(9) *Rex v. Mountford*, L. R. 1906, 2 K. B. 814; 75 L. J. K. B. 1003; 70 J. P. 511; 4 L. G. R. 1058.

(10) *Horton v. Colwyn Bay U.D.C.* (C. A.), L. R. 1908, 1 K. B. 327; 77 L. J. K. B. 215; 98 L. T. 547; 72 J. P. 57; 6 L. G. R. 211. See also *Re London & N. W. Ry. Co. and Reddaway* (1907), 71 J. P. 150; 23 T. L. R. 279, which arose under a special Railway Act.

prospective,¹¹ except damage which cannot then be foreseen.¹² This applies also to claims for compensation under the present Act; for the following matters were held to be proper subjects for the consideration of an umpire in determining the amount of compensation to be paid to the owner of land through which a local board had carried a sewer, namely, the difficulty which the owner might experience in obtaining the consent of the local board under sect. 26 to the erection of buildings over the sewer, the possibility of a refusal lessening the value of the adjoining land, and the fact that stench might occasionally arise: *per* Lush, J., "the umpire was bound to take into consideration future as well as present damage."¹³

Where effecting the purposes for which statutory powers are given may occasion, not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards, inconvenience or injury to others, the persons authorised to execute the works may be treated as under an obligation to take from time to time measures to prevent the recurrence of such inconvenience and injury, that no needless injury to any one may be occasioned.¹⁴

Claims for remote and consequential damage cannot be sustained.¹⁵ But where a local authority, in the course of laying a new sewer in a street, without negligence and in a reasonable manner, obstructed the access to the plaintiff's business and residential premises to a substantial extent and for a substantial time, compensation was held to be recoverable under the present section.¹⁶

And damage by loss of custom caused by building operations obstructing access to a shop is not too remote to be the subject of an action.¹⁷

Interference by a railway company with the hall, through which the lessee of some rooms in a building had access to the rooms, was held to give rise to a valid claim for compensation in respect of "lands injuriously affected during the execution of the works" under the Lands Clauses Act, the value of the rooms being lessened by the injury to the access.¹⁸

A railway company, in pursuance of their statutory powers to take certain land for widening their railway, acquired a house on such land subject to a lease containing a covenant for quiet enjoyment, and then proceeded to interfere with a passage over which the tenant had a right of way under the lease. The Court of Appeal held that the tenant's remedy was not by action for breach of the covenant, but by claim for compensation under the company's Acts. The court also held that a temporary interference with the tenant's right of access to his land rendering it less convenient, but not affecting his estate, title, or profession, was not a breach of the covenant at all.¹⁹

Interference by a railway company for the purposes of the reconstruction of their line with the exercise of a person's right of way over an occupation road was held to be the subject of compensation under sect. 68 of the Lands Clauses Consolidation Act, 1845, and an injunction to restrain such interference was therefore refused.²⁰

And an injunction to restrain interference with ancient lights was refused on the like ground.²¹

The obstruction of a public right of access to the river Thames has been held not to be within the 68th section of the Lands Clauses Act.²²

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Consequential damage.

Damage by obstruction of access to premises.

Interference with private rights of way and light.

Obstruction of public right.

(11) *Croft v. London and North Western Ry. Co.*, 3 B. & S. 436; 32 L. J. Q. B. 113; 9 Jur. (N.S.) 962; 7 L. T. 741. See also *Colac v. Summerfield*, *ante*, p. 755 (42).

(12) *Lawrence v. Great Northern Ry. Co.* (1851), 16 Q. B. 643; 20 L. J. Q. B. 293; 6 Ry. Cas. 656; 15 Jur. 652.

(13) *Uttley v. Todmorden Loc. Bd. of Health* (1874), 44 L. J. C. P. 19; 31 L. T. 445; 39 J. P. 56; but see *ante*, p. 755 (35), as to claims for compensation for possible negligence and nuisance.

(14) *Geddis v. Bann Reservoir Proprietors* (1878), L. R. 3 A. C. 430. See also *Morrison's Case*, *post*, p. 763 (9).

(15) See *Herring v. Metropolitan Bd. of Works* (1865), 19 C. B. (N.S.) 510; 34 L. J. M. C. 224, commented on in *Lingké's Case*, *infra* (16); *Ricket v. Metropolitan Ry. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; 16 L. T. 542; *Bigg v. London City Cpn.* (1873), L. R. 15 Eq. 376; 28 L. T. 336; *Anglo-Algerian Steamship Co. v. Houlder Line, Ltd.*, L. R. 1908, 1 K. B. 659; 77 L. J. K. B. 187; 98 L. T. 440.

(16) *Lingké v. Christchurch Cpn.* (C. A.),

L. R. 1912, 3 K. B. 595; 82 L. J. K. B. 37; 107 L. T. 476; 76 J. P. 433; 10 L. G. R. 773.

(17) *Fritz v. Hobson* (1880), L. R. 14 Ch. D. 542; 49 L. J. Ch. 321; 42 L. T. 225.

(18) *Ford v. Metropolitan District Ry. Co.* (1886, C. A.), L. R. 17 Q. B. D. 12; 55 L. J. Q. B. 296; 54 L. T. 718; 50 J. P. 661. See also *Re Great Eastern Ry. Co. and London C.C.* (1907, C. A.), 98 L. T. 116; 72 J. P. 1, where compensation was obtained for the taking for a public footway of a way which had been public but was at the time in question permanently stopped up under a railway Act, and in use for private purposes.

(19) *Manchester Sheffield and Lincolnshire Ry. Co. v. Anderson* (1898), 67 L. J. Ch. 568; 78 L. T. 821.

(20) *Barnard v. Great Western Ry. Co.* (1902), 86 L. T. 798; 66 J. P. 568.

(21) *Courage & Co. v. South Eastern Ry. Co.* (1902), 19 T. L. R. 61. And see *Eagle v. Charing Cross Ry. Co.* (1867), L. R. 2 C. P. 638; 36 L. J. C. P. 297; 16 L. T. 593.

(22) *Reg. (Balstone) v. Metropolitan Bd. of Works* (1869), L. R. 4 Q. B. 358; 38 L. J. Q. B. 201; 33 J. P. 710.

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But with reference to a claim for compensation under the same Act in respect of the loss of access to a navigable river, the rule on the subject was propounded by Thesiger, Q.C. (afterwards L.J.), in argument as follows: "Where by the construction of works authorised by the Legislature there is a physical interference with a right, whether public or private, which an owner of a house is entitled by law to make use of in connection with the house, and which gives it a marketable value apart from any particular use to which the owner may put it, if the house, by reason of the works, is diminished in value there arises a claim for compensation." And Lord Chelmsford in his judgment said: "I think the rule as thus stated may be accepted with this necessary qualification, that where the right which the owner of the house is entitled to exercise is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world."²³

Loss of view.

A borough council passed a resolution authorising a committee to erect a suitable stand to enable the aldermen and councillors to view the funeral procession of the late King Edward VII., the cost to be borne by the members. A stand 29 feet wide and 10 feet 10 inches high at the back was erected in the middle of a highway, leaving room for traffic to pass on both sides. The tenant of premises whose view of the procession was thus spoilt claimed damages. Before the erection of the stand she had let her rooms to persons who wished to see the procession, and when the stand was erected released them from their bargain. It was held (1) that the erection of the stand constituted a public nuisance, although the traffic was temporarily stopped for the purposes of the procession; (2) that the council could be sued as such, for the stand was erected in pursuance of their resolution; (3) that though damages were claimed for loss of view, and this was not generally actionable, damages were recoverable in this case, as the stand had "seriously interfered with the enjoyment by the plaintiff of her house," and the plaintiff had established that she had suffered, by reason of a public nuisance, "special damage apart from the other members of the public"; and (4) that the plaintiff was justified in releasing persons who had agreed to take her rooms from their bargain, and could recover for the loss so sustained, and also for the loss sustained by her inability to find persons to take the rooms after the erection of the stand.²⁴

Betterment.

Where loss of trade, through obstruction of a highway during works carried on by a railway company, had been held to be an injurious affecting of the tradesman's interest in his premises, which entitled him to compensation under sect. 68 of the Lands Clauses Consolidation Act, 1845, the company were held not entitled to set off the advantage which would accrue to the property so affected upon the conclusion of the works.²⁵

Riots.

As to compensation for damage done during riots, see the Act of 1886, which has been dealt with elsewhere.²⁶

Amount of Compensation.

Value of interest in property.

Where compensation was to be given to the person whose property was affected under an Act, the Privy Council held that a person whose streams had been taken by a water company was entitled to be paid the value of his interest in the streams, though he had never up to the time when they were taken obtained one farthing for the use of them, and might never have made any use of them, the damage or loss which he sustained being that he was deprived of the power of using the property which was his.²⁷

Right of support.

The compensation awarded in the case cited below²⁸ was held to cover a right to the support of a sewer, though there was no evidence that this was taken into consideration by the arbitrator.

Costs.

An Improvement Act, incorporating the Lands Clauses Act, authorised the local authority to lay sewers in any lands, making full compensation for any damage,

(23) *Metropolitan Bd. of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 47 L. J. C. P. 385; 31 L. T. 182.

(24) *Campbell v. Paddington B.C.*, L. R. 1911, 1 K. B. 869; 80 L. J. K. B. 739; 104 L. T. 394; 75 J. P. 277; 9 L. G. R. 387. *Beckett v. Midland Ry. Co.* (1867), L. R. 3 C. P. 82; 35 L. J. C. P. 163; 13 L. T. 672; 12 Jur. (N.S.) 231, considered.

(25) *Senior v. Metropolitan Ry. Co.* (1863, Ex. Ch.), 2 H. & C. 258; 32 L. J. Ex. 225; 9 Jur. (N.S.) 802; 8 L. T. 544. Overruled, as

regards compensation for loss of trade, by *Ricket v. Metropolitan Ry. Co.*, *ante*, p. 757 (15).

(26) *Post*, Vol. II., pp. 1891, 1892. See also *Pitchers v. Surrey C.C.* (C. A.), L. R. 1923, 2 K. B. 57, as to rioting by soldiers in camp, and *Motor Union Insurance Co. v. Boggan* (1923, H. L., 1.), 58 L. J. Jo. 260, *re* Irish raids.

(27) *Trent-Stoughton v. Barbados Water Co.*, L. R. 1893 A. C. 502.

(28) *Jary v. Barnsley Cpn.*, *ante*, p. 63 (4).

and contained a provision for the recovery of the compensation before two justices. It was held that "full compensation" included the costs of applying to the justices.²⁹

And under the present Act it has been held that such compensation includes the costs incurred in successfully defending proceedings taken by the local authority against the claimant in relation to the exposure for sale of meat alleged to be unsound.³⁰

In a later case, in an arbitration on a claim for compensation in respect of the seizure and condemnation of certain meat and the expenses to which the owner had been put in defending (successfully) proceedings against him for exposing the meat for sale, the umpire found that the meat was unsound and was exposed for sale, and that the owner had sustained loss to the extent of the value of the meat and the costs of defending the proceedings; but on a special case stated the court held that the arbitrator ought not to have found that the owner was in default or that the meat was unsound, and should only have awarded the value of the meat and not the amount of the costs.³¹ Subsequently, however, the Court of Appeal upheld a similar award, and the council were held liable to pay the full amount of compensation awarded.³²

An order against the owner of premises to execute works for the abatement of a nuisance under the present Act was quashed by the Divisional Court with costs. He subsequently claimed other costs in excess of the taxed costs by way of compensation under the present section, and an arbitrator, to whom the matter was referred, found that such additional costs were reasonably and properly incurred. The Court of Appeal, however, held that he was not entitled to recover them, as they were expenses which the law did not allow.³³

Interest on the amount of the claim and costs was allowed as from the date of the demand, this having stated that interest would be claimed.³⁴

With regard to the award of an amount exceeding the claim, see the Note to sect. 68 of the Lands Clauses Act, 1845.³⁵

Arbitration.

The present section only contemplates a reference to arbitration after the damage has in fact been sustained. Thus, in a case where notice of intention to construct a sewer was served on a landowner by an urban district council under sect. 16 of the present Act, and the parties thereupon proceeded to arbitration, Collins, L.J., expressed the opinion that there was no jurisdiction in the arbitrators to deal with damage prior to the construction of the sewer.³⁶

Per Channell, J. : "A person who claims compensation under sect. 308 has to prove four things—that the authority has exercised its powers; that he was not in default; that he had suffered damage; and the amount of such damage. But only with regard to the last two things can the matter be referred to arbitration, though of course all can be disputed. The arbitrators and umpire are bound to assume the exercise of the powers, and that the person injured was not in default."³⁷

As to the assessment of compensation where land is compulsorily purchased, see the Act of 1919.³⁸

The person who claims compensation is entitled to have the amount determined by arbitration, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration to settle the amount.³⁹

In a case already cited⁴⁰ Buckley, L.J., said that the county court judge

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Costs—cont.

Interest.

Award
exceeding
claim.

Premature
arbitration.

Subjects for
arbitration.

Dispute as to
liability.

Duties of
arbitrator
and judge.

(29) *Huddersfield Cpn. v. Shaw* (1890), 54 J. P. 724.
(30) *In re Bater and Williamson and Birkenhead Cpn., and Walshaw v. Brighouse Cpn.*, ante, p. 232.
(31) *In re Davies and Rhondda U.D.C.* (1899), 80 L. T. 696.
(32) *Walshaw v. Brighouse Cpn.*, ante, p. 232. In the *Winchester Case*, ante, p. 233, costs were included in the sum awarded, but the award was upset on another ground, see ante, p. 752 (8).
(33) *Barnet v. Eccles Cpn.*, L. R. 1900, 2 Q. B. 423; 69 L. J. Q. B. 834; 83 L. T. 66; 64 J. P. 692.

(34) See *per* Bray, J., in *Fletcher v. Birkenhead Cpn.* (1905), 4 L. G. R. at p. 488. Affirmed in C. A., where this matter was not mentioned, see ante, p. 65 (14).
(35) *Post*, Vol. II., p. 1578.
(36) *Davis v. Witney U.D.C.* (1899), 63 J. P. 279.
(37) In the *Rhondda Case*, supra (31).
(38) *Post*, Vol. II., p. 2334.
(39) *Brierley Hill Loc. Bd. v. Pearsall* (1884), L. R. 9 A. C. 595; 54 L. J. Q. B. 25; 51 L. T. 577; 49 J. P. 84.
(40) *Lingké v. Christchurch Cpn.*, ante, p. 757 (16). For quotation, see L. R. 1912, 3 K. B. at p. 611.

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"thought erroneously that it was for the arbitrator, to whom this matter had gone on *quantum*, to find the facts on the question of liability. I need scarcely say that is not so. He referred to witnesses called before the arbitrator. He was not entitled to refer to those witnesses; they were not witnesses before him. He could not say, as he did say, that the question ought to be asked of the arbitrator. The judge is bound to ask it of himself and to answer it himself."

Assessment of compensation in action.

Where a Navigation Act authorised the undertakers to lay rubbish taken from a river on the adjacent lands, making satisfaction for the damage, and certain persons were named as the commissioners to assess the compensation, it was held that, after the death of the commissioners so named, no others having been appointed in their place, the amount of compensation could be assessed in an action.⁴¹

Stamp Duty.

Receipt for amount of compensation.

It has been held that a receipt under seal for compensation under the Railway Clauses Consolidation Act, 1845,⁴² for not working coal adjacent to a railway is a release of an interest in property otherwise than on a sale, and therefore only required a 10s. stamp and was not chargeable with *ad valorem* duty under the Stamp Act, 1891.⁴³

Recovery of Compensation.

Action.

It is well settled that, whenever the Legislature authorises the doing of a certain thing, and damage results from it, the remedy is under the provisions of the statute legalising what otherwise would be a wrong, and not by action at law.⁴⁴ Where under an Act the amount of any damages, costs, or expenses is directed to be ascertained and recovered in a particular manner, that remedy is exclusive, and an action will not lie for the amount.⁴⁵

An action may be brought, notwithstanding the provision for compensation, for damage sustained by the negligent exercise of statutory powers⁴⁶; but Farwell, J., without deciding whether the existence of a common law right of action for such negligence would have ousted the claim for compensation under the statute, held that, where damage had been sustained in consequence of the exercise of such powers, and the body exercising the powers relied on the fact that the damage was caused by the negligence of their contractors or agents as a defence to a claim for compensation, the onus of proving such negligence was on such body.⁴⁷

An urban district council altered the position of certain public steps in connection with the rebuilding of a bridge which they had taken over from the county council under a provisional order made by the Local Government Board and confirmed by Parliament. The order provided that, subject to its provisions, the present Act should apply to the purposes of the order as if they were purposes of the Act; and a person who alleged that she sustained damage by the alteration of the steps was held by Swinfen Eady, J., to have no right of action against the district council on the ground that her remedy, if any, was to claim compensation under the present section.⁴⁸

Summary proceedings.

The summary remedy, however, which is provided by the present section for determining the fact of damage and amount of compensation, and also for recovering such amount, where the claim is for £20 or less, is not, it will be observed, the only or exclusive remedy, so as to prevent the parties from proceeding, if neither of them objects, in the same manner as though the claim were for more than £20.

Mandamus.

If the claim does not exceed £20, and neither the fact of damage nor the amount of compensation is disputed, but only the liability to pay any compensation, the claimant's remedy is by *mandamus*. Thus, the court granted a *mandamus* commanding a local board of health to make compensation for damage sustained by reason of their sinking shafts near to, and making sewers under, certain houses within their district.⁴⁹ In this case the return to the writ, alleging that the prosecutor had not specified the amount claimed, or whether it was under £20,

(41) *Bentley v. Manchester Sheffield and Lincolnshire Ry. Co.*, L. R. 1891, 3 Ch. 222; 60 L. J. Ch. 641; 65 L. T. 22.

(42) See s. 78, *post*, Vol. II., p. 1612.

(43) *Great Northern Ry. Co. v. Inland Revenue Comrs.* (1899), 64 J. P. 21.

(44) *Per* Lord Cairns, L.C., in *Hammersmith Ry. Co. v. Brand* (1869), L. R. 4 H. L. 215; 38 L. J. Q. B. 265; 21 L. T. 238; and *per* Blackburn, J., in *Mersey Docks Trustees v.*

Gibbs, *post*, p. 762 (3).

(45) See *ante*, pp. 659-661.

(46) See *post*, p. 762.

(47) *St. James and Pall Mall Electric Light Co. v. Regem* (1904), 73 L. J. K. B. 518; 90 L. T. 344; 68 J. P. 288.

(48) *Arnott v. Whitby U.D.C.* (1909), 111 L. T. 14; 73 J. P. 369; 7 L. G. R. 856.

(49) *Reg. v. Burslem Loc. Bd.* (1858), 22 J. P. 400.

whereby the defendants were unable to know whether proceedings were to be taken before an arbitrator or before justices, as provided by the Act, was held to be a good return.⁵⁰ But a rule *nisi* to enter the verdict for the defendants on the trial of the issues raised upon the *mandamus* was subsequently discharged by the court, and it was held that the *mandamus* was good, and that the prosecutor was entitled to a verdict on the whole return, and to a peremptory *mandamus*; for as it did not appear on the return that there was any dispute as to the amount, the rest of the allegations in the return (beyond the denial of liability, which had been found for the prosecutor) were immaterial,⁵¹ and this judgment was affirmed in the Exchequer Chamber.⁵²

Where part of the damage has been done under the powers of a statute, a *mandamus*, and not an action at law, is the proper remedy for that part of the damage.⁵³

If the council will not admit the fact of damage and amount of compensation, a *mandamus* may be granted commanding the council to appoint an arbitrator and to make compensation.⁵⁴

A rule for a *mandamus* to compel a local board to levy a rate to satisfy damages sustained by the personal representative of a deceased owner by reason of a sewer or drain having been made by the board, is reported to have been made absolute, but it does not appear whether the claim for damages arose under the compensation clause or not.⁵⁵

If the fact of damage or the amount has been disputed and settled by arbitration, the award, on being made a rule of court, is enforceable by motion, unless the claimant's title to the land in respect of which the compensation is claimed, is disputed, in which case the local authority are entitled to require the claimant to bring an action on the award.⁵⁶ As to the duty of the judge in an action upon an award, see the case cited below.⁵⁷

There is no express limitation of the time within which a claim for compensation under the statute is to be made, and it appears from a case decided under the Metropolitan Acts ⁵⁸ that the six months' limitation of actions and other proceedings does not apply. In another case a claim for compensation in respect of the construction of a sewer was made and enforced seven and a half years after the sewer was constructed. This claim was made, after the death of the person who had been tenant for life, by a remainderman, who had a vested interest in the land at the time of the construction of the sewer, and might then have made his claim if he had been aware of what had been done; but as no notice had been given to him, and he had only recently become aware of the existence of the sewer, his claim was held not to be too late.⁵⁹

Inexcusable delay, however, affords an answer to an application for a *mandamus*.⁶⁰

The repealed section ⁶¹ did not mention the "fact of damage," but only the amount of compensation. Where, however, a local board did not deny that they had made a certain sewer, and were liable to make compensation if there were any damage, but only denied the fact of damage, this was a dispute as to the amount of damage and not as to the liability of the board to make any compensation, and therefore was the subject of a reference; and the arbitrators, if of opinion that there was no damage, might award that the amount of compensation was nothing.⁶²

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Motion.

Action on the award.

Limitation of time.

Laches.

Dispute as to fact of damage.

(50) *Reg. v. Burslem Loc. Bd.* (1858), 29 L. J. Q. B. 21; 5 Jur. (N.S.) 1394.
(51) *Ibid.*, 1 E. & E. 1077; 28 L. J. Q. B. 345; 5 Jur. (N.S.) 1394.
(52) *Ibid.*, 1 E. & E. 1088; 29 L. J. Q. B. 242; 6 Jur. (N.S.) 696; 2 L. T. 667.
(53) See *Reg. v. North Midland Ry. Co.*, ante, p. 753 (19).
(54) *Reg. v. Halifax Loc. Bd.* (1856), 20 J. P. 51.
(55) *Rowell v. Hartlepool Loc. Bd.* (1860), 34 L. T. (O.S.) 232.
(56) *Re Walker and Beckenham Loc. Bd.* (1884), 50 L. T. 207; 48 J. P. 264.
(57) *Lingke's Case*, ante, p. 759 (40).
(58) *Delany v. Metropolitan Bd. of Works* (1867), L. R. 3 C. P. 111; 37 L. J. C. P. 59; 17 L. T. 262.

(59) *In re Pettiward and Metropolitan Bd. of Works* (1865), 19 C. B. (N.S.) 489; 34 L. J. C. P. 301; 12 L. T. 764. See also *Byfield v. Barnet U.D.C.* (1911, Lord Coleridge, J.), post, Vol. II., p. 1578 (4), only reported in *Loc. Gov. Chron.* 1089; 2 *Glen's Loc. Gov. Case Law* 218; *Turner v. Midland Ry. Co.*, post, Vol. II., p. 1578 (3); and, as to non-application of P. A. Protection Act, 1893, the *Glasgow Case*, post, p. 777 (58).
(60) See *Pollard's Case*, ante, p. 527 (11), and *Rex v. Stainforth Canal Co.* (1813), 1 M. & S. 32; *Rex v. Cockermouth Inclosure Comrs.* (1830), 1 B. & Ad. 378.
(61) 11 & 12 Vict. c. 63, s. 144.
(62) *Bradby or Bradley v. Southampton Loc. Bd.* (1855), 4 E. & B. 1014; 24 L. J. Q. B. 239; 1 Jur. (N.S.) 778; 19 J. P. 644.

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Action for Damages.

Negligence.

The rule that compensation can only be claimed and recovered in the manner provided by the statute in pursuance of which the act that caused the damage was done, relates to acts which are properly, carefully, and skilfully done. If there be negligence or a want of proper care and skill in doing the act, an action will lie to recover damages for an injury caused thereby.

The House of Lords held that the trustees of the Mersey docks and harbour were liable for damage occasioned by the negligence of persons doing the business of the trust; Lord Westbury expressing his doubt whether Lord Cottenham had not, in a previous case,¹ carried too far the doctrine of non-liability of trust property for the acts of trustees constituting a public body. In the same case the principle of liability for negligence in the case of an ordinary company² was approved of, and applied to a corporate body intrusted by statute with the performance of a public duty and receiving therefrom no profits or emoluments for itself. It was also laid down that, if knowledge of the existence of a cause of mischief makes persons responsible for the injury it occasions, they will be equally responsible when, by their culpable negligence, its existence is not known to them.³

Thus, a local board were liable to a person who, when passing along the highway, was injured by reason of the servants of the board negligently leaving a heap of stones upon the highway.⁴

A child was killed on the pavement by the fall on him of a scaffold pole, which a passing cart knocked out of the hands of the men carrying it. The negligence proved was (1) failure to exercise proper supervision over the unloading; (2) failure to warn approaching traffic of the projection of the pole into the roadway; (3) failure to warn foot-passengers; and (4) allowing the pole to project just as a horse and cart was passing. The action failed, however, for other reasons.⁵

Hidden dangers or traps.

In a case where a person recovered damages for an injury received while viewing premises which were to let,⁶ Bankes, L.J., said: "If a person creates a dangerous condition of things (something in the nature of a concealed trap), whether in a public highway, or on his own premises, or on those of another, and he sees some other person who to his knowledge is unaware of the existence of the danger lawfully exposing himself or about to expose himself to the danger which he has created, he is under a duty to give such person a warning."

A landowner laid out a new street in a borough, ending at the brink of a precipitous ravine, which he left unprotected. Six years afterwards the corporation of the borough made up the street under sect. 150 of the present Act, and took over its maintenance; but they also left the end of it unprotected, and although they lighted the street, the light at the end was insufficient to warn the driver of a motor car, who drove down the street on a dark evening, of the danger. It further appeared that another street in the same straight line, on the opposite side of the ravine, which was also lighted by the corporation, tended to give the impression that the two streets were continuous. The motor car fell over the edge of the ravine. A person riding in it was injured, and in an action tried before Lush, J., recovered damages from the corporation, the learned judge holding that, although, when a new highway is dedicated, the public, if they accept it as a highway, must take it with all its defects, yet when the highway authority undertake a duty with regard to it they must exercise due care and have due regard to the safety of those who will use it, and that therefore the corporation, who made up the street in such a way as to expose passengers to a hidden trap, did not exercise their statutory powers reasonably and with proper care, and were liable in damages for their negligence. He further held that, as the corporation undertook the lighting of the

(1) *Duncan v. Findlater* (1839), 6 Cl. & Fin. 894.

(2) See *Parnaby v. Lancaster Canal Co.* (1839), 11 A. & E. 223.

(3) *Mersey Docks and Harbour Bd. Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; 35 L. J. Ex. 225; 14 L. T. 677; 12 Jur. (N.S.) 571; 30 J. P. 467.

(4) *Foreman v. Canterbury Cpn.* (1871), L. R. 6 Q. B. 214; 40 L. J. Q. B. 138; 24 L. T. 385; in which *Holliday v. St. Leonard, Shoreditch, Vestry* (1861), 11 C. B. (N.S.) 192; 30 L. J. C. P. 361; 8 Jur. (N.S.) 79, was considered to be overruled. See also *Penny's Case*, *post*, p. 771 (84); and *Ryan's Case*, *post*,

p. 772 (4).

(5) *Barnett v. Cohen*, L. R. 1921, 2 K. B. 461; 90 L. J. K. B. 1307; 125 L. T. 733; 19 L. G. R. 623. Further as to this case (*re* measure of damages), see *post*, p. 776 (48).

(6) *Kimber v. Gas Light and Coke Co.*, *post*, Vol. II., p. 1257. For quotation, see L. R. 1918, 1 K. B. at p. 445. But see *Great Central Ry. Co. v. Bates*, L. R. 1921, 3 K. B. 578; 90 L. J. K. B. 1269; 126 L. T. 61; 19 L. G. R. 649, where it was held that there was no such duty towards a constable on patrol duty who enters private premises in circumstances which do not make him either a licensee or an invitee of the owner.

street which they knew to be dangerous, and adopted an inadequate and improper method of protecting the public, they were liable on that ground also, and he overruled a contention that the claim was barred by the Public Authorities Protection Act, 1893, although the street had been made up and lighted more than six months before the action was commenced, on the ground that the cause of action arose at the time of the accident, which was within the six months.⁷

In 1883 a local authority made up a street and covered with a grating a gully for carrying away surface water. In 1912 the plaintiff, while riding a bicycle, was injured, owing, as the jury found, to the dangerous and excessive depression at the grating. As, however, the authority had exercised due care in constructing the grating, and were not negligent in not having discovered the defect, the plaintiff's action for damages failed.⁸

But a local authority may be liable, though the original construction was not negligent, if a change of circumstances renders further work reasonably necessary. Thus, where a person's eye was injured by coming in contact with the spike on a tree guard, which he could not see owing to the war-time restrictions on lighting, and damages were recovered, Lord Reading, C.J., said: "In my judgment the obligation of the defendants continues as long as the trees and guards are maintained in the public highway. There is no duty to keep them absolutely safe, but it is their duty to use reasonable care, and they are not entitled to let the trees and guards remain in a condition which renders them dangerous to the public who are using the highway. Whether they have taken reasonable precautions in the particular case is a matter for the jury. . . . The degree of care required was not exhausted by erecting the guards so as to be reasonably safe for the protection of the public at the time of their erection."⁹

As to putting poisonous berries in a public pleasure ground, see the case cited below.¹⁰

A sewer had been constructed under local Acts which empowered a local authority to cause such sewers as they should think necessary to be made, repaired, and cleansed. Some forty years afterwards, during a violent thunderstorm, the sewer burst under a cellar and flooded a house, which eventually fell down. In an action by the owner against the authority, the jury found that the bursting of the sewer was caused by defects in its original construction and the omission of the defendants to take reasonable means to discover such defects. Judgment was given for the plaintiff, on the grounds that the defendants were under a legal duty to use the powers given them by statute to keep the sewer in proper order, and from time to time to inform themselves as to its condition; that the local Act gave them power to cause the sewer to be cleansed and repaired, and that the common law superinduced upon that power a duty to use it and to use all reasonable means to inform themselves whether there was occasion to do so; and that the findings of the jury showed that the defendants omitted to perform this duty and so were negligent.¹¹ The Court of Appeal, however, reversed the judgment, on the grounds that there was no common knowledge with respect to a sewer, and in the absence of evidence upon the point the jury ought not to have found a verdict of actionable negligence against the defendants, the burden of proof lying upon the plaintiffs

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(7) *McClelland v. Manchester Cpn.*, L. R. 1912, 1 K. B. 118; 81 L. J. K. B. 98; 105 L. T. 707; 76 J. P. 21; 9 L. G. R. 1209. Distinguished in *Moul's Case*, *post*, p. 774 (19). Further as to Act of 1893, see *post*, Vol. II., p. 1988 (2). As to the liability of a railway company to keep the steps of a footbridge free from snow, see *Brackley v. Midland Ry. Co.* (1916, C. A.), 85 L. J. K. B. 1596; 114 L. T. 1150; 80 J. P. 369; 14 L. G. R. 632; and, as to their duty to fence a goods yard, *Norman v. Great Western Ry. Co.* (C. A.), L. R. 1915, 1 K. B. 584; 84 L. J. K. B. 598; 112 L. T. 266. As to the liability of a harbour authority who invite shipowners to use a harbour for failure to keep the advertised depth of water on the sill, see *Bede Steam Shipping Co. v. Wear River Comrs.*, L. R. 1907, 1 K. B. 310; 76 L. J. K. B. 434; 96 L. T. 370.

(8) *Papworth v. Battersea B.C.* (No. 2) (C. A.), L. R. 1916, 1 K. B. 583; 85 L. J. K. B. 746; 114 L. T. 340; 80 J. P. 177; 14 L. G. R. 236. In this case a new trial had been

ordered, partly because the jury had not said whether the negligence which they found was committed by the defendants in their capacity as sewer or highway authority, see *post*, p. 775 (41). See also *Jones v. Rew*, *ante*, p. 325 (10). But see *Butler v. Newton Abbot U.D.C.* (1911, Lawrance, J., at Exeter Assizes). 2 Glen's Loc. Gov. Case Law 120, where a manhole was left 5 inches below level of new metal and plaintiff recovered £421 damages. And *White's Case*, *post*, p. 765 (31).

(9) *Morrison v. Sheffield Cpn.*, cited in Note to P. H. Am. Act, 1890, s. 43, *post*, Part I., Div. II. For quotation, see L. R. 1917, 2 K. B. at pp. 870, 871. See also cases as to lighting street refuges, etc., cited *ante*, p. 408, and, as to failure to light a heap of sand, *Thurrold v. Hanover Square Vestry* (1898, Wills. J.), *Times*, Dec. 7, p. 13, col. iii, where the plaintiff succeeded.

(10) *Glasgow Cpn. v. Taylor*, *ante*, p. 430 (34).

(11) *Fleming v. Manchester Cpn.* (1881), 44 L. T. 517; 45 J. P. 423.

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to show that the defendants were guilty of negligence in not making periodical examination and inspection of the sewer.¹²

In an action under Lord Campbell's Act, where the deceased had met his death from bad gas while working in a sewer vested in the district council, it was held that the following circumstances did not afford sufficient evidence of negligence to support the action, namely, that there was no cradle or life-line for pulling out the workmen in case of accident or emergency, that two ventilating pipes, through which the foul gas could have escaped, had been allowed to become choked, and that the foreman had not tested the air in the sewer before sending the deceased into it.¹³

The depositions taken, and the verdict and rider of the jury, at a coroner's inquest are not admissible in an action for negligence under this Act.¹⁴

But the unexplained fact that an explosion, which caused damage, had taken place in the electric light apparatus of a local authority, was held to be itself evidence of negligence.¹⁵

Where a similar explosion was caused by placing a telephone cable too near an existing electric power cable, an action for the injury to the former cable was held not to lie.¹⁶

Alternative
powers.

A statutory body, on whom alternative powers are conferred, such as the power to place electric wires either overhead or underground, are not bound to adopt that alternative which affords the greater protection to the public, so as to be guilty of negligence if they adopt the other and a member of the public is injured in consequence.¹⁷

Alternative
methods of
executing
power.

A special Act having enacted that a tramway company should pave with wood the portions of a road between and adjoining the rails of their tramway, the company paved those portions with soft wood blocks treated with creosote, emanations from which caused damage by injuring a neighbouring landowner's plants. There was evidence that another mode of paving, not involving the use of creosote, might have been adopted, and the jury in a county court action by the landowner found that the injury to the plaintiff's plants was caused by the wood paving, but that when the work was done the company did not know, and could not have known, that (as was subsequently discovered) the use of creosote was dangerous to vegetation. Judgment having been entered for the plaintiff, the Court of Appeal confirmed it, holding that the principle of *Fletcher v. Rylands*¹⁸ that a person was liable for the natural consequences of any non-natural use of land by him was not confined to cases where such user was or could be known to involve danger, the onus (*per* Lord Alverstone, C.J.) being upon the defendant to show that that which he did was something which, according to the experience of mankind, was not dangerous.¹⁹

Volenti non
fit injuria.

Where a statute imposes an absolute duty, and an injury results directly from non-performance of that duty, the defence of *volenti non fit injuria* does not apply. Thus Salter, J., held that an action for damages for personal injury sustained through the absence of fencing to certain factory machinery succeeded, though the plaintiff knew of, and accepted, the risk. The jury's further finding that it was "commercially impracticable" to fence it securely, and that if so fenced it would be either "mechanically useless" or more dangerous than unfenced, was also held to be no defence.²⁰

Improper
construction
of works.

It will be no answer to an action for damages that the works were executed under the powers of an Act of Parliament, if the damage was occasioned by the wrongful construction or improper execution of the works, or the want of proper and sufficient accessories, such as drains,²¹ even though the Act affords a special remedy for the recovery of compensation for injury caused in the execution of such Act.

(12) *Fleming v. Manchester Cpn.* (1882), *Times*, June 27. *Cf.*, as to drinking fountains, the *Edinburgh and Warrington Cases*, *ante*, p. 152 (13), (14).

(13) *Digby v. East Ham U.D.C.* (1896, Q. B. D.), 13 T. L. R. 11.

(14) *Barnett's Case*, *ante*, p. 762 (5).

(15) *Solomons v. Stepney B.C.* (1905), 69 J. P. 360; 3 L. G. R. 912.

(16) *Postmaster-General v. Liverpool Cpn.* (1923, H. L. aff.), 58 L. J. Jo. 272, 311. For C. A., see 86 J. P. 157; 20 L. G. R. 721.

(17) *Dumphy v. Montreal Power Co.*, L. R. 1907 A. C. 454; 76 L. J. P. C. 71; 97 L. T. 499.

(18) *Post*, p. 769 (63).

(19) *West v. Bristol Tramways Co.* (1908), L. R. 1908, 2 K. B. 14; 77 L. J. K. B. 684; 99 L. T. 264; 72 J. P. 243; 6 L. G. R. 609.

(20) 1 Edw. VII. c. 22, s. 10 (1) (c); *Davies v. Owen & Co.*, L. R. 1919, 2 K. B. 39; 88 L. J. K. B. 887; 121 L. T. 156; 83 J. P. 193; 17 L. G. R. 407. See also *Abbott v. Isham*, *post*, p. 775 (33).

(21) *Brine v. Great Western Ry. Co.* (1862), 2 B. & S. 402; 31 L. J. Q. B. 101; 8 Jur. (N.S.) 410; 6 L. T. 50; 26 J. P. 516. See also *Lawrence v. Great Northern Ry. Co.*, *ante*, p. 757 (12).

Where, however, a penalty is expressly imposed for negligence in the exercise of particular statutory powers, an action does not lie for compensation for loss sustained through such negligence, unless the statute which imposes such penalty indicates that such additional remedy is available.²²

The Railway Fires Act, 1905,²³ expressly gives a right to compensation for damage to agricultural land caused by sparks from railway locomotives used under statutory powers.

The following are other instances of actions for damages against local authorities:—

Damages were recovered from improvement commissioners for the injury caused by sewage flowing up the plaintiff's drain for want of a flap at its junction with a new sewer, made by the commissioners in substitution for an old sewer, with which the drain had been connected, the old sewer having had a flap at the junction.²⁴

In an action against a local board it was alleged that they had so constructed a sewer that quantities of filth and sewage matter were poured in, upon, and about the approaches and works connected with the bridge of a floating-bridge company. It was held that this charged the board with a wrong not within the compensation clause of the Public Health Act, 1848, and that therefore the action might be maintained against them. *Per* Lord Campbell, C.J.: "Sect. 139²⁵ clearly supposes that there may be an action for a wrong, because it not only provides that there shall be notice of action, but also that the party to whom notice is given may tender amends, and pay money into court."²⁶

Sewerage works were executed under the Metropolis Management Act, 1855,²⁷ whereby a person's premises were injured; and the jury having found that by proper care and skill the injury could have been avoided, it was held that the plaintiff was not precluded by the provisions relating to the recovery of compensation from maintaining the action.²⁸

The Middle Level Drainage Commissioners in Norfolk were empowered and directed by statute to make a cut, and make and maintain at or near its opening a sluice, to exclude tidal waters. The sluice was properly made, but owing to the absence of due care and skill in the persons employed by them to maintain it the sluice burst, whereby the tidal waters came in and flooded the neighbouring lands. There was no proof that the commissioners had negligently or improperly employed unskilful or incompetent agents; but in an action at the suit of the owners of the neighbouring lands, the Exchequer Chamber, on the authority of the *Mersey Docks* case,²⁹ decided that, as an absolute duty was imposed on the commissioners to maintain the sluice, they were liable for the damage caused by the negligent performance of that duty by their servants.³⁰

Where an iron grid, through which water ran from the road into a sewer of the local board, was left broken for six months, whereby the plaintiff's horse was injured, the local board were held liable as the sewer authority.³¹ And in another case, an accident having occurred by reason of the faulty filling up of a trench for a sewer by the local board's contractor, the board were held liable in their joint capacity of highway and sewer authority.³²

So, where the grating of a sewer had been left projecting above the surface of a highway, either from its being too high, or the roadway being too low, so as to cause a horse to trip up and fall, and thus to be injured, and the owner of the horse

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(22) *E.g.* for neglect of the duty imposed by s. 29 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), to remove street refuse; *Saunders v. Holborn Dist. Bd. of Works*, L. R. 1895, 1 Q. B. 64; 64 L. J. Q. B. 101; 71 L. T. 519; 59 J. P. 453. Applied in *Phillips v. Britannia Hygienic Laundry Co.*, L. R. 1923, 1 K. B. 539, *re* breach of Motor Cars (Use and Construction) Order, 1904, Art. II. r. 6.

(23) 5 Edw. VII. c. 11.

(24) *Ruck v. Williams* (1858), 3 H. & N. 308; 27 L. J. Ex. 357.

(25) 11 & 12 Vict. c. 63, s. 139, which corresponded to s. 264 of the present Act.

(26) *Southampton and Itchin Floating Bridge Co. v. Southampton Loc. Bd. of Health* (1858), 4 Jur. (N.S.) 1299; 28 L. J. Q. B. 41.

(27) 18 & 19 Vict. c. 120, s. 135.

(28) *Clothier v. Webster* (1862), 12 C. B.

(N.S.) 790; 31 L. J. C. P. 316; 6 L. T. 461; 9 Jur. (N.S.) 231. See also *London General Omnibus Co. v. Tilbury Contracting and Dredging Co.* (1907), 71 J. P. 534.

(29) *Ante*, p. 762 (3).

(30) *Coe v. Wise* (1866), L. R. 1 Q. B. 711; 37 L. J. Q. B. 262; 14 L. T. 891; 30 J. P. 484; 7 B. & S. 831.

(31) *White v. Hindley Loc. Bd.* (1875), L. R. 10 Q. B. 219; 44 L. J. Q. B. 114; 32 L. T. 460, followed and confirmed in *Blackmore v. Mile End Old Town Vestry* (1882), L. R. 9 Q. B. 451; 51 L. J. Q. B. 496; 46 L. T. 869.

(32) *Smith v. West Derby Loc. Bd.* (1878), L. R. 3 C. P. D. 423; 47 L. J. C. P. 607; 38 L. T. 716; see also *Bathurst Borough v. Macpherson* (1879, P. C.), L. R. 4 A. C. 256; 48 L. J. P. C. 61; 41 L. T. 778; distinguished in *Pictou Municipality v. Geldert*, and *Sydney Municipal Council v. Bourke*, *post*, p. 774 (23) (25).

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Action for
damages—
continued.

had obtained a writ of *mandamus* to the local authority to whom the sewer belonged to pay the compensation which had been awarded by an arbitrator. It was held that the case was one not for compensation, but for an action grounded on negligence, as the facts alleged showed that the defect arose not necessarily from carrying out the powers of the Act, but from negligent and improper execution of them.³³

The Court of Appeal held that a water company, authorised or obliged by Act of Parliament to maintain a water-plug in a highway, is not liable for damage sustained by a person who falls over the plug by reason of the road having worn away round it, the plug itself being in good order.³⁴ And subsequently, in a case where a person sustained damage in consequence of the cover of a manhole to a sewer projecting above the level of the road, by reason of the road having been worn away and not having been made up to the level of the cover, and not by reason of any fault in the construction of the cover, the Court of Appeal decided that the corporation, who were both sewer and highway authority, were under no liability.³⁵ But a lady who was almost blind and fell over an unguarded projecting water hydrant key recovered damages,³⁶ though a child who did the same thing failed.³⁷

And in another case a successful action was brought in a county court against the Metropolitan Water Board for damages for injury sustained by a person who caught her foot in an open stop-cock box placed in the foot pavement of a street by one of the waterworks companies, whose undertakings had been transferred to the Board. The practice of the Board, following that of the company, was to plug the boxes with wads of straw covered by road scrapings. Judgment for the plaintiff was upheld by the Divisional Court on the ground that it was the duty of the Board to cause the box to be properly plugged after using it, and that the county court judge could have drawn the inference of fact that, on the last occasion when the stop-cock was used, it had not been properly plugged, although the court considered that it was not the duty of the Board to take steps to maintain the plugging so that it should remain level with the pavement between the occasions on which the stop-cock was used³⁸; and in a similar case tried shortly afterwards before Channell, J., without a jury, the learned judge did draw the inference referred to, and he also overruled a contention on the part of the Board that it was the consumers, for whose supply the stop-cock box had been placed in the street, and not the Board, who were responsible for the condition of the box.³⁹ In the latter case, however, Channell, J., had assumed that the box was dangerous without the plug, and a new trial was ordered by the Court of Appeal in order to obtain a distinct finding on this point.⁴⁰

Other cases relating to actions in respect of injuries caused by falls over projecting water plugs, etc., have been cited elsewhere.⁴¹

A person, while being taken under a railway bridge in a van, was thrown against a girder of the bridge through the jolting of the van over a ridge left in the road by the contractor who had repaired the road for the district council. In an action brought by him against the council in respect of the injuries which he sustained, Bruce, J., in giving judgment in his favour, said: "It is quite clear that the moment you begin to alter a road, or break it up, or do anything to the surface of the road, unless it is carefully done there must be danger to the public. Therefore, when the local boards take upon themselves the making of the road, there is a duty imposed upon them of taking care that no dangerous obstructions are allowed to exist to passengers passing along the road. . . . Whether they knew of it (the obstruction) or not does not matter, because if they did not know they ought to

(33) *Reg. v. Ware R.S.A.*, M. S., Q. B. D., 13th March, 1880. But see *Papworth's Case*, ante, p. 763 (8).

(34) *Moore v. Lambeth Water Co.* (1886), L. R. 17 Q. B. D. 462; 55 L. J. Q. B. 304; 55 L. T. 309; 50 J. P. 756.

(35) *Thompson v. Brighton Cpn.*, and *Oliver v. Horsham Loc. Bd.*, L. R. 1894, 1 Q. B. 332; 63 L. J. Q. B. 181; 70 L. T. 206; 58 J. P. 297, overruling *Kent v. Worthing Loc. Bd.* (1882), L. R. 10 Q. B. D. 118; 52 L. J. Q. B. 77; 48 L. T. 362; 47 J. P. 23. And see *Winslowe v. Bushey U.D.C.* (1908), where jury found defect in manhole cover due to original construction, 72 J. P. 64, but C. A. held that there was no evidence of this and ordered new trial with leave to amend alleging negligent maintenance (72 J. P. 259).

(36) *McKibbin v. Glasgow Cpn.*, 1920 S. C. (S.) 590.

(37) *Plantza v. Glasgow Cpn.*, 1910 S. C. (S.) 786; 47 Sc. L. R. 688; 1 Glen's Loc. Gov. Case Law 47. For other cases relating to injuries to children, see *Crane's Case*, post, Vol. II., p. 1205 (4); *Barnett's Case*, ante, p. 762 (5); *Ching's Case*, post, p. 775 (33); *Hardy's Case*, post, p. 775 (37).

(38) *Osborn v. Metropolitan Water Bd.* (1910, K. B. D.), 102 L. T. 217; 74 J. P. 190; 8 L. G. R. 170.

(39) *Rosenbaum v. Metropolitan Water Bd.* (1910, K. B. D.), 103 L. T. 284; 74 J. P. 378; 8 L. G. R. 735.

(40) *Ibid.* (1911, C. A.), 103 L. T. 739; 75 J. P. 12; 9 L. G. R. 315.

(41) *Post*, Vol. II., pp. 1218, 1220.

have known.”⁴² Further as to the absence of “knowledge,” see the cases cited below.⁴³

Per Shearman, J.⁴⁴: “The defendants are not liable if they have done nothing to remedy the nuisance which they have *inherited* from somebody else.”

Although a person may not be entitled to a right of support for his house, the district council, in laying a sewer under adjoining land, are bound to exercise proper care, and are liable for damages if the house is cracked and injured by their negligence in the construction of the sewer. In the Bristol case above cited there was no allegation of negligence, and on that ground the case was distinguished in a subsequent case, and damages were recovered for the negligent construction of a sewer, which had caused the walls of the plaintiff’s house to crack.⁴⁵

Where it was admitted that a sewer was originally insufficient, Lord Russell, C.J., ruled that a person injured by the overflow of sewage from it was entitled to damages.⁴⁶

With regard to the liability of a district council in case of damages arising from negligent construction or maintenance of sewers, see the Note to sect. 19.⁴⁷

The diversion of sewage by a local authority from one drain or sewer to another which was already surcharged with sewage, whereby damage was caused, was held to be actionable.⁴⁸

Where a local authority with due care sprayed a road with tar to obviate the dust nuisance, but failed to show that the resulting injury to the plaintiff’s watercress beds was a *necessary* consequence of the exercise of this power, damages were awarded.⁴⁹

In raising the level of a highway on an embankment to that which it had before it fell through the weather and pressure of traffic, the defendants covered the gravel boards of the adjoining owner’s fence, and thereby caused them to bulge. They were ordered to reinstate the fence and pay costs.⁵⁰ But where the plaintiff failed to prove that the removal of some road scrapings, which had accumulated against his wall, had damaged or would damage the wall, the action was dismissed.⁵¹

An action lies for the *unreasonable* as distinguished from the *negligent* exercise of statutory powers.

In an action for damages against a metropolitan vestry for injuring gas-pipes laid under a street by the use of heavy steam rollers, and for an action to restrain the use of such rollers, Grove, J., left it to the jury to say whether the use of the rollers was reasonable and proper as regards the surrounding circumstances, considering the character of the traffic and of the district and the roads that the vestry had to repair, and whether the gas-pipes were reasonably made and proper for bearing the effects of the ordinary traffic.⁵²

A water company in the exercise of their statutory powers constructed a shaft near a house, and while they were doing so caused a noise which might have been an actionable nuisance if they had caused it in mere wantonness, or in the execution of works for a purpose involving a permanent continuance of the nuisance. An action for an injunction and damages by the owner and occupier of the house was dismissed by Vaughan Williams, J., although there was evidence that the company might by using a different kind of pump have caused less noise; the learned judge saying that all that was necessary, even if the sinking of the shaft would have been a nuisance if done by a private person, was that the works should be done with as little damage or annoyance to others as reasonably could be.⁵³

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Unnecessary injury.

Trespass.

Unreasonable exercise of powers.

(42) *Hill v. Tottenham U.D.C.* (1898), 79 L. T. 495.

(43) *Bateman’s Case*, ante, p. 36 (10), re status of pipe as “sewer”; *Papworth’s Case*, ante, p. 763 (8), re defect in sewer grating.

(44) In *Craib v. Woolwich B.C.* (1920, 36 T. L. R. 630). See also *Nash v. Rochford R.D.C.* (C. A.), L. R. 1917, 1 K. B. 384; 86 L. J. K. B. 370; 116 L. T. 129; 81 J. P. 57; 15 L. G. R. 103; *Papworth’s Case*, ante, p. 763 (8); and *Master’s Case*, post, p. 774 (20). But see *Taylor’s Case*, ante, p. 721 (8); and *Morris’ Case*, post, p. 775 (34).

(45) *Hall v. Bristol Cpn.*, ante, p. 756 (5). *Fairbrother v. Bury R.S.A.* (1889, Q. B. D.), 37 W. R. 544; following *Chadwick v. Trower* (1839), 6 Bing. N. C. 1; 3 Scott 699; 2 Hodges 267; 6 L. J. C. P. 47.

(46) *Touzeau v. Slough U.D.C.* (1896), 60 J. P. 103.

(47) *Ante*, p. 79.

(48) *Dent v. Bournemouth Cpn.* (1897), 66 L. J. Q. B. 395.

(49) *Dell v. Chesham U.D.C.*, L. R. 1921, 3 K. B. 427; 90 L. J. K. B. 1322; 125 L. T. 633; 85 J. P. 186; 19 L. G. R. 489.

(50) *Rochford v. Essex C.C.*, ante, p. 302 (3).

(51) *Webster v. Bakewell R.D.C.*, post, Vol. II., p. 1991 (6).

(52) *Gaslight and Coke Co. v. Hanover Square Vestry* (1887, Q. B. D.), 3 T. L. R. 581; and see *Gaslight and Coke Co. v. Kensington Vestry* (1885), L. R. 15 Q. B. D. 1; 54 L. J. Q. B. 414; 53 L. T. 457; 49 J. P. 469. *Chichester Cpn. v. Foster*, post, Vol. II., p. 1218 (5).

(53) *Harrison v. Southwark and Vauxhall Water Co.*, L. R. 1891, 2 Ch. 409; distinguished in *Colwell v. St. Pancras B.C.*, post, Vol. II., p. 1280 (3).

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Unreasonable
exercise of
powers—
continued.

So also the Court of Appeal held that a householder was not entitled to an injunction to restrain the Corporation of Liverpool, who were constructing an electric tramway under statutory powers, from placing one of the poles on the public footpath two feet six inches from his front door; the court having come to the conclusion upon the facts of the case that the corporation had acted *bonâ fide* and not vexatiously in the matter, and declining to go into the question whether a more convenient situation could not have been found, or to interfere with the discretion of the corporation.⁵⁴

A statutory power to run tramcars was held to be subject to the obligation to conduct the traffic on the tramway in a reasonable manner, and the owners of a tramway system were therefore held liable in damages when a frightened horse caused an accident which might have been prevented if the conductor of a tramcar had stopped it when he perceived that an accident was likely to take place. *Per* Vaughan Williams, L.J.: "Although the tramway company's Act of Parliament authorised them to do what otherwise would have been a nuisance, it did not free them from the obligation to make a proper use of their statutory powers. There was no pretence for the proposition that, because the company were authorised to run tramcars on the highway, their drivers were exempted from the common law obligation to take reasonable care not to injure persons lawfully using the highway."⁵⁵

On an application to strike out a statement of claim on the ground that no action would lie for mere unreasonableness in the exercise of a statutory power, Farwell, J., refusing the application, held that on the assumption that carrying on work on the site of a proposed railway station by night as well as by day, so as to make the plaintiff's house uninhabitable, was unreasonable, a good cause of action was disclosed, and the plaintiff was not confined to the remedy by claim for compensation under the Lands Clauses Consolidation Act, 1845.⁵⁶

Acts ultra
vires.

A district board under the Metropolis Management Act, 1855, were held not empowered to pollute water flowing through the land of another person, and they were therefore liable to an action at the suit of the owner of such land, who was consequently not bound to proceed for redress by seeking compensation under that statute. It made no difference in this respect that the works executed by the district board were necessary for the abatement of a nuisance, even on the land of the person injured; nor that the water thus polluted lay outside the district over which the authority of the district board extended.⁵⁷

A waterworks company that had power to take water from certain springs, and had made a compensation reservoir for some millowners, whose rights were reserved by the special Act, had no right as against the millowners to foul the water. It was doubted in that case whether sect. 6 of the Waterworks Clauses Act, 1847,⁵⁸ gave any compensation for injury to the lands of third persons caused by works constructed upon land which the company had taken by consent.⁵⁹

Where the tenant of a shop sued the local authority for unnecessarily and negligently blocking a certain street, in the course of making a new street under an Act which authorised them to stop temporarily all or any part of the carriageway or footway which they might think necessary to be stopped up, it was found that there was no excess of the local authority's powers; and Smith, L.J., doubted whether there would have been a right of action for consequential damage from loss of business, even if there had been such excess, when the damage alleged to have been suffered was of the same nature and kind as everyone else in the street suffered through the road being blocked.⁶⁰

The unauthorised erection of an electric standard was held ⁶¹ to be a proper subject-matter for an action rather than for a claim for compensation under sect. 68 of the Lands Clauses Consolidation Act, 1845.⁶²

Dangerous
accumulation.

If a person brings or accumulates on his land anything which, if it should escape, may cause damage to his neighbour, he does so at his peril. If it does escape and causes damage, he is responsible, however careful he may have been, and whatever

(54) *Goldberg and Son v. Liverpool Cpn.* (1900), 82 L. T. 362.

(55) *Rattee v. Norwich Electric Tramway Co.* (1902, C. A.), 18 T. L. R. 562.

(56) *Roberts v. Charing Cross, Euston, and Hampstead Ry. Co.* (1903), 87 L. T. 732.

(57) *Cator v. Lewisham Dist. Bd. of Works* (1864), 5 B. & S. 115; 34 L. J. Q. B. 74; 11 Jur. (N.S.) 340; 13 L. T. 212.

(58) 10 & 11 Vict. c. 17, s. 6.

(59) *Clowes v. Staffordshire Potteries Water Co.* (1872), L. R. 8 Ch. 125; 42 L. J. Ch. 107; 27 L. T. 521.

(60) *Martin v. London C.C.* (1899), 80 L. T. 866.

(61) *Andrews v. Abertillery U.D.C.*, distinguishing *Escott v. Newport Cpn.*, ante p. 296 (45).

(62) Set out post, Vol. II., p. 1578.

precautions he may have taken to prevent the damage, unless the escape is the consequence solely of *vis major*, or the act of God.⁶³

The doctrine in *Fletcher v. Rylands* has, however, been held not to apply to a body having statutory authority to do what it has done.⁶⁴ The obligation on a body having statutory authority to execute certain works is to use reasonable care to do no unnecessary damage to others. If they use such care and a nuisance is nevertheless caused, they are not liable to an injunction or in damages.⁶⁵ Thus, a water company were held not to be liable for damage caused by the bursting of one of their water-pipes, the jury having expressly found that they were not guilty of any negligence.⁶⁶

Nor, again, does the doctrine in *Fletcher v. Rylands* imply a liability created and measured by the non-natural uses of the neighbour's property; for a man cannot increase the liability of his neighbour by applying his own property to special uses, whether for business or pleasure. And a telegraph company were therefore unable to recover from an electric tramway company the expenses which they had incurred in preventing the working of their cable from being disturbed by the currents used on the tramway.⁶⁷

"Wherever according to the sound construction of a statute, the Legislature has authorised a proprietor to make a particular use of his land, and the authority given is, in the strict sense of law, permissive merely, and not imperative, the Legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law right of others."⁶⁸

If "permissive" statutory powers are exercised, they must be exercised carefully.⁶⁹

Thus, in 1867 a local Act authorised the defendants to construct a new road on the side of a hill. In 1914 heavy rains fell, and water and shale from the hill were carried along the road and into the plaintiff's mill. Atkin, J., found (1) insufficient provision for carrying off the water and shale, (2) absence of reasonable care in maintaining the works intended for dealing with the water and shale, (3) misfeasance, and (4) no *vis major*, and gave judgment for the plaintiffs.⁷⁰

Upon the occasion of a rainfall unprecedented for many years, there was imminent peril of a navigation company's canal bursting; and the company, in order to prevent it, raised a sluice by which a large quantity of water escaped into a neighbouring brook, and ultimately flowed into some collieries of the plaintiffs, and destroyed their works. It was found that, if relief had not been afforded to the canal banks at this time, an inundation must have very shortly ensued, which would have equally destroyed the plaintiffs' works, and also caused far greater devastation to property and probably loss of life throughout a very wide area; that the course adopted by the company was prudent and proper, and the only effectual measure which was possible in the emergency. The plaintiffs claimed alternatively damages, or compensation under the company's Act, which provided for satisfaction to be made for injury or damage alleged to be sustained by reason of carrying into effect its provisions. It was held that the plaintiffs' injury was by the finding due not to the company's wrongful acts, nor to the special Act, but to *vis major*, or an

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**Dangerous
accumulation**
—continued.

Vis major.

(63) *Fletcher v. Rylands* (1868), L. R. 3 H. L. 330; 37 L. J. Ex. 161; 19 L. T. 220; *Fletcher v. Smith* (1877), L. R. 2 A. C. 781; s.c. nom. *Smith v. Musgrave*, 47 L. J. Ex. 4; s.c. nom. *Musgrave v. Smith*, 37 L. T. 367; and *Nicholls v. Marsland* (1876), L. R. 2 Ex. D. 1; 46 L. J. Ex. 174; 35 L. T. 725. But see *Ross v. Fedden* (1872), L. R. 7 Q. B. 661; 41 L. J. Q. B. 270; 26 L. T. 966, which related to the escape of water from a higher to a lower floor of a house: *Wilson v. Waddell* (1876), L. R. 2 A. C. 95; 35 L. T. 639, which related to the working of a mine in such a manner that the surface water flowed through fissures and found its way into a neighbouring mine; *Tennant v. Goldwin*, ante, p. 128 (6), which related to an escape of sewage into adjoining premises; *National Telephone Co. v. Baker*, L. R. 1893, 2 Ch. 186; 62 L. J. Ch. 699; 68 L. T. 283; 57 J. P. 373, which related to the creation and discharge of an electrical current beyond the control of the person creating it; and the *London Hydraulic Power Co.'s Case*, post, p. 770 (75).

(64) *Dunn v. Birmingham Canal Co.* (1872),

L. R. 8 Q. B. 42; 42 L. J. Q. B. 34; 21 W. R. 266.

(65) *Ash v. Great Northern Piccadilly and Brompton Ry. Co.* (1903), 67 J. P. 417.

(66) *Green v. Chelsea Water Co.* (1894), 70 L. T. 547. See also *Hammond v. St. Pancras Vestry*, ante, p. 82 (3).

(67) *Eastern and South African Telegraph Co. v. Cape Town Tramways Co.*, L. R. 1902 A. C. 381; 71 L. J. P. C. 122; 86 L. T. 457.

(68) *Per Curiam in Canadian Pacific Ry. Co. v. Parke*, L. R. 1899 A. C. 535, at p. 544; 68 L. J. P. C. 89; 81 L. T. 127. See also *Metropolitan Asylum District Managers v. Hill*, ante, p. 254 (20); and *Canadian Pacific Ry. Co. v. Roy*, L. R. 1902 A. C. 220; 71 L. J. P. C. 51; 86 L. T. 127.

(69) See *Shrimpton v. Hertford C.C.*, post, p. 775 (33).

(70) *Baldwins, Ltd. v. Halifax Cpn.* (1916), 85 L. J. K. B. 1769; 80 J. P. 357; 14 L. G. R. 787. See also *Greenock Cpn. v. Caledonian Ry. Co.*, ante, p. 430 (37), and *Priest v. Manchester Cpn.*, ante, p. 199 (14), where the flooding was caused in the former case by a children's paddling pond, and in the latter by a refuse tip.

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Vis major—
continued.

act of God, and that, as in any event the plaintiffs' works would have been equally destroyed, the immediate damage caused by the company raising the sluice was *injuria absque damno* and irrecoverable.⁷¹

As to what is an act of God, Fry, J., said: "I do not think that the mere fact that a phenomenon has happened once, when it does not carry with it or import any probability of a recurrence—when, in other words, it does not imply any law from which its recurrence can be inferred—places that phenomenon out of the operation of the rule of law with regard to the act of God. In order that the phenomenon should fall within that rule it is not, in my opinion, necessary that it should be unique, that it should happen for the first time; it is enough that it is extraordinary, and such as could not reasonably be anticipated."⁷²

A Canadian local authority were held liable for damage caused by the bursting of a sewer in consequence of an "exceptional storm."^{72a}

By an Act of 1871,⁷³ which did not contain the usual clause as to nuisances, the defendant hydraulic power company was given authority to lay mains in streets. By an Act of 1884⁷⁴ they were given further powers subject to the nuisance clause, and the two Acts were to be "construed as one." In 1895 the defendants laid hydraulic mains in a street, and in 1901 the plaintiffs laid an electric cable in the same street under a provisional order. In 1902 the soil of the street subsided, owing to the faulty laying of the plaintiffs' main, and the defendants' mains were injured. The plaintiffs paid for this injury. In 1912 water escaped from the defendants' mains, and damaged the plaintiffs' cables. The bursting of the defendants' mains was due to subsidence, which was not caused by them, and could not by the exercise of reasonable care have been detected by them; nor was it due to the laying of the plaintiffs' mains, but to frost and heavy traffic. It was held that the doctrine of coming to a nuisance did not apply, as normally there was no nuisance, and that the defendants, having brought for their profit a dangerous thing, namely, water at a very high pressure, which, if it escaped, did enormous damage, into a road used by others, were liable if it escaped even without their negligence, unless they could bring themselves within one of the established exceptions; and with regard to those exceptions (1) that the Act of 1884 prevented them from relying upon their statutory authority, (2) that gradual subsidence through heavy traffic was not *vis major*, (3) that the subsidence was not caused by any act or default of the plaintiffs, (4) that it did not result from the malicious act of a third party, and (5) that the defendants' proposition that, as the use of the streets for carrying mains was now an ordinary use of streets, persons using streets in this way must do so subject to the risks arising from user by others for the same purposes without negligence, was not sound.⁷⁵

Liability for
acts of officer.

Corporations were held not to be liable, in one case, for the negligence of a medical officer in prematurely discharging an infected patient from a hospital,⁷⁶ and in another, for the negligence of an inspector under the Diseases of Animals Act, 1894, in detaining sheep under the Sheep Scab Order.⁷⁷

Liability for
acts of
licensee.

The plaintiff was injured by the negligent construction of works by a railway company on a highway over a quay. The company had arranged with the owners of the quay for the execution of the works, which were authorised by the company's local Act. It was held that, as the company had sole control of the place where the accident happened, and were acting under their statutory powers and not under the orders or as licensees of the owners of the quay, the latter were not liable.⁷⁸

Liability for
acts of
contractor.

With reference to the responsibility of a person employing a contractor for damage caused to others by the acts of the contractor, it is laid down that the duty of the employer towards third persons is discharged (1) if the work is not dangerous,

(71) *Thomas v. Birmingham Canal Navigation Proprietors* (1879), 49 L. J. Q. B. 851; 43 L. T. 435; 45 J. P. 21. See also *Aero Pioneers, Ltd. v. Piggott Bros.* (1911, C. A.), 2 Glen's Loc. Gov. Case Law 19, as to a gale.

(72) *Nitro-Phosphate and Odam's Chemical Manure Co. v. London and St. Katherine Dock Co.* (1878), L. R. 9 Ch. D. 503, at p. 515; 27 W. R. 267.

(72a) *Montreal City Cpn. v. Watt & Scott, Ltd.*, L. R. 1922, 2 A. C. 555; 91 L. J. P. C. 239; 128 L. T. 147.

(73) Wharves, etc., Hydraulic Pressure Co.'s Act, 1871 (34 & 35 Vict. c. cxxi.).

(74) London Hydraulic Power Act, 1884 (47 & 48 Vict. c. lxxii.), ss. 1, 17.

(75) *Charing Cross Electric Supply Co. v.*

London Hydraulic Power Co. (C. A.), L. R. 1914, 3 K. B. 772; 83 L. J. K. B. 1352; 111 L. T. 198; 78 J. P. 305; 12 L. G. R. 807; distinguished in *Goodbody v. Poplar B.C.*, post, Vol. II., p. 1288 (3); and see the *Liverpool Case*, ante, p. 764 (16); and, as to explosions in street electric light boxes, *Farrell v. Limerick Cpn.*, post, Vol. II., p. 1288 (2); and *Elliott v. Battersea B.C.* (1910, K. B. D.), 74 J. P. Jo. 627; 1 Glen's Loc. Gov. Case Law 48.

(76) *Evans v. Liverpool Cpn.*, ante, p. 256 (33).

(77) *Stanbury v. Exeter Cpn.*, L. R. 1905, 2 K. B. 838; 75 L. J. K. B. 28; 93 L. T. 795; 70 J. P. 11; 4 L. G. R. 57.

(78) *Barham v. Ipswich Dock Comrs.* (1885), 54 L. T. 23.

that is, where the danger does not arise from the thing contracted to be done, and (2) if the contractor is an ordinarily careful and skilful man⁷⁹; but that (*per* Cockburn, C.J.⁸⁰) "a man who orders a work to be executed from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot relieve himself of his responsibility by employing some one else—whether it be the contractor employed to do the work from which the danger arises, or some independent person—to do what is necessary to prevent the act he has ordered to be done from becoming wrongful." These words of Cockburn, C.J., are quoted at length by Lord Blackburn,⁸¹ but are described as being "too broadly stated," for they would "if taken in the full sense of the words" render a person who ordered post-horses and a coachman from an inn bound to see that the coachman, though not his servant but that of the innkeeper, used that skill and care which was necessary when driving the coach to prevent mischief to the passengers.

A district council were held by the Court of Appeal liable for damage caused by an explosion of gas that escaped from a gas main, broken by the negligence of their contractor in the course of constructing a sewer for them.⁸²

£3,500 damages were awarded against a local authority because of the negligence of a contractor in reinstating a highway after laying a new sewer.⁸³

Another council were held to be liable for an accident which was caused by a heap of soil left on a street by their contractor, who had been employed to make up the street: the case being distinguished from that of mere casual or collateral acts of negligence, such as that of a workman leaving a pickaxe or the like on the road, on the ground that the council must have known that the works would cause some obstruction and danger, unless means were taken to give due warning to the public.⁸⁴ So also where a county council employed a contractor to take down and rebuild a highway retaining wall, and the contractor left a heap of *débris* in the road unlighted and unfenced, a person who was injured thereby was held to be entitled to damages in an action against the council for negligence.⁸⁵

The Court of Appeal held that a telephone company, who had contracted with a plumber to connect telephone tubes laid in a trench under the pavement of a street, were liable for damage caused by the plumber dipping a benzoline lamp, the safety-valve of which was out of order, into a caldron of molten solder placed on the footway without a screen; and that, having regard to the danger to the public from the nature of the work, they were liable even if the plumber was an independent contractor.⁸⁶

It has also been laid down by the Court of Appeal that, where an obstruction belonging to A is likely to become a dangerous public nuisance, and damage is caused to a member of the public by the negligence of the contractor employed by A to remove the obstruction, A is liable, although it was not through his negligence that the obstruction was caused, and though the physical possession and control, but not the ownership, of the obstruction were taken over by the contractor.⁸⁷ So also if a contractor is employed to do a thing in itself unlawful, *e.g.* to break up a street for a purpose for which the employer has no authority to break it up, the employer is liable for damage caused by the contractor.⁸⁸

(79) *Gray v. Pullen* (1864), 5 B. & S. 970; 34 L. J. Q. B. 265; 11 L. T. 569.

(80) In *Bower v. Peate* (1876), L. R. 1 Q. B. D. 321, at p. 326.

(81) In *Hughes v. Percival* (1883, H. L.), L. R. 8 A. C. 443, at p. 446; 52 L. J. Q. B. 719; 49 L. T. 189; 47 J. P. 772.

(82) *Hardaker v. Idle U.D.C.*, L. R. 1896, 1 Q. B. 335; 65 L. J. Q. B. 363; 74 L. T. 69; 60 J. P. 196. And see *Cox v. Paddington Vestry* (1891), 64 L. T. 566, where a leakage from a water main was caused.

(83) *Jacob v. Southend Cpn.* (1902, Lawrence, J.), Times, Dec. 16, p. 3, col. iii. Damages reduced by consent in C. A. to £3,000. Appeal *re* misdirection dismissed. Plaintiff given all costs. Times, May 21, 1903, p. 3, col. i.

(84) *Penny v. Wimbledon U.D.C.* (C. A.), L. R. 1899, 2 Q. B. 72; 68 L. J. Q. B. 704; 80 L. T. 615; 63 J. P. 406. In this case the contractor was a co-defendant with the council, and paid £75 into court; the council paid nothing into court. The damages

awarded were £50. It was held that the payment into court by the contractor did not afford a defence to the action as far as the council were concerned, and that its only effect as regards them was that the judgment against them would be for costs only. See also, on costs point, *Beadon v. Capital Syndicate, Ltd.* (1912, C. A.), 28 T. L. R. 427; 56 Sol. J. & W. R. 536; 3 Glen's Loc. Gov. Case Law 140.

(85) *Clements v. Tyrone C.C.* (C. A., I.), 1905 Ir. K. B. 415, 542. See also the *Beaconsfield Case*, ante, p. 120 (17).

(86) *Holliday v. National Telephone Co.*, L. R. 1899, 2 Q. B. 392; 68 L. J. Q. B. 1016; 81 L. T. 252. Distinguished in *Wilson's Case*, cited in Note to P. H. Am. Act, 1890, s. 35 (see footnote (14), post, Part I., Div. II).

(87) *The Snark* (C. A.), L. R. 1900 P. 105; 69 L. J. P. 41; 82 L. T. 42; 9 Asp. M. C. 50, following the *Wimbledon* and *Idle Cases*, *supra*.

(88) *Ellis v. Sheffield Gas Co.* (1853), 2 E. & B. 767; 23 L. J. Q. B. 42; 18 Jur. 146.

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Liability for
acts of
contractor—
continued.

Sect. 308, n.
Liability of
contractor.

Liability for
acts of owner
or occupier
of premises.

Malicious
acts of third
parties.

Liability for
miskeasance.

A local authority employed a contractor to equip their tramlines for electric traction. The contractor was held liable for his sub-contractor's negligence which had caused an accident to a passenger.⁸⁹

In an action against a water company for an injury caused by negligence in fixing a stop-cock and box in the pavement, in connection with the communication pipe to a house, the plaintiff was non-suited, but a new trial was subsequently granted on the ground that there was evidence of negligence, the stop-cock being dangerous to passers-by, and being used by the company, although it was originally fixed by the consumer.⁹⁰

Where the local authority had given notice to an owner to connect his drains with the main sewer, and he dug a trench in the road, and after making the connection to the satisfaction of the surveyor, filled up the trench, the local authority were not liable for an accident caused by the soil in the trench subsiding; for the notice did not make the owner their agent.⁹¹

If the injury is due to the malicious act of a third party, no action lies.⁹²

A metropolitan borough council were held by the House of Lords to be liable in damages for misfeasance in throwing open for traffic a highway under their control when it was not fit for traffic. They had opened and *properly* filled in a sewer trench in the road; and after the road was opened for traffic a cab-driver, finding the ground softened by the rain, crossed to the off side of the road, where his cab ran into a heap of rubbish deposited there by a wrongdoer and left there after the council had become aware of its existence. The cab was overturned and the driver injured, and the action was brought to recover damages for the injury.¹

Filling up a hole in a road with soft ballast,² and repairing a wooden bridge with a plank in which there was a hidden defect,³ were held to be misfeasance.

A local authority deposited a heap of stones close to the footway of a street. Some of the stones got on the footway, and the plaintiff was injured by falling over one of them, but there was no evidence to show how they got on the footway. The county court judge found that there was no evidence of misfeasance to go to the jury, but the Court of Appeal held that this was wrong, as the presence of the stone on the footway might have been due to misfeasance on the part of the local authority or their servants.⁴

The plaintiff was being driven in a pony cart along a highway paved with granite setts. The pony put its foot in a hole in the setts, and the plaintiff was thrown out of the cart and injured. The evidence for the plaintiff was that the hole was two inches deep; that the appearance of the roadway was inconsistent with subsidence through ordinary wear and tear; that the sand and cement used in mending the roadway had been mixed in the wrong proportions; and that the roadway had been repaired from time to time by the defendants as highway authority. The defendants called no evidence, but at the end of the plaintiff's case submitted that there was no evidence of misfeasance for the jury. The county court judge declined to withdraw the case from the jury, but told them that before they could find for the plaintiff they must be satisfied that the hole had been caused by unskilful and negligent laying or repair of the setts. The jury found negligence in the construction and repair of the roadway by the defendants, and awarded £50 damages. The county court judge entered judgment for the plaintiff with costs on 21st January, 1914. On 3rd February, 1914, the defendants applied to the county court judge for a new trial on the grounds (a) that there was no evidence of misfeasance, and (b) that the verdict was against the weight of evidence. The application was

(89) *Maxwell v British Thomson Houston Co.* (1902, C. A.), 18 T. L. R. 278. See also *Pinn v. Rew* (1916, K. B. D.), 32 T. L. R. 451.

(90) *Strute v. Southwark and Vauxhall Water Co.* (1889), 53 J. P. 424. See also *Osborn's Case*, ante, p. 766 (38), and *Batt's Case*, post, Vol. II., p. 1218.

(91) *Steel v. Dartford Loc. Bd.* (1891, C. A.), 60 L. J. Q. B. 256.

(92) *Wheeler v. Morris* (1915, C. A.), 84 L. J. K. B. 1435; 113 L. T. 644; *Simpson v. Metropolitan Water Bd.*, post, Vol. II., p. 1218.

(1) *Shoreditch B.C. v. Bull* (1904), 90 L. T. 210; 68 J. P. 415; 2 L. G. R. 756; discussed in *Dawson v. Bingley U.D.C.*, ante, p. 155 (10). See also, as to throwing roads open to traffic before they are ready, *Thompson v. Bradford Cpn.*, ante, p. 362 (37); *Parkinson v. Yorkshire (W.R.) C.C.* (1922, K. B. D.),

20 L. G. R. 308; *Small v. Fermanagh C.C.* (1914, Enniskillen C. Ct.), 78 J. P. Jo. 366; and *Warren v. Devon C.C.* (1915, Newton Abbot C. Ct.), 138 L. T. Jo. 364.

(2) *Meeling v. Newington Vestry* (1893, Q. B. D.), 10 T. L. R. 54.

(3) *Breen v. Tyrone C.C.* (1908, Omagh Assizes), 42 Ir. L. T. 250.

(4) *Gould or Gouldson v. Birkenhead Cpn.* (1910), 74 J. P. 105; 8 L. G. R. 395. Cf. *Lancaster v. West Ham Loc. Bd.* (1886, Field, J.), 2 T. L. R. 820, where leaving a loose kerbstone on a public footway was held to be misfeasance; and see also *Ryan v. Tipperary (N.R.) C.C.*, 1912 Ir. K. B. 392; 46 Ir. L. T. 302; 3 Glen's Loc. Gov. Case Law 78, where a local authority had to pay damages for leaving large stone on half of highway which was open to traffic while other half was being repaired.

refused on the ground that there was evidence on which reasonable men might find for the plaintiff. The defendants appealed to the King's Bench Division. The plaintiff took a preliminary objection to the hearing of the appeal, so far as the point as to absence of evidence was concerned, on the grounds (i.) that, even if the county court judge had held that there was no evidence, he could not have entered judgment for the defendants; and (ii.) that, as he had held that there was some evidence, he could not subsequently reverse his own decision and order a new trial. The court postponed their decision as to this until after argument on the appeal as to the weight of evidence. It was held (1) that sect. 120 of the County Courts Act, 1888,⁵ got over the first preliminary objection; (2) that the second objection was sound; and (3) that the question as to weight of evidence was one of fact for the county court judge, and that, as he had made no error in law in determining this question, his decision was final,⁶ and that, even if this were not so, his decision was correct.⁷ *Per Lush, J.*⁸: "The principle of misfeasance is this: that if the road authority wash their hands of the maintenance of a particular road and leave it to take care of itself, they cannot be sued; but if the road authority take in hand the maintenance of the road and do repair it and keep it in repair, and if they had known of a particular hole in the part of the road which they were repairing and had negligently allowed it to remain, I very much doubt whether that would have been a case of non-feasance."

Planks properly erected thirteen years previously to prop up a footpath where it adjoined a ditch had rotted away, owing to exposure to the elements, and an accident happened in consequence. Judge Harrington held that failure to repair this artificial structure had resulted in a public nuisance, for which the highway authority were liable in damages.⁹

Formerly commissioners acting under the Towns Improvement Clauses Act, 1847,¹⁰ were held liable in their corporate capacity to be sued by a person who had suffered damage from a highway being allowed by them to remain in a dangerous condition; because that Act cast on them the duty of repairing the highway, and rendered them indictable if they did not repair it.¹¹

In an action against a local board for negligently permitting a footpath to remain unfenced, whereby the plaintiff's husband fell into an adjoining goit and was drowned, the court, after deciding that the goit was not a hole within the meaning of sect. 83 of the Towns Improvement Clauses Act, 1847,¹² held that there was no absolute duty to fence under the provisions of the Public Health Act, 1848,¹³ but declined to express any opinion on the question whether, if there had been negligence in the defendants in the course of their public duty, any action would have lain against them.¹⁴ But where a fence was taken down and not replaced until after an accident, the person injured recovered damages.¹⁵

A local authority in Ireland were held not liable in damages for failure to repair a fence round a labourer's cottage erected by them.¹⁶

An urban district council are in the same position with respect to actions for non-repair of a highway as the inhabitants of the parish or surveyor of highways, and therefore an action against them will not lie for damage occasioned by the mere non-repair of a highway.¹⁷ An accident was caused by tar oozing up during exceptional heat from the foundation on which the surface of a road had been laid a long time before. The Divisional Court held that, as the plaintiff had not shown that the road was badly constructed originally, he could not recover damages for the accident.¹⁸

The plaintiff was injured by the omnibus in which she was travelling colliding

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Liability for
misfeasance—
continued.

Liability for
non-feasance.

(5) 51 & 52 Vict. c. 43, s. 120.

(6) *Ibid.*, s. 93.

(7) *Clarke v. West Ham Cpn.*, L. R. 1914, 2 K. B. 448; 83 L. J. K. B. 1306; 110 L. T. 1007; 78 J. P. 309; 12 L. G. R. 744.

(8) 12 L. G. R., at p. 749. See also Note in 5 Glen's Loc. Gov. Case Law 79.

(9) *Andrews v. Merton and Morden U.D.C.* (1921, Croydon C. Ct.), L. J. C. Ct. R. 50; 43 M. C. Circular 194. *Bathurst Borough v. Macpherson*, ante, p. 765 (32) applied.

(10) 10 & 11 Vict. c. 34, s. 49.

(11) *Hartnall v. Ryde Comrs.* (1863), 4 B. & S. 361; 33 L. J. Q. B. 39; 8 L. T. 574.

(12) *Post*, Vol. II., p. 1629.

(13) 11 & 12 Vict. c. 63, s. 68, which corresponded to s. 149 of the present Act.

(14) *Wilson v. Halifax Cpn.* (1868), L. R.

3 Ex. 114; 37 L. J. Ex. 44; 17 L. T. 660; 32 J. P. 230

(15) See *Whyler v. Bingham R.D.C.*, ante, p. 304 (15).

(16) *Elliott v. Strabane R.D.C.* (No. 2), 1913 Ir. K. B. 193; 4 Glen's Loc. Gov. Case Law 17. Further as to this case, see *post*, p. 781 (26).

(17) *Gibson v. Preston Cpn.* (1870), L. R. 5 Q. B. 218; 39 L. J. Q. B. 131; 22 L. T. 293; 34 J. P. 342; 10 B. & S. 942; *Parsons v. Bethnal Green Vestry* (1867), L. R. 3 C. P. 56; 37 L. J. C. P. 62; 17 L. T. 211; *Maguire v. Liverpool Cpn.* (C. A.), L. R. 1905, 1 K. B. 767; 74 L. J. K. B. 369; 92 L. T. 374; 69 J. P. 153; 3 L. G. R. 485.

(18) *Holloway v. Birmingham Cpn.* (1905), 69 J. P. 358; 3 L. G. R. 878.

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continued.

with an electric standard. The collision was caused by some wood blocks which had been laid properly about seventeen years before the accident, but some days before had become raised to a dangerous height by the action of excessive rain. The county court judge found that the defendants knew that wood blocks were "likely to behave" as these had, and held that it was their duty "either to put the road in a safe condition or fence off the dangerous spot," and that failure to perform this duty was misfeasance. The Divisional Court, however, held that it was non-feasance. Avory, J., saw no distinction between omitting to repair a bulge and omitting to repair a depression, and refused to hold that the liability of wood paving to bulge made it improper to use this material. Lush, J., added that "deliberately leaving one hole open and confining their repair to another, doing one-half of the road and not the other," might be misfeasance, but that was not this case.¹⁹

Neglect to remove the grass which hid the "grips" which took away surface water from a highway was held to be non-feasance, and the plaintiff also failed to satisfy the court that the grips had been made by the defendants.²⁰

The House of Lords approved the principle that in every case the liability of a body created by statute must be determined upon a true interpretation of the statutes under which it is created.²¹ And the Privy Council subsequently held that against such a body no action lay for mere non-feasance, except in regard to a duty imposed upon them by the statute towards the person injured by the negligent omission to perform the duty, and decided that a body merely under a duty to maintain the retaining wall of a road for purposes of road conservancy,²² and another under a similar duty to repair a bridge,²³ were not liable to persons injured in consequence of their neglect to repair; and, following the decision of the House of Lords in the *Newmarket* case,²⁴ they dissented from the proposition that, whenever persons could be proceeded against by way of indictment for non-repair, an action against them would lie at the suit of any one sustaining special damage.²⁵ So also Lord Russell, C.J., held that the neglect by the London County Council of their duty to lop trees growing in a public park, placed under their control by statute, was mere non-feasance, and did not render them liable to an action by a traveller on a tramcar who was injured by a branch overhanging the adjoining road.²⁶

With regard to the liability of a district council in respect of the pollution of streams by sewage, see the Note to sect. 17,²⁷ and the Rivers Pollution Prevention Act, 1893.²⁸ As to negligence in connection with the construction, maintenance, and cleansing of sewers, see the Note to sect. 19²⁹; and as to failure to light dangerous places, the Note to sect. 161.³⁰

On the other hand, where the parties charged with the non-feasance are under an obligation to an individual member of the public to perform the duty, as, for instance, where the duty is to be performed for remuneration, their neglect of the duty affords a cause of action to the person injured.³¹

Bucknill, J., held that a local authority, who had employed a contractor to clean their street lamps, were under a duty, towards the persons employed by the contractor, to see that the lamps were safe to work upon.³²

And a county council, as the education authority, under a statutory duty to keep

(19) *Moul v. Croydon Cpn.* (1918), 88 L. J. K. B. 505; 119 L. T. 318; 82 J. P. 283; 16 L. G. R. 595. As to the application of the dictum of Lush, J., see the *West Ham Case*, ante, p. 773 (7).

(20) *Masters v. Hampshire C.C.* (1915, K. B. D.), 84 L. J. K. B. 2194; 79 J. P. 493; 13 L. G. R. 879. See also *Irving's Case*, ante, p. 37 (18).

(21) *Mersey Docks v. Gibbs*, ante, p. 762 (3).

(22) *Gibraltar Sanitary Comrs. v. Orfila* (1890), L. R. 15 A. C. 400; 59 L. J. P. C. 95; 63 L. T. 58.

(23) *Pictou Municipality v. Geldert*, L. R. 1893 A. C. 524; 63 L. J. P. C. 37; 69 L. T. 510.

(24) *Cowley v. Newmarket Loc. Bd.*, ante, p. 298 (18). In Scotland the non-feasance doctrine has not been recognised: see *Laurie v. Aberdeen City Cpn.*, 1911 S. C. (S.) 1226; 2 Glen's Loc. Gov. Case Law 122; *Law v. Glasgow Cpn.* (1916, Sc. S.), 54 Sc. L. R. 125.

But it has in Ireland, see, e.g., *Harbinson v. Armagh C.C.*, 1902 Ir. K. B. 538.

(25) *Sydney Municipal Council v. Bourke*, L. R. 1895 A. C. 442; 64 L. J. P. C. 140; 72 L. T. 605; 59 J. P. 659. See also *Short's Case*, ante, p. 298 (19).

(26) *Tregellas v. London C.C.* (1897, Q. B. D.), 14 T. L. R. 55. See also *Trinder v. Great Western Ry. Co.* (1919, Avory, J.), 35 T. L. R. 291; and cf. *Simon v. London General Omnibus Co.* (1907, Ridley and Bray, JJ.), 23 T. L. R. 463, re projecting fire alarm finger-post; and *Hase v. London General Omnibus Co.* (1907, K. B. D.), 23 T. L. R. 616, re projecting street lamp-post arm.

(27) Ante, p. 66.

(28) Post, Vol. II., p. 1743.

(29) Ante, p. 79.

(30) Ante, p. 408.

(31) *Brabant v. King* (1895), 44 W. R. 157.

(32) *Giles v. Aldershot U.D.C.* (1902), 66 J. P. 441.

their provided schools "efficient" for the scholars, were held by the Court of Appeal to be liable for an injury to a scholar who had tripped over a hole in the playground, which had previously been filled up in a temporary manner from day to day by the caretaker of the school.³³ This was followed by the same court in a case in which a child at a provided school had been directed by a teacher to go from one schoolroom to another, and in doing so was injured by a heavy swing door, which the jury had found not to be a suitable door for infants when erected in the first instance, namely, by the school board, who were the defendants' predecessors. In this case an amendment of particulars, stating that the defendants were sued as successors of the school board, who erected the door, was held to have been unnecessary.³⁴

Further as to the distinction between misfeasance and non-feasance, see the treatise referred to below.³⁵

Where a local authority threw about 20,000 loads of chalk from the cliffs and thus formed a heap against the plaintiff's bathing establishment, made the sea "resemble a milk pond," and enabled trespassers to gain an entrance into the establishment, an action for damages and an injunction failed, because the baths were "not in a state to be worked" and the plaintiff had not acquired a "prescriptive right to obtain pure water from the sea."³⁶

A child playing on an escalator at an underground railway station was held to be a trespasser, and therefore not entitled to recover damages from the company for an injury sustained when the entrance was not guarded.³⁷

As to the defence of contributory negligence, see the cases cited below.³⁸

As regards the measure of damages, the Court of Appeal held that, in an action against a local authority for damages for trespass committed by them under circumstances of aggravation in entering upon the plaintiff's land and pulling down a wall at the side of a highway, the damages were not to be measured merely by the out-of-pocket expenses to which the plaintiff had been put, but that he was entitled to punitive damages, and the jury ought to be directed to take into consideration facts which aggravated the wrong.³⁹

An accelerated pension was held properly included in estimating the value of a constable's services lost through the defendants' negligence.⁴⁰ Damages awarded on the basis of the price of an annuity were held to be excessive.⁴¹

A colliery company trespassed on certain land by tipping spoil from their

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Condition of plaintiff's own premises.

Duty towards trespassers.

Contributory negligence.

Measure of damages.

Depreciation of value.

(33) *Ching v. Surrey C.C.*, L. R. 1910, 1 K. B. 736; 79 L. J. K. B. 481; 102 L. T. 414; 74 J. P. 187; 8 L. G. R. 369. See also *Jackson v. London C.C.* (1912, C. A.), 76 J. P. 217; 10 L. G. R. 348, where lime was negligently left in a heap in a playground; *Shrimpton v. Hertford C.C.* (1911, H. L.), 104 L. T. 145; 75 J. P. 201; 9 L. G. R. 397, *re* conveyance to school in brake without conductor; and *Abbott v. Isham* (1920, K. B. D.), 90 L. J. K. B. 309; 124 L. T. 734; 85 J. P. 30; 18 L. G. R. 719, *re* school boiler which burst. But see *Smirkinich v. Newport Cpn.* (1912, K. B. D.), 76 J. P. 454; 10 L. G. R. 959, *re* circular saw; *Shepherd v. Essex C.C.* (1913, K. B. D.), 4 Glen's Loc. Gov. Case Law 19, *re* phosphorous secreted at chemistry class; *Chilvers v. London C.C.* (1916, K. B. D.), 80 J. P. 246; 32 L. L. R. 363, *re* toys; *Gow v. Glasgow Education Authority*, 1922 S. C. (S.) 260, *re* blind children; and *Newman v. Northampton C.C.* (1911, N. C. Ct.), 76 J. P. Jo. 5; 3 Glen's Loc. Gov. Case Law 76, *re* dangerous games.

(34) *Morris v. Carnarvon C.C.*, L. R. 1910, 1 K. B. 840; 79 L. J. K. B. 670; 102 L. T. 524; 74 J. P. 201; 8 L. G. R. 485. See also *Smith v. Martin and Hull Cpn.*, L. R. 1911, 2 K. B. 775; 80 L. J. K. B. 1256; 105 L. T. 281; 75 J. P. 433; 9 L. G. R. 780, *re* order to poke fire.

(35) By the late Alexander Glen, K.C., in 45 L. J. Jo. 104, 133.

(36) *Andrews v. Ramsgate Cpn.* (1916, K. B. D.), Times, Feb. 24, p. 3, col. iii. See also *Savill's Case*, ante, p. 83 (10).

(37) *Hardy v. Central London Ry. Co.* (C. A.), L. R. 1920, 3 K. B. 459; 89 L. J. K. B. 1187; 124 L. T. 136. But see *Lowery*

v. Walker, L. R. 1911 A. C. 10; 80 L. J. K. B. 138; 103 L. T. 674, *re* bite by savage horse; and see also the *Lochgelly Case*, ante, p. 119 (13); *Jenkins v. Great Western Ry. Co.*, and other cases cited post, Vol. II., p. 1630 (1); *Coffee v. M'Evoy*, 1912 Ir. K. B. 290; 3 Glen's Loc. Gov. Case Law 187, *re* accident to child of tenant whose notice to quit had expired; and *Mackenzie v. Fairfield Shipbuilding Co.*, 1913 S. C. (S.) 213; 50 Sc. L. R. 79; 4 Glen's Loc. Gov. Case Law 169, *re* child and quarry near highway.

(38) *Jones v. Westminster City Cpn.* (1915, Ridley, J.), 79 J. P. Jo. 112, plaintiff reading "Daily Sketch" and falling into opened gravel store pit in pavement not guilty of contributory negligence; the *Postmaster General's Case*, ante, p. 764 (16); *Butterby v. Drogheda Cpn.*, 1907 Ir. K. B. 134, *re* heap of stones; *Plantza's Case*, ante, p. 924 (37), *re* children; *McKibben's Case*, ante, p. 766 (36), *re* blind persons; *Torrance's Case*, ante, p. 300 (18); *Boobear v. Greenwich B.C.* (1911, Darling, J.), 2 Glen's Loc. Gov. Case Law 119, *re* carrying heavy sack over negligently constructed steps; and *Charlesworth v. Darton U.D.C.* (1915, Barnsley C. Ct.), 79 J. P. Jo. 316, where plaintiff knew road was under repair.

(39) *Davis v. Bromley U.D.C.* (1903), 67 J. P. 275; 1 L. G. R. 668.

(40) *Bradford Cpn. v. Webster*, L. R. 1920, 2 K. B. 135; 89 L. J. K. B. 455; 123 L. T. 62; 84 J. P. 137; 18 L. G. R. 199.

(41) *Papworth v. Battersea B.C.* (No. 1), (C. A.), L. R. 1915, 1 K. B. 392; 84 L. J. K. B. 1881; 13 L. G. R. at p. 208. Further as to the measure of damages, see ante, p. 83.

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colliery upon it. The Court of Appeal held that the principle of the way-leave cases applied, that is, that the trespasser ought to pay for his use of the plaintiff's land, and that therefore, as to so much of the land as was covered with spoil, the value of the land for the purpose for which it was used by the company ought to be taken into account (without regard, however, to the profits derived by them from such user); but that as to the rest of the land, which had been permanently depreciated in value, the measure of damages was the diminution in such value.⁴²

Costs of inquiry as to damages.

By a consent order, in two actions by a local authority for damages for subsidence at a sewage farm, an inquiry before an official referee was ordered. Heavy costs were incurred in complying with his orders for inspection and particulars. A compromise was then arrived at, under which the defendants agreed to pay the plaintiffs' costs. It was held that these included the costs so incurred.⁴³

Damages or re-instatement.

A local authority, in making a dam for a reservoir, found a fissure, which it was deemed advisable to fill with concrete. For this purpose they inadvertently and carelessly drove a heading for some distance beyond the boundary of the land which they had purchased, and filled the aperture, in the plaintiffs' land, with concrete. The plaintiffs claimed a mandatory injunction to remove the concrete, and restore his land to its original condition. Joyce, J., considering that the injury to the plaintiffs' land could be estimated in money, that the amount would be small in comparison with the cost of restoring the land, and that it would be oppressive to the defendants to make a mandatory order, assessed the damages on the basis of a sum which would be adequate for the privilege of using the land in the manner in which the defendants had used it, or which they would have had to pay for it.⁴⁴

Continuing damage.

When damage is caused to land by the removal of minerals and consequent subsidence, the owner has a cause of action whenever and as often as such damage takes place,⁴⁵ the original excavation not being the cause of action, but the damage proceeding from it.⁴⁶

Lord Campbell's Act.

The "reasonable expectation of pecuniary advantage," which must be proved in order to found a claim for damages under Lord Campbell's Act,⁴⁷ was held not proved where the deceased was a child of four. It was also held that the plaintiff, a Jew, could not have recovered the cost of procuring a watcher upon the body, the loss he had sustained by abstaining from business, or burial expenses.⁴⁸ A pension payable to the widow is to be taken into consideration.⁴⁹

Insurance against damages.

A district council would not appear to be justified in charging upon the rates the premiums on a policy of assurance against liability in respect of accidents to members of the public by reason of defects in or faulty construction of roads, or arising from the negligence of their workmen.

8 332 178
Contempt of court.

It was held not to be contempt of court for a landlord to threaten a tenant with notice to quit if he proceeded with an action for damages against the local authority, with whom the landlord was negotiating in respect of the same cause of complaint.⁵⁰

Action for Injunction.

Action in name of Attorney-General.

Unless an actual injury results or will result to a private individual himself, from the excessive exercise of the powers of a district council, he cannot restrain the council by injunction from proceeding with the works. The Attorney General may, however, in the case of such an exercise of excessive powers, proceed on behalf of the public against the council for disregarding the provisions of the Act of Parliament.⁵¹

Where a public body are proceeding to break a statutory provision, an injunction at the instance of the Attorney General is as of right, and evidence that no one will be injured is useless.⁵²

(42) *Whitwham v. Westminster Brymbo Coal and Coke Co.*, L. R. 1896, 2 Ch. 538; 65 L. J. Ch. 741; 74 L. T. 804.

(43) *Stoke-upon-Trent Cpn. v. Staffordshire Coal Co.* (1916, Neville, J.), 85 L. J. Ch. 812; 115 L. T. 621; 80 J. P. 273.

(44) *Riley v. Halifax Cpn.* (1907, Ch. D.), 97 L. T. 278; 71 J. P. 428; 5 L. G. R. 909.

(45) *Darley Main Colliery Co. v. Mitchell* (1886, H. L.), L. R. 11 A. C. 127; 55 L. J. Q. B. 529; 54 L. T. 882; followed in *Crumlie (or Crumlie) v. Wallsend Loc. Bd.* (C. A.), L. R. 1891, 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. 490.

(46) *Backhouse v. Bonomi* (1861), 9 H. L. Cas. 503; 34 L. J. Q. B. 181; 4 L. T. 754.

(47) 1846, 9 & 10 Vict. c. 93, ss. 1, 2.

(48) *Barnett v. Cohen*, ante, pp. 762, 764

(5) (14). See also the *Royston Case*, ante, p. 83 (9).

(49) *Baker v. Dalglish Steam Shipping Co.* (C. A.), L. R. 1922, 1 K. B. 361; 91 L. J. K. B. 392; 126 L. T. 482.

(50) *Webster v. Bakewell R.D.C.* (No. 1) (1916, Neville, J.), 80 J. P. 251; 14 L. G. R. 547.

(51) *Ware v. Regent's Canal Co.* (1858), 3 De G. & J. 212; 28 L. J. Ch. 153; 5 Jur. (N.S.) 25.

(52) *A.G. v. Cockermouth Loc. Bd.* (1874), L. R. 18 Eq. 172; 44 L. J. Ch. 118; 30 L. T. 590; *A.G. v. Dorchester Cpn.*, ante, p. 744 (25).

As to the necessity for the *fiat* of the Attorney General, the effect of delay before obtaining his *fiat*, his right to an injunction, the relevance of the relator's motives, and other points in relation to this form of action, see the Note to sect. 107.⁵³

The owner of land within the metropolitan area, through which there ran a watercourse, which he said was a private drain, but which the vestry of the parish said was a public sewer, took up part of the watercourse, whereupon the vestry summoned him before a police magistrate and recovered penalties. He refused to restore the watercourse, and the vestry gave notice of their intention to enter and reinstate the sewer, but instead of acting upon this notice they issued another summons under the same statute. In an action for an injunction to restrain the vestry from taking summary proceedings, it was held that, although the court, having before it a case within its own jurisdiction involving a question which may be decided by magistrates, may grant an injunction, yet where the Legislature has pointed out a proceeding before magistrates as the appropriate remedy, it will not generally interfere by injunction.⁵⁴

A local board, assuming to act under the authority of sect. 39, erected a public urinal partly upon a highway and partly upon a strip of land belonging to the plaintiff, and so near to her adjoining land as to be a nuisance to her and her tenants, and to depreciate the value of her property. It was held that this was not a matter in respect of which the plaintiff's remedy was by compensation under the present section, but that she was entitled to a mandatory injunction to restrain the board from continuing the urinal upon her land or so near thereto as to cause injury or annoyance to her or her tenants. The plaintiff, in the same case, had land upon which an inn and some stabling were erected. These stood back from the highway, and in front of them was an open space (forming part of the same land) which had been left open to and on a level with the highway, until the board, in exercise of their powers under sect. 149, and for the convenience of the public, placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's land and premises. On this part of the case it was held that the plaintiff was not entitled to an injunction directing the defendants to remove the kerbstones, but that in the absence of any unreasonable conduct the remedy would be compensation.⁵⁵

A claim for compensation, made at a time when both parties assumed that the acts causing the injury were authorised by statute, was not regarded as an acquiescence so as to preclude the person sustaining the injury from recovering damages in lieu of an injunction.⁵⁶

Further, with regard to injunctions to restrain local authorities from causing injury or nuisance in the exercise of their powers, see the Notes to sects. 17 and 39.

Protection of Council and Members.

Members and officers of district councils, and persons acting under the direction of such councils, are protected by sect. 265 from personal liability for acts done by them *bonâ fide* for the purpose of executing the Public Health Acts.

Actions against district councils and other bodies and persons for acts done by them in pursuance or intended execution of statutory powers, or public duties, or for negligence or default in the execution of such powers or duties, must be commenced within the time limited by the Public Authorities Protection Act, 1893.⁵⁷ This Act does not apply to applications for compensation under the present section.⁵⁸

Previous notice of action is no longer required; but if the plaintiff has not afforded the council or other defendant a sufficient opportunity of tendering amends, or does not recover more than the sum tendered as amends, he may have to pay costs as between solicitor and client, even though he may obtain judgment in the action.⁵⁹

If a local authority intend to rely upon a statute in defence to proceedings in the county court, they must give notice of their "statutory defence."⁶⁰ But where

Sect. 308, n.

Action to restrain summary proceedings.

Action for private nuisance.

Personal liability.

Limitation of actions.

Notice of statutory defence.

(53) *Ante*, p. 208.

(54) *Stannard v. Camberwell Vestry* (1881), L. R. 20 Ch. D. 190; 51 L. J. Ch. 629; 46 L. T. 243. See also *ante*, p. 650.

(55) *Sellors v. Matlock Bath Loc. Bd. of Health*, cited with other urinal cases, *ante*, p. 114.

(56) *Pentney v. Lynn Paving Comrs.* (1865), 12 L. T. 818; 13 W. R. 983.

(57) *Post*, Vol. II., p. 1974.

(58) *Glasgow Cpn. v. Smithfield Meat Co.*, 1912 S. C. (S.) 364; 3 Glen's Loc. Gov. Case Law 62. Further as to this case, see *ante*, p. 233 (6), and *post*, Vol. II., p. 1981 (2).

(59) See Act of 1893, *post*, Vol. II., p. 1974.

(60) C. C. R., Order X., r. 18.

Sect. 308, n.

no such notice is given, the county court judge is not bound to adjourn,⁶¹ if in his opinion the setting up of the defence at the trial would not prejudice the plaintiff and an adjournment would involve needless expense. In the case in which it was so decided, it was held that setting up sect. 67 of the Highway Act, 1835, was such a "statutory defence."⁶²

Compensation
in certain cases
to officers.

P.H. 1872, s. 33.
P.H. 1874, s. 18.

Sect. 309. If any officer of any trustees commissioners or other body of persons intrusted with the execution of any local Act, whether acting exclusively under the local Act, or partly under the local Act and partly under the Local Government Acts, or any officer of any sanitary authority under the sanitary Acts by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any provisional order made in pursuance of either of those Acts, removed from his office, or deprived of the whole or part of the emoluments of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the [Minister of Health] may by order award to such officer such compensation as the said [Minister] may think just; and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.¹

Provision where
improvement
Act district or
local govern-
ment district
becomes a
borough.

Sect. 310. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners, or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers rights duties capacities liabilities obligations and property exercisable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament, within or for the benefit of such district or part of a district, shall pass to and be exercisable by and vested in the council of such borough.

The transfer by virtue of the Public Health Act, 1872, of the powers rights duties capacities liabilities obligations and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers rights duties capacities liabilities obligations and property exercisable by attaching to or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament.

Note.

Incorporation
of boroughs.

New municipal boroughs may be created by royal charter upon petition to the Privy Council under the Municipal Corporations Act, 1882.²

Existing boroughs may be altered by orders of the Minister of Health under the Local Government Act, 1888.³

In the case of certain ancient boroughs not under the Municipal Corporations Act, but comprised in a local government or Improvement Act district, the Local Government Board were authorised by the Municipal Corporations Act, 1883,⁴ to make schemes for the adjustment of the powers, etc., of the corporations, or for the transfer of them to the sanitary authorities.

Transfer
of powers.

The Public Health Acts of 1872 and 1874,⁵ the last clause of sect. 10 and sect. 270, sub-sect. (2) of the present Act, and, in the case of turnpike trustees, sect. 322, subject to the exceptions mentioned in the last part of sect. 6, have provided for the transfer of sanitary powers and duties to existing municipal corporations. Under the Municipal Corporations Act, 1882,⁶ certain trustees may transfer powers, etc., to a town council. Sect. 330 contains a saving for certain navigation rights under local Acts on the transfer of powers by virtue of this Act.

Under sect. 49 of the Local Government Act, 1858,⁷ local boards could become burial boards; under sect. 44 of the Sanitary Act, 1866,⁷ a burial board, whose district was included in, or conterminous with, an urban district, could transfer

(61) Under C. C. R., Order X., r. 10A.

(62) *Thomas v. Gower* R.D.C., ante, p. 129 (6).

(1) This section is superseded by L. G. Act, 1888, s. 120, and L. G. Act, 1894, s. 81 (7). As to the practice with regard to the scale of compensation, see the Note to s. 120, post, Vol. II., pp. 1957-1959. For s. 81, see *ibid.*, p. 2110.

(2) See ss. 210-218, post, Vol. II., pp. 1833-1837. And see L. G. Act, 1888, s. 56; L. G.

Act, 1894, s. 54, post, Vol. II., pp. 1929, 2090. Also the School Boards Act, 1885, s. 1, post, Vol. II., p. 1835.

(3) See s. 54, post, Vol. II., p. 1927.

(4) 46 & 47 Vict. c. 18, s. 7.

(5) 35 & 36 Vict. c. 79, s. 7; 37 & 38 Vict. c. 89, s. 3.

(6) See s. 136, post, Vol. II., p. 1828.

(7) Re-enacted in Sched. V., Part III., post.

their powers to the urban authority. Now, an urban district council may by resolution transfer to themselves the powers of an existing authority under any of the "adoptive Acts," which include the Burial Acts.⁸

Further, with regard to the effect of a statutory transfer of property and liabilities to a local authority, see the Note to sect. 67 of the Local Government Act, 1894,⁹ and the Local Government (Stock Transfer) Act, 1895.⁹

Sect. 310, n.

Sect. 311. Any local board constituted either before or after the passing of this Act may, with the sanction of the [Minister of Health], change their name. Every such change of name shall be published in such manner as the [Minister of Health] may direct. No such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against the local board by their new name which might have been continued or commenced against the local board by their former name.

Power of local boards to change name.

Note.

With regard to the original name and the incorporation of a local board, see sect. 7. A district council may change their name with the sanction of the county council under the Local Government Act, 1894.¹⁰

It is expressly provided by sect. 260 of the present Act that, in legal proceedings by or against a local authority, the corporate name of the authority and the constitution and limits of their district need not be proved.

Name of local board.

Sect. 312. [As to election of certain improvement commissioners, etc.]¹¹

Sect. 313. Where in any Act, or order made by one of [His] Majesty's Principal Secretaries of State or by the [Minister of Health] and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts which are repealed by this Act are mentioned or referred to, such Act order or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act order or document expressed in relation to the repealed provisions therein mentioned or referred to.¹²

L.G. Am., s. 2. Substitution in other Acts of provisions of this Act for provisions of repealed Acts.

Sect. 314. Any local authority may, if they think fit, make byelaws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority.

Bye-laws as to hop-pickers. P.H. 1874, s. 45.

Note.

With regard to the making and confirmation of the bye-laws of local authorities, see sects. 182-186.

By the Public Health (Fruit Pickers' Lodgings) Act, 1882,¹³ which is to "be construed as one with" the present Act,¹⁴ the present section is to be "deemed to extend to and authorise the making of bye-laws for securing the decent lodging and accommodation of persons engaged in the picking of fruits and vegetables."¹⁵

Bye-laws. Fruit-pickers.

Sect. 315. Any byelaw made by any sanitary authority under the Sanitary Acts which is inconsistent with any of the provisions of this Act shall so far as it is inconsistent therewith be deemed to be repealed.¹⁶

As to bye-laws inconsistent with this Act.

Sect. 316. In the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act, and, in the case of the

As to construction of incorporated Acts. L.G., s. 7.

(8) See L. G. Act, 1894, s. 62, *post*, Vol. II., p. 2096.

(9) *Post*, Vol. II., p. 2098.

(10) See s. 55, *post*, Vol. II., p. 2090.

(11) Repealed by L. G. Act, 1894, s. 89, Sched. II., *post*, Vol. II., p. 2113. Improvement commissioners are now "district councils," and elected in the same manner: see Act of 1894, s. 23 (5), *post*, Vol. II., p. 2037. The present Act (see s. 339) contains a saving for the composition of certain local boards of health, and the qualification and number of their members; but see the Note to that section, *post*.

(12) As to the repealed "Sanitary Acts," see *ante*, p. 3, and Sched. V., Part I., *post*. The repealed provisions are indicated under the marginal notes to the corresponding sections of the present Act. As to the abbreviations there used, see *ante*, p. 42. See also s. 326, which continues the sanitary authorities existing at the passing of the present Act, and their officers and servants, as well as their bye-laws.

(13) 45 & 46 Vict. c. 23.

(14) *Ibid.*, s. 1.

(15) *Ibid.*, s. 2.

(16) As to bye-laws not so inconsistent, see s. 326, *post*. As to bye-laws generally, see ss. 182-186, *ante*.

Sect. 316.

Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of a special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act.

Note.

Incorporated Acts.

A part of the Waterworks Clauses Act, 1847, and the whole of the Waterworks Clauses Act, 1863, are incorporated with the present Act by sect. 57; parts of the Towns Improvement Clauses Act, 1847, by sects. 160 and 169; part of the Markets and Fairs Clauses Act, 1847, by sect. 167; part of the Town Police Clauses Act, 1847, by sect. 171; and the Lands Clauses Acts, 1845, 1860, and 1869, by sect. 176. The last-mentioned Acts have been amended by the Lands Clauses Umpire Act, 1883, and the Lands (Taxation of Costs) Act, 1895.¹⁷

Interpretation of incorporated enactments.

Per Lord Blackburn: "Where a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act, from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act. I do not mean that if there was in the original Act a section not incorporated, which came by way of a proviso or exception on that which is incorporated, that should be referred to. But all others, including the interpretation clause, if there be one, may be referred to."¹⁸

Incorporated enactments are to be taken as if they had been for the first time enacted in the incorporating Act, and are, therefore, deemed to have been passed at the date of the passing of the latter Act.¹⁹

A complicated series of incorporations subject to savings for inconsistencies was considered in an action tried by Phillimore, J., whose judgment on the point was reversed by the Court of Appeal, but restored by the House of Lords. The enactments were described by Sir Gorell Barnes, P., as "drawn almost as if for the purpose of creating a Chinese puzzle." The Railways Clauses Consolidation Act, 1845, is incorporated with all subsequent special railway Acts, save so far as it is expressly varied or excepted by such special Acts.²⁰ A special railway Act of 1846 first incorporated a previous special Act of 1836, save so far as such previous Act was inconsistent with the Act of 1845; and then incorporated the Act of 1854, save so far as it was inconsistent with "the provisions hereinafter mentioned." The result of these incorporations was ultimately decided to be that certain provisions relating to the repair of bridges over the railway, which were contained in the Act of 1845, would have prevailed over those which were contained in the special Act of 1836, if the latter had been inconsistent with the former, which the House of Lords considered was not the case.²¹

A clause in an Act of Parliament, imposing a penalty for offences against "this Act," for which no special penalty was "hereinbefore" appointed, was held by the Divisional Court to apply to an offence against a regulation made in pursuance of an earlier Act, with which the later Act was incorporated.²²

Sect. 35 of the Metropolitan Water Board (Charges) Act, 1907,²³ which saves the operation of the Metropolis Water Act, 1902, has the effect, taken in conjunction with section 45 (b) of the Act of 1902,²⁴ whereby contracts with the metropolitan water companies were made binding on the Metropolitan Water Board, of preserving agreements made by the water companies with their consumers, even where such agreements were made under provisions in the companies' Acts which were repealed by the Act of 1907.²⁵

(17) See Notes to Act of 1845, ss. 28, 34, *post*, Vol. II., pp. 1572, 1573.

(18) *Portsmouth Cpn. v. Smith* (1885), L. R. 10 A. C. 371; 54 L. J. Q. B. 473; 53 L. T. 394; 49 J. P. 676.

(19) *Ex parte Public Works Comrs., Re Woods Estate* (1886, C. A.), L. R. 31 Ch. D. 607; 55 L. J. Ch. 488; 54 L. T. 145.

(20) See sect. 1, *post*, Vol. II., p. 1601.

(21) *Rhondda U.D.C. v. Taff Vale Ry. Co.*,

L. R. 1909 A. C. 253; 78 L. J. K. B. 647; 100 L. T. 713; 73 J. P. 257; 7 L. G. R. 616.

(22) *Willingale v. Norris* (1908, K. B. D.), L. R. 1909, 1 K. B. 57; 78 L. J. K. B. 69; 99 L. T. 830; 72 J. P. 495; 7 L. G. R. 76.

(23) 7 Edw. VII. c. clxxi, s. 35.

(24) 2 Edw. VII. c. 41, s. 45 (b).

(25) *Metropolitan Water Bd. v. Mulholland* (1909, K. B. D.), 74 J. P. 27; 8 L. G. R. 88.

A local authority acquired some land compulsorily and fenced it. The adjoining owner suffered damage by reason of his inability to continue to let his land for agistment purposes, owing to the fence having fallen into disrepair. It was held that, though the definition of "company" had been extended to cover purchasing local authorities, there was no such extension of the expression "railway company," and that, as the Irish Act of 1864 (which was held to be *in pari materia* with the English Act cited below) only imposed the liability in question on "railway companies," its mere incorporation in the local authority's compulsory powers Act (*re* labourers' cottages) did not impose such liability on them. The action was accordingly dismissed.²⁶

Sect. 316, n.
Interpretation of incorporated enactments—*continued.*

The National Insurance Act, 1911,²⁷ makes employers who fail to pay proper contributions liable "on summary conviction" to a penalty. The Fines Act (Ireland) 1851 Amendment Act, 1874,²⁸ provides that, where offences are to be prosecuted in a summary manner, they are to be prosecuted according to the provisions of the Petty Sessions (Ireland) Act, 1851.²⁹ Sect. 42 of this latter Act declares that its provisions are not to refer to complaints under any Act relating to excise, customs, stamps, taxes, etc. It was held that, assuming the Act of 1911 to come within this description (as to which *quære*), the effect of the Act of 1874 was to incorporate the Act of 1851, except sect. 42, and that the justices had wrongly declined jurisdiction to deal with the summons.³⁰

As to the effect of the provision that Acts are to be "construed as one," and as to the construction of "consolidation" Acts, see the Note to sect. 1.^{30a}

For other canons of construction and numerous cases thereon, see the Note to sect. 1 of the Interpretation Act, 1889.³¹

With regard to the recovery of penalties, see sects. 251-254.

Penalties.

The last paragraph of the present section has been treated as applying sect. 253 to proceedings under the incorporated enactments.³²

Sect. 317. The schedules to this Act shall be read and have effect as part of this Act.

Construction of schedules.

The forms contained in Schedule IV. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.³³

TEMPORARY PROVISIONS.

Sect. 318. [*As to clerk and treasurer of certain authorities.*¹]

P.H. 1872, s. 12.
As to special district rates.
See L.G., s. 54 (1).
L.G. Am., ss. 12, 13.

Sect. 319. Nothing in this Act shall affect the making and levying of any special district rates, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Acts in force at the time of the passing of this Act.

Note.

Sect. 86 of the Public Health Act, 1848,² under which these rates were leviable, was repealed by the Local Government Act, 1858,³ which, however, contained a saving for the debts previously incurred and contracts and engagements entered into, and for all powers of raising money in connection with such rates. The Local Government Act (1858) Amendment Act, 1861,⁴ allowed the special district rates to be made and levied as part of the general district rates, and by the same Act debts charged on special district rates might, with the sanction of the Secretary of State (now the Minister of Health) and of the mortgagees, and the owners and ratepayers of the district, be repaid, and money might be raised for such repayment on the credit of the general district rate.

Special district rates

(26) Railways Clauses Act, 1845 (8 Vict. c. 20), ss. 68, 69; Railways (Ireland) Act, 1864 (27 & 28 Vict. c. 71), ss. 13, 15. *Elliott v. Strabane* (No. 2) R.D.C. (No. 2), 1913 Ir. K. B. 193; 46 Ir. L. T. 159; 4 Glen's Loc. Gov. Case Law 17.

(27) 1 & 2 Geo. V. c. 55, s. 69 (2).

(28) 37 & 38 Vict. c. 72, s. 5.

(29) 14 & 15 Vict. c. 93, s. 42.

(30) *Irish Insurance Comrs. v. Hamilton*, 1913 Ir. K. B. 453; 47 Ir. L. T. 172; 4 Glen's Loc. Gov. Case Law 92.

(30a) *Ante*, p. 3.

(31) *Post*, Vol. II., p. 1962.

(32) *Ross v. Taylerson* (1898), 62 J. P. 181.

But see *Jobson v. Henderson*, *ante*, pp. 661 (2), 699 (11).

(33) As to necessity for complying with these forms, see the *Stourbridge Case*, *ante*, p. 319 (12); and *Rayner's Case*, cited in Note to H. T. P. Act, 1909, s. 41, *post*, Part II., Div. III.

(1) Repealed as obsolete by S. L. R. Act, 1883. It related to officers whose tenure of office was regulated by P. H. Act, 1872, 35 & 36 Vict. c. 79, s. 12.

(2) 11 & 12 Vict. c. 63, s. 86.

(3) 21 & 22 Vict. c. 98, s. 54.

(4) 24 & 25 Vict. c. 61, ss. 12, 13.

Sect. 320.

Division of expenses between landlord and tenant in certain cases.
P.H. 1874, s. 8.

Sect. 320. Where under the provisions of any local Act in that behalf any expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough rate were, before the passing of the Public Health Act, 1872, divided between landlord and tenant in moieties or otherwise, the [Minister of Health] may, on the application either of landlord or tenant, by order make provision for the continuance of such division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act.

Validity of certain securities.
P.H. 1872, s. 46.

Sect. 321. Where by any sanction to a loan given or by any provisional order made under the Sanitary Acts, it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited.

P.H. 1874, s. 3.

Sect. 322. [*As to certain turnpike trustees.*⁵]

As to main sewerage districts and joint sewerage boards.
11 & 12 Vict. c. 63.
P.H. 1872, s. 58.
S.U. 1867, ss. 10-14.

Sect. 323. Where any district has been constituted in pursuance of the provisions of the Public Health Act, 1848, for the purposes of main sewerage only, or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilization Act, 1867, the [Minister of Health] may by provisional order dissolve such district, or may constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act, without application previous to the making of any such order; and until an order has been made by the [Minister of Health] under this section, the authority of any such district shall continue to be the authority thereof and their members shall be elected as if this Act had not passed: Provided that the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts which are in force within the district of any such authority at the time of the passing of this Act and are repealed by this Act shall be deemed to be substituted for those enactments.

An order made under this section may if necessary provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom any moneys found to be due are to be paid and the mode of raising such moneys.

Note.**Main sewerage districts.**

The Public Health Act, 1848, made provision for the partial application of the Act to a district, as well as for the application of the whole Act.⁶ The Public Health Act, 1872,⁷ contained a similar provision to the above with respect to main sewerage districts, and it was acted upon by the Local Government Board in the case of the Wisbech and Walsoken provisional order.⁸

Joint sewerage boards.

The sewer authority of a district, with the consent of the sewer authorities of adjoining districts, could, under the Sewage Utilization Act, 1867,⁹ apply to the Local Government Board for an order forming one united district for the purposes of the Sewage Utilization Acts, 1865 and 1867. These joint boards were regulated by sects. 12-14 of the latter Act. See, now, sects. 279-284 of the present Act.

Sect. 324. [*As to audit of certain accounts.*¹⁰]

Sect. 325. [*As to certain orders under section 20 of 35 & 36 Vict. c. 79.*¹¹]

(5) Repealed by S. L. R. Act, 1898, all turnpike trusts having now expired, see *ante*, pp. 26, 27, and Glen's "District Councillor's Guide," Chap. I., § 8.

(6) 11 & 12 Vict. c. 63, s. 10.

(7) 35 & 36 Vict. c. 79, s. 58.

(8) 36 & 37 Vict. c. cxi.

(9) 30 & 31 Vict. c. 113, s. 10.

(10) Repealed by S. L. R. Act, 1883. It related to accounts of sanitary authorities

not audited in 1875. As to accounts and audit, see ss. 245-249, *ante*.

(11) Repealed by S. L. R. Act, 1883. It related to the temporary constitution of certain port sanitary authorities. As to port sanitary authorities, see ss. 287-291, the first of which contains a provision for future renewals of orders temporarily constituting such authorities.

PART XI.

SAVING CLAUSES AND REPEAL OF ACTS.

SAVING CLAUSES.

Sect. 326. All urban sanitary authorities and rural sanitary authorities existing at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act; and all joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the Sanitary Acts, and existing at the time of the passing of this Act, shall be deemed to be joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and local government districts under this Act; and the members of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) for such time as they would respectively have held office if this Act had not been passed; and the officers and servants of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions, as to duties remuneration and otherwise, as they would have held them if this Act had not been passed; and all byelaws duly made under any of the Sanitary Acts by this Act repealed and not inconsistent with any of the provisions of this Act shall be deemed to be byelaws under this Act; and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act, and to their several officers and servants, in substitution for the provisions of the Sanitary Acts by this Act repealed, but so as not to affect any right acquired or liability incurred under the Sanitary Acts, or any of them, before the passing of this Act, and existing at the time of the passing of this Act.

Provision as to the sanitary authorities existing at the passing of this Act and their officers, etc.

Note.

The Public Health Act, 1872,¹ gave definitions of urban and rural sanitary authorities similar to the definitions given by sects. 6 and 9 of the present Act.

Sanitary authorities.

As to "the Sanitary Acts," see the Notes to sects. 1 and 4²; and as to the substitution of this Act for the repealed Sanitary Acts, see sect. 313. The repealed sections corresponding to those of the present Act are indicated under the marginal notes to the latter. Reference should also be made to the saving in the repealing clause : sect. 343.

Sanitary Acts.

Bye-laws which are inconsistent with this Act are repealed, as far as regards such inconsistency, by sect. 315; and the present Act does not render valid a bye-law, purporting to have been made under the repealed Acts, which was invalid.³ Bye-laws (under a local Act) as to bicycles were held to be of no force, having regard to sect. 85, sub-sect. (1) of the Local Government Act, 1888.⁴ With regard to the making of new bye-laws under the present Act, see sect. 182 and Note.

Bye-laws.

Sect. 327. Nothing in this Act shall be construed to authorise any local authority—

(1.) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; or

Saving for works and property of certain authorities, and for navigation and water rights, etc.

L.G., s. 68.

(2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in [His] Majesty's Principal Secretary of State for the War Department for the time being; or

(3.) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate

(1) 35 & 36 Vict. c. 79, ss. 4, 5.

92; 34 W. R. 682; 50 J. P. 805.

(2) *Ante*, pp. 3, 8, 9.

(4) *Watson v. Winch*, *ante*, p. 496 (49), and

(3) *Reay v. Gateshead Cpn.* (1886), 55 L. T.

post, Vol. II., p. 1949.

Sect. 327.

on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or

(4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference; or

(5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such rival canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof; or

(6.) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person, as are herein-before in that behalf respectively mentioned, such consent to be expressed in writing in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent.

And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

Note.

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Proceedings against the Crown.

Actions
against the
Crown.

In an unsuccessful action brought against the Lords of the Admiralty to restrain them from entering on the plaintiffs' lands under alleged compulsory powers,¹ Romer, J., laid down the principles applicable to such actions as follows: "Inasmuch as the plaintiffs could not sue the Crown for a past or threatened trespass, they could not, in respect of any trespass, sue the defendants in the capacity of agents for or as representing the Crown. Again, the plaintiffs could not sue the defendants merely on the footing that, as representing a branch of the executive government, the defendants were responsible for a trespass committed or threatened by some officials or persons in the employment or under the control of the Government, or of the Admiralty as a department of the Government, even though those officials or persons purported to act on behalf of or as representing the Crown, or the Government, or the Admiralty. And further, even if some of the defendants, acting on behalf of the Crown, or of the Government, or of the Admiralty, had committed or threatened a trespass, that would not justify the plaintiffs in suing the other defendants if they had taken no part in the transaction. On the other hand, the plaintiffs could sue any persons actually committing or threatening the trespass, even though those persons only acted on behalf or by the authority of the Government, or of the defendants as representing the Admiralty. Moreover, I do not think the rights of the plaintiffs would, of necessity, be confined to an action against those actually committing the trespass, who might be some very humble persons. If a trespass was committed by those persons by the order or direction of some higher officials, so as in substance to have been the act of those higher officials, then the latter could be sued. . . . But in this case they could be sued not because, but in despite of the fact that they occupied official positions or acted as officials."

His Majesty's Commissioners of Public Works and Buildings were held to be liable to an action for damages for breach of a contract entered into by them with

(1) *Raleigh v. Goschen*, L. R. 1898, 1 Ch. 73; 67 L. J. Ch. 59; 77 L. T. 429; followed in *Bainbridge v. Postmaster-General* (C. A.), L. R. 1906, 1 K. B. 178; 75 L. J. K. B. 366; 94 L. T. 120.

a firm of builders for the erection of a public building, because (*per* Ridley, J.) they had made the contract specially themselves, and not as agents of the Crown, and (*per* Phillimore, J.) they were in the position of servants of the Crown who might be sued for the purpose of obtaining a judgment declaratory of the right of the subject who had contracted with them.² And the same Commissioners were held liable to indemnify their contractor against damages recovered from him for trespass committed by him on the instructions of their architect.³ But a loan to an occupier of land by the Irish Public Works Commissioners, in pursuance of certain Irish statutes made applicable by Treasury minute, was held to be a Crown debt, and as such not barred by the Statute of Limitations.⁴

A breach of an undertaking by the British Government that clearance would be given to a neutral vessel from a British port during the war was held not enforceable by action.^{4a}

It is a general rule that the Crown is not bound by an Act of Parliament, except so far as the Crown may be mentioned therein, though the Crown is sometimes expressly exempted without any mention being made of the Crown in other parts of the Act.⁵ As to the application of the Crown Office Rules to the Crown, see the case cited below.⁶

Rates, taxes, and tolls are not chargeable against the Crown, or against the servants of the Crown acting on behalf of the Crown. In order, however, to be entitled to this exemption from rates, the premises rated must be used *exclusively* for the purposes of the Crown.⁷ As to water rates, see the case cited below.⁸

The Crown exemption from male servant licences was held not to apply to such servants at a luncheon club for Government employees provided by the Office of Works on the top floor of certain Government offices.⁹

Bye-laws with respect to new buildings originally made under the Local Government Act, 1858, were held not to be applicable to land and buildings vested in the Prison Commissioners for the use of the Secretary of State for public prison purposes, and the saving in the present section with regard to some portion of the rights of the Crown was held not to raise the inference that all other exemptions of the Crown were intended to be done away with and to be given up, but to have been inserted *ex abundanti cautela*.¹⁰ But Lord Kinnear, in a case already cited,¹¹ said: "I am not at this moment prepared to hold that property which the Crown has acquired from a subject is, by reason of its now belonging to the Crown, necessarily exempted from building restrictions."

Militia,¹² Volunteer,¹³ and Territorial corps¹⁴ were held entitled to the exemption in respect of their headquarters as servants of the Crown.

The expenses of making up a street under sect. 150 of the present Act were held not recoverable from the officer commanding a Volunteer corps, in whom the headquarters of the corps adjoining the street were vested by the Volunteer Act, 1863.¹⁵

A summons against a village postmaster for allowing the post office chimney to catch fire was dismissed, with regret, as the premises were vested in the Crown.^{15a}

(2) *Graham v. Public Works Comrs.*, L. R. 1901, 2 K. B. 781; 70 L. J. K. B. 860; 85 L. T. 96; 65 J. P. 677. See also *Stewards & Co. v. Reginam* (Petition of Right in respect of breach of contract by the Admiralty) (1900, C. A.), 17 T. L. R. 111; *Roper v. Public Works Comrs.*, L. R. 1915, 1 K. B. 45; 84 L. J. K. B. 219; 111 L. T. 630, *re* trespass, nuisance, and breach of contract; and *Hosier Bros. v. Sec. of State for War*, L. R. 1918, 2 K. B. 671; 87 L. J. K. B. 1009; 119 L. T. 351, *re* declaration as to meaning of contract.

(3) *Kirby v. Chessum (Public Works Comrs. Third Parties)* (1914, C. A.), 79 J. P. 81; 12 L. G. R. 1136; 30 T. L. R. 660. As to joining the Crown as a defendant, see *Esquimaux Ry. Co. v. Wilson*, L. R. 1920 A. C. 358; 89 L. J. P. C. 27; 122 L. T. 563.

(4) *A.G. (Public Works Comrs. of Ireland) v. Howley*, 1914 Ir. Ch. 124; 48 Ir. L. T. 145; 5 Glen's Loc. Gov. Case Law 18.

(4a) *Rederiaktiebolaget Amphitrite v. Regem*, L. R. 1921, 3 K. B. 500; 91 L. J. K. B. 75; 126 L. T. 63.

(5) See, *e.g.*, I. D. (Notification) Act, 1889, s. 15, *post*, Part II., Div. I.

(6) *Rex v. Amendt*, *ante*, p. 659 (81), *re* Comrs. of Customs and Excise.

(7) *Greig v. Edinburgh University* (1868), L. R. 1 H. L. Sc. 348; *Worcester C.C. v. Worcester U.A.C.*, L. R. 1897, 1 Q. B. 480;

66 L. J. Q. B. 323; 76 L. T. 138; and see *Rayner's Case*, *ante*, p. 587 (80); and the *Glasgow Case*, *ante*, p. 587 (83).

(8) *Postmaster-General v. Nenagh U.D.C.*, *post*, Vol. II., p. 1226.

(9) *London C.C. v. Houndle* (1911, K. B. D.), 105 L. T. 211; 75 J. P. 442; 9 L. G. R. 958.

(10) *Gorton Loc. Bd. of Health v. Prison Comrs.* (1887), 68 J. P. 27, n.; 1 L. G. R. 838. See also *Symons v. Baker*, L. R. 1905, 2 K. B. 723, as to byelaws imposing pilotage dues.

(11) *Edinburgh Magistrates v. Lord Advocate*, *ante*, p. 365 (18). For quotation, see 1912 S. C. (S.), at p. 1092; 3 Glen's Loc. Gov. Case Law, at p. 164.

(12) *Reg. v. Jay* (1857), 8 E. & B. 469; s.c. *Jay v. Hammon*, 4 Jur. (N.S.) 407; 27 L. J. M. C. 25.

(13) See *Pearson's Case*, *ante*, p. 587 (79).

(14) See *Wixon's Case*, *ibid.*, and *Dellar Bros. v. Drury*, L. R. 1912, 2 K. B. 209; 81 L. J. K. B. 766; 106 L. T. 806; 76 J. P. 239; 10 L. G. R. 395.

(15) *Hornsey U.D.C. v. Hennell*, L. R. 1902, 2 K. B. 73; 71 L. J. K. B. 479; 86 L. T. 423; 66 J. P. 613. *Westminster Vestry v. Hoskins*, L. R. 1899, 2 Q. B. 474; 68 L. J. Q. B. 840; 81 L. T. 390; 63 J. P. 725, not followed.

(15a) *Rex v. Bliss* (1923, Hinckley P.C.), 58 L. J. Jo. 262.

Sect. 327, n.

Statutory proceedings against the Crown.

Sect. 327, n.

A servant of the War Office, acting under definite instructions from his superior officer, who drove a locomotive belonging to the War Office through a town at a greater speed than that allowed by the Locomotives Act, 1865,¹⁶ was held to be exempt from the penalty.¹⁷

Costs.

As a general rule, costs will not be given either for or against the Crown,¹⁸ except "in the case of a statute impliedly or expressly mentioning the Crown or a Government Department, and contemplating or making provision for costs."^{18a}

Commissioners of sewers.

Sewers.

With regard to commissioners of sewers and the statutes under which they act, see the Note to sect. 13. With regard to the drainage of land for agricultural purposes, see the Note to sect. 31.

Sewers under the authority of commissioners of sewers, and those made and used for draining, preserving, and improving land under a local or private Act, or for irrigating land, are expressly excepted from the sewers which are vested in the local authority by sect. 13.

Woolwich dockyard.

Admiralty Works.

Woolwich dockyard is exempted from the Act, and the local authorities of the district, which includes the dockyard, are restrained from entering upon or doing any works upon any lands vested in the Lord High Admiral, or in the Master-General, or other principal officer of the Ordnance.¹⁹

With regard to the local authorities for Woolwich, see the Note to sect. 339.

Secretary of State.

War Department Works.

A local board of health filed a bill for an injunction to restrain the Secretary of State for War from stopping up a ditch in the town within their jurisdiction, and thereby interfering with certain sanitary measures which they were carrying out; but as there was no injury, nor an invasion of the rights of the inhabitants of the town, the injunction was refused.²⁰ The same local board took various steps in the same suit,²¹ and at the final stage, by which time the ditch had acquired the soubriquet of "Chancery Ditch," claimed an injunction against obstructing an ancient easement which they possessed in the flow of water through the ditch, and interfering with their right to the free use thereof for sanitary purposes. They claimed the easement with regard to the drainage of the whole district, whereas it appeared from the nature of the locality that the ditch could carry off only the surface water which collected on an undulating space of ground of 114 yards in length. The bill was, however, dismissed with costs, principally on the ground that the proper remedy was under the Public Health Act, 1848.²²

With regard to the power of the Secretary of State to divert sewers and interfere with watercourses, see sect. 335 and Note.

With regard to the local authority for Aldershot, see the Note to sect. 339.

Navigation Works.

Sect. 330 enacts that no transfer of powers or privileges under the Act shall deprive navigation proprietors of their powers or privileges. See also the end of the Note to sect. 332.

Tidal rivers.

The right of navigating a tidal river is common to the subjects of the realm; but private riparian rights may also exist in such a river, and the public right may be connected with a right to the exclusive access to particular land on the bank of the river, the invasion of which right may form the ground for an action for damages or for an injunction.²³ The public right of navigation may be used in a reasonable manner for any reasonable purpose: it includes the right of a riparian proprietor to moor a vessel of ordinary size, at reasonable times, and for a reasonable time, alongside his wharf for loading or unloading it.²⁴

Rivers which are *publici juris*, and common highways for man or goods, may be fresh or salt, and may or may not be tidal. According to Lord Hale, "divers rivers, as well above the bridges as below, as well above the flowings of the sea as

(16) 28 & 29 Vict. c. 83, s. 4.

(17) *Cooper v. Hawkins*, L. R. 1904, 2 K. B. 164; 73 L. J. K. B. 113; 89 L. T. 476; 68 J. P. 25; 1 L. G. R. 833. Followed in *Chare v. Hart*, *post*, Vol. II., p. 1791.

(18) See *ante*, p. 659.

(18a) See *per Sargant, J.*, in *In re Carbonit Aktiengesellschaft* (1923), 58 L. J. Jo. 314.

(19) 15 & 16 Vict. c. 69, s. 2.

(20) *Felkin v. Lord Herbert* (1861), 4 L. T. 433; 9 W. R. 496.

(21) *Felkin v. Lewis* (1863), 8 L. T. 788;

Felkin v. Lord Herbert (1863), 9 L. T. 635.

(22) *Felkin v. Lord Herbert* (1864), 11 L. T. 173.

(23) *Lyon v. Fishmongers' Co.* (1876), L. R. 1 A. C. 662; 46 L. J. Ch. 68; 35 L. T. 569; see also *Orr-Ewing v. Colquhoun* (1877), L. R. 2 A. C. 839, as to these rights; and *North Shore Ry. Co. v. Pion* (1889), L. R. 14 A. C. 612; 59 L. J. P. C. 25; 61 L. T. 525.

(24) *Original Hartlepool Collieries Co. v. Gibbs* (1877), L. R. 5 Ch. D. 713; 46 L. J. Ch. 311; 36 L. T. 433.

below, and as well where they are become to be the private propriety, as in what parts they are of the King's propriety, are public rivers *juris publici*." ²⁵

A district council were held not to be entitled to carry a sewer under a towing path vested in the Thames conservators without the consent of that body under sub-sect. (3) of the present section, although the interference with the traffic on the towing path might be only temporary, and though the council did not intend to interrupt the traffic over more than half of the path at any one time, or to interfere with the towing of vessels at all. ²⁶

As to the discharge of oil into navigable waters, see the Act of 1922. ^{26a}

Harbours.

As to loans for the purpose of constructing harbours, see sect. 7 of the Public Works Loans Act, 1882, and sect. 4 of the Public Works Loans Act, 1887. ²⁷

As to the functions of county, borough, district, and parish councils in connection with "small harbours principally used by the fishing industry," see the Fishery Harbours Acts, 1915 and 1917. ²⁸

Formerly some local authorities acted as harbour authorities under the local Acts by which they were constituted. But the Local Government Act, 1894, ²⁹ split them into two distinct bodies by converting them into urban district councils for the purposes of all enactments relating to such councils, and at the same time continuing them as harbour authorities elected and acting under the local Acts as such authorities.

A Harbour Act defined a harbour as including its precincts, and as extending along the shore from a certain burn on the west to another burn on the east, and it prohibited the removal from the harbour or its precincts of any sand, &c., except from places appointed by the harbour commissioners. The House of Lords held that this prohibited the owners of a certain part of the foreshore between the two burns from removing sand from that part of the foreshore, although the Act gave them no compensation in respect of the loss of the right to remove such sand. ³⁰

Watercourses.

The right of a riparian owner to the use of a stream does not depend on the ownership of the soil of the stream, see the Note to sect. 332.

With reference to the meaning of the word "watercourse," Jessel, M.R., said: "A grant of a watercourse in law, especially when coupled with other words, may mean any one of three things. It may mean the easement or the right to the running of water, it may mean the channel-pipe or drain which contains the water, and it may mean the land over which the water flows. Which it does mean must be shown by the context, and if there is no context, I apprehend that it would not mean anything but the easement, a right to the flow of the water." ³¹

With reference to an enactment imposing a penalty for throwing rubbish into certain navigable rivers "or any watercourses thereto belonging," tributary streams not forming part of the navigation were held not to come within the provision. ³²

The present section was held to prevent a local authority from interfering with a sewage irrigation pipe, that pipe not being within sect. 67 of the Highway Act, 1835. ³³ The local authority claimed the right to interfere with the pipe as a highway, and not as a sanitary authority; but it was held that, their highway powers being derived from sect. 144 of the present Act, they were seeking to exercise the powers of "this Act" within the words at the commencement of the present section. ³⁴

Sect. 332 contains a more general saving for water rights, but both that and the present section must be read subject to sect. 14 of the Housing, Town Planning, etc., Act, 1919. ³⁵

It is an offence under the Rivers Pollution Prevention Act, 1876, ³⁶ for any

(25) De Jur. Mar. part i. c. 3. For further information on the subject of rights in connection with navigable rivers, see Glen's "Law relating to Highways," Chap. III., § 2.
(26) *Thames Conservators v. Walton-upon-Thames U.D.C.* (1907, Phillimore, J.), 96 L. T. 555; 71 J. P. 202; 5 L. G. R. 274.
(26a) Set out *post*, Vol. II., p. 2361.
(27) *Post*, Vol. II., pp. 1741, 1742.
(28) *Post*, Vol. II., p. 2262.
(29) See s. 65, *post*, Vol. II., p. 2097.
(30) *Musselburgh Real Estate Co. v. Mussel-*

burgh Cpn., L. R. 1905 A. C. 491. *A.G. v. Tomline*, *ante*, p. 105 (43), followed. See also *Lord Talbot de Malahide v. Dunne*, *ante*, p. 653 (5).
(31) *Taylor v. St. Helens Cpn.* (1877), L. R. 6 Ch. D. 264; 46 L. J. Ch. 857; 37 L. T. 253.
(32) *Smith v. Barnham* (1876), L. R. 1 Ex. D. 419; 34 L. T. 774.
(33) *Ante*, p. 129.
(34) *Ballard v. Leek U.D.C.* (1917, Ch. D.), 117 L. T. 12; 81 J. P. 232.
(35) *Post*, Part II., Div. III.
(36) See s. 2, *post*, Vol. II., p. 1743.

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Towing path.

Discharge of oil.

Loans.

Fishery harbours.

Harbour authorities.

Removal of sand.

Meaning of watercourse.

Irrigation works.

Saving for water rights.

Pollution of watercourse.

Sect. 327, n.

person to put or cause to be put various substances into any stream. See also the remainder of that Act with regard to the pollution of streams, and sect. 17 of the present Act and the Note thereto.

Where a local board were interfering with a watercourse in a manner not authorised by statute, they were restrained by injunction, the person injured not being left to his remedy under the compensation clause of the Public Health Act, 1848.³⁷

Bridges.

By sect. 4 of the present Act, bridges other than county bridges are included in the term "street."

Maintenance of bridges.

Under sect. 148 an urban district council may, by agreement with the surveyor of a county bridge, undertake the maintenance of the road over the bridge. See also sect. 3 of the Highways and Bridges Act, 1891.³⁸

Reference to arbitration in case of works not within preceding section.

L.G., s. 69.

Sect. 328. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid, interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path which any body of persons or person are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river canal dock harbour or basin, or with any land necessary for the enjoyment or improvement thereof, the local authority shall give to such body of persons or person a notice specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration; (that is to say,) (1.) Whether the matters or things proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or land, or to the enjoyment or improvement of such river canal dock harbour or basin as aforesaid: (2.) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being fully compensated by money.³⁹

Effect of arbitration.
L.G., s. 70.

Sect. 329. The result of any such arbitration shall be final, and the local authority shall do as follows; (that is to say,)

(1.) If the arbitrators are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:

(2.) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things:

(3.) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision as to transfer of powers, etc.
L.G., s. 71.

Sect. 330. No transfer of powers and privileges under this Act shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.⁴⁰

Provision as to alteration of sewers.
L.G., s. 72.

Sect. 331. Any body of persons or person authorised by virtue of any Act of Parliament to navigate on or use any river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal or the use of such dock harbour or basin, may, at their own expense, and on substituting other sewers drains culverts and pipes equally effectual and certified as such by the surveyor to the local authority, take up, divert, or alter the level of any sewers drains culverts or pipes constructed by any local authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing-paths

(37) *Grand Junction Canal Co. v. Shugar* (1871), L. R. 6 Ch. 483; 24 L. T. 402; 35 J. P. 660. Distinguished in *English's Case*, post, p. 797 (69).

(38) *Post*, Vol. II., p. 1898.

(39) See ss. 266, 267, as to authentication

and service of notices, and ss. 179-181 as to mode of referring questions under the Act to arbitration.

(40) As to transfers of powers and privileges, see ss. 10, 275, and 310; and, as to interfering with navigations, s. 327 (3)-(6).

thereof, and may do all such things as may be necessary for carrying into effect such taking up diversion or alteration. Sect. 331.

Note.

The present section refers only to sewers constructed by the district council; but all sewers in the district, with certain exceptions mentioned in sect. 13, are vested in them. If the council desire themselves to alter or discontinue a sewer, they may do so by virtue of sect. 18.

A penalty is imposed by sect. 307 for wilfully damaging works or property of the council, and by sect. 26 for erecting a building over any of their sewers without their consent.

Differences of opinion arising out of this substitution of sewers, etc., may be referred to arbitration under sect. 333.

Alteration of sewers.

Sect. 332. Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

Saving for water rights generally.
L.G., s. 73.
N.R. 1855, ss. 44, 45.

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Purchase of Waterworks and Rights.

Under sect. 51 the district council may purchase waterworks or rights to take or convey water. If, however, the owners are unwilling to sell them, a provisional order for the compulsory purchase of them will not be issued, as it would be in contravention of the present section. But the land itself, including the water rights, could be purchased compulsorily under sect. 176, or the water rights alone could be acquired by promoting a local Act.

Purchase by agreement.

Interference with Watercourse.

Sects. 17 and 327 also contain provisions protecting "streams or watercourses" and rivers and navigations, but sect. 327 and the present section must be read subject to sect. 14 of the Housing, Town Planning, etc., Act, 1919.¹

The present section does not apply to a case in which the council merely permit an existing sewer to discharge the drainage of houses connected with it, into a stream, without themselves doing any act to cause it to be so discharged,² though they may be liable to proceedings under the Rivers Pollution Acts.³

Discharge of sewage.

Riparian proprietors have a common interest in the water of a running stream, and a separate property in the alveus or channel thereof, *usque ad medium filum fluminis*; but no proprietor may so use his property in the alveus as to affect the interest of *ex adverso* proprietors in the stream; and in order to entitle a riparian proprietor to relief against building on the alveus, it is not necessary for him to prove that damage to him has been, or is likely to be, caused thereby. In such case the onus of showing that no damage will arise lies on the person making the encroachment. Anything done *in alveo* which produces no sensible effect on the stream is, however, allowable. *Per* Lord Chelmsford, L.C.: "A riparian proprietor may build a bulwark on his bank *ripæ muniendæ causâ*, but he must so build as to cause no actual injury to the opposite proprietor; in this case, however, mere apprehension of damage would not be sufficient ground for relief." *Per* Lord Westbury: "The interest of a riparian proprietor in the stream extends not only to the prevention of a diversion or diminution thereof, but to the prevention of any such interference with its course as might possibly be attended with damage at a future period to another proprietor. The general rule is that, even though imme-

Riparian rights.

(1) *Post*, Part II., Div. III.

(2) *Ogilvie v. Blything R.S.A.* (1892), 67 L. T. 18.

(3) See Act of 1893, s. 1, *post*, Vol. II., p. 1745.

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Riparian
rights—
continued.

diating damage cannot be described, or actual loss predicted, an obstruction to the current of a stream constitutes an injury of which the courts will take notice as an encroachment which adjacent proprietors have a right to have removed.⁴ Scouring and cleansing a river-bed, so as to keep the stream in its accustomed course and at its accustomed level, is "not only permissible in but obligatory upon a riparian owner."⁵ And a landowner was held liable for the obstruction of a stream by the roots of a tree on his land growing into and filling up the channel.⁶ One riparian proprietor was, however, held by Kekewich, J., to have no right as against others to remove from the bed of the stream a long-continued natural accumulation of gravel and growth of weeds, which had permanently altered the flow and course of the water.⁷

Pleas were upheld claiming a prescriptive right⁸ to discharge sand, stone, rubble, etc., into a natural stream flowing through the plaintiff's lands whereby the channel was obstructed and water overflowed.⁹ But in an action for pollution¹⁰ a defence based on prescription was overruled on the grounds (1) that there had been no enjoyment as of right during the full period of twenty years; (2) that there had been a change of user adversely affecting the plaintiff; (3) that there was no uniformity of user by which the extent of the right claimed could be measured; and (4) that the user was contrary to the Rivers Pollution Prevention Act, 1876, and that therefore no lost grant could be presumed.

An easement to discharge water on to a neighbour's land was held not lost by a short discontinuance, and the burden was held not to have been substantially increased by scouring out part of the old watercourse or by substituting pipes for another part.¹¹

Change in
course of
stream.

Where a non-tidal river gradually changes its bed, it is doubtful whether the riparian owners gain or lose land, as the case may be, especially if their original boundaries remain well defined, as in a case where the bed belongs to a separate owner. *Per* Romer, J., the question whether particular land forms part of the bed at any time depends on the physical circumstances, including past and present fluctuations of the river, the nature and use of the ground in question and the growths upon it.¹²

For a successful action for damages for injury sustained through an artificial alteration to the course of a stream, see the case cited below.¹³

Divided
stream.

With reference to the presumptive ownership by the riparian proprietors of the bed of a stream *usque ad medium filum*, Joyce, J., held that, where there was an island in the stream, the presumptive ownership of the riparian owner on one side did not extend beyond the middle of that part of the stream which flowed between his land and the island.¹⁴

Encroachment
on stream.

Although an encroachment on the alveus of a running stream may be complained of without the necessity of proving that damage has been sustained, or is likely to be sustained,¹⁵ yet where, upon a balance of testimony, it appears that the quantity of water sent on to another's works will not, in all probability, be substantially diminished in quantity or quality, the court will not proceed by mandatory injunction.¹⁶

Diversion of
stream.

A person diverting a stream into a new and artificial channel for his own convenience is bound to make it capable of carrying off all the water which may reasonably be expected to flow into it, irrespective of the capacity of the old and natural channel.¹⁷ And one who has made a watercourse from a stream to his

(4) *Bickett v. Morris* (1866), L. R. 1 H. L. Sc. 47; 14 L. T. 835; 12 Jur. (N.S.) 803, followed in *A.G. v. Earl Lonsdale* (1868), L. R. 7 Eq. 377; 38 L. J. Ch. 335; 20 L. T. 64. See also *Hanbury v. Jenkins*, L. R. 1901, 2 Ch. 401; 70 L. J. Ch. 730; 65 J. P. 631.

(5) *Rex v. Wharton* (1701), 12 Mod. 510; Rolle's Abr. tit. Nusans (A); *Brown v. Best* (1747), 1 Wils. 174; cited with approval by Lord Coleridge, C.J., in *Rhodes v. Airedale Drainage Comrs.* (1876), L. R. 1 C. P. D. at p. 392. See also *Miner's Case*, post, p. 792 (31).

(6) *Hall v. Swift* (1838), 6 Scott, 167; 4 Bing. (N.C.) 381; 1 Wm. 157; 7 L. J. C. P. 209.

(7) *Withers v. Purchase* (1889), 60 L. T. 819. See Gale on Easements, p. 480.

(8) Under 2 & 3 Wm. IV. c. 71, s. 2.

(9) *Carlyon v. Lovering* (1857), 26 L. J. Ex. 251; 1 H. & N. 784.

(10) *Hulley v. Silversprings Bleaching Co.* (Eve, J.), L. R. 1922, 2 Ch. 268; 91 L. J. Ch.

207; 126 L. T. 499; 86 J. P. 30.

(11) *Craig v. McCance* (1910. Ch. D., I.), 44 Ir. L. T. 90; 1 Glen's Loc. Gov. Case Law 111.

(12) *Hindson v. Ashby*, L. R. 1896, 1 Ch. 78; 73 L. T. 468; 60 J. P. 40; reversed on the facts, L. R. 1896, 2 Ch. 1; 65 L. J. Ch. 515; 74 L. T. 327; 60 J. P. 484.

(13) *Greenock Cpn. v. Caledonian Ry. Co.*, ante, p. 430 (37).

(14) *Great Torrington Commons Conservators v. Moore Stevens*, L. R. 1904, 1 Ch. 347; 73 L. J. Ch. 124; 89 L. T. 667; 68 J. P. 111; 2 L. G. R. 397.

(15) *Earl of Norbury v. Kitchin*, post, p. 792 (33).

(16) *Edleston v. Crossley & Sons* (1868), 18 L. T. 15.

(17) *Musgrave or Fletcher v. Smith* (1877), L. R. 2 A. C. 781; 47 L. J. Ex. 4; 37 L. T. 367; 26 W. R. 83.

mill, with a sluice-gate at the head of such watercourse, is bound to maintain the sluice-gate so as to prevent flooding of the mill after he has sold the mill with a right to the use of the water in the watercourse.¹⁸

As to the duty to scour natural streams¹⁹ and artificial streams,²⁰ and as to the construction of a covenant to "repair" waterworks,²¹ see the cases cited below.

A man has a right to protect his own property against an extraordinary flood, which is a common enemy, although the damage inflicted by such flood upon his neighbour be thereby increased; provided, however, that he does not interfere with the natural outlet of a natural stream in exercising such right of self-protection.²² But a person is not entitled by artificial erections on his own land to cause water to flow on to the land of another in a manner in which it would not have flowed but for such erections.²³

While a lower proprietor must submit to the flow of water coming down upon his lands by the natural force of gravitation,²⁴ he is not bound to receive water brought up from a depth by artificial means, such as pumping.²⁵

A municipal corporation, as owners of a mill and some low-lying lands, having for upwards of two hundred years exercised an uninterrupted right to open, in times of flood, certain river locks belonging to the plaintiff, were held by the House of Lords to be entitled to the right as an easement, either by prescription or on the presumption of a lost grant, and the easement was presumed to have been granted in respect of the lands affected by its exercise.²⁶ The plaintiff in this case was subsequently held by the House of Lords not to be under the obligation to repair these river locks.²⁷

As to the duty of the Crown to maintain sea defences, see the cases cited below.²⁸

The Secretary of State for War is empowered to interfere with streams in certain cases by the Defence Act, 1860: see the Note to sect. 335.

Abstraction of Water from Watercourse.

A riparian proprietor can have no larger right than he has by nature against those above or below him. "The right to have the stream to flow in its natural state without diminution or alteration is an incident to the property in the land through which it passes; but flowing water is *publici juris*, not in the sense that it is a *bonum vacans*, to which the first occupant may acquire an exclusive right, but that it is public and common in this sense only, that all may reasonably use it who have a right of access to it; that none can have any property in the water itself, except in the particular portion which he may choose to abstract from the stream and take into his possession, and that during the time of his possession only. But each proprietor of the adjacent land has a right to the usufruct of the stream which flows through it."²⁹ But as soon as a riparian owner has appropriated the water to a beneficial use, he may sue for injury done to him in respect thereof.³⁰ By a long series of decisions the rights of riparian

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Duty to scour, etc.

Protection against floods.

Duty of Crown.

Riparian rights in natural stream.

(18) *Buckley & Sons, Ltd. v. Buckley & Sons*, L. R. 1898, 2 Q. B. 608; 67 L. J. Q. B. 953.

(19) *Normile v. Ruddle*, ante, p. 130 (10).

(20) *Anderson v. Cleland* (C. A., I.), 1910 Ir. K. B. 334; 1 Glen's Loc. Gov. Case Law 111.

(21) *Evan-Thomas v. Neath Cpn.*, ante, p. 41 (11).

(22) *Nield v. London and North Western Ry. Co.* (1874), L. R. 10 Ex. 4; 44 L. J. Ex. 15; 23 W. R. 60. Applied in *Maxey Drainage Bd. v. Great Northern Ry. Co.* (1912, K. B. D.), 106 L. T. 429; 76 J. P. 236; 10 L. G. R. 248. See also *Roberts v. Rose*, ante, p. 79, and *Jones v. Williams*, ante, p. 212, re entry on lands of another to abate a nuisance; *Cope v. Sharpe* (C. A.), L. R. 1912, 1 K. B. 496; 81 L. J. K. B. 348; 106 L. T. 56, re extinguishing fires; and *Greyvensteyn v. Hatting*, L. R. 1911 A. C. 355; 80 L. J. P. C. 158; 104 L. T. 360, re locusts.

(23) *Hurdman v. Northern Eastern Ry. Co.* (1878), L. R. 3 C. P. D. 168. Distinguished in the *Maxey Drainage Bd. Case*, supra (22), and in *Gerrard v. Crowe*, L. R. 1921, 1 A. C. 395; 90 L. J. P. C. 42; 124 L. T. 486. And see *Burnley Co-op. Soc. v. Pickles* (1898),

77 L. T. 803; 62 J. P. 260. But see *Burdett Coutts v. Ridge P.C.*, post, Vol. II., p. 2086 (12).

(24) See *Wilson v. Waddell*, ante, p. 769 (63).

(25) Per Lord Shand in *Young v. Bankier Distillery Co.*, L. R. 1893 A. C. 691, at p. 701; 69 L. T. 838; 58 J. P. 100.

(26) *Simpson v. Godmanchester Cpn.*, L. R. 1897 A. C. 696; 66 L. J. Ch. 770; 77 L. T. 409.

(27) *Simpson v. A.G.*, L. R. 1904 A. C. 476; 75 L. J. Ch. 1; 91 L. T. 610; 69 J. P. 85; 3 L. G. R. 190.

(28) *A.G. v. Tomline*, ante, p. 105 (43), applied in *Holien v. Tipping*, 1915 Ir. Ch. 210; *Canvey Island Comrs. v. Preedy*, L. R. 1922, 1 Ch. 179; 91 L. J. Ch. 203; 126 L. T. 445; 86 J. P. 21; 20 L. G. R. 125.

(29) Per Parke, B., in *Embrey v. Owen* (1851), 6 Ex. at p. 369; 20 L. J. Ex. at p. 216; 15 Jur. 633. See also *White & Sons v. J. & M. White* (1906, H. L.), 94 L. T. 65.

(30) See *Mason v. Hill* (1833), 5 B. & Ad. 1; *Holker v. Porritt* (1875), L. R. 10 Ex. 59; 33 L. T. 125; 44 L. J. Ex. 52; *Brown v. Best* (1747), 1 Wils. 174; *Bealey v. Shaw* (1805), 6 East 208.

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proprietors to the use of water flowing in definite channels above ground have been well settled. Each proprietor of the land has a right to the stream flowing in a natural course over his land, to use the same as he pleases, in a manner not inconsistent with a similar right in the proprietors of the land below his, through which the stream also flows; so that, in the absence of prescription or grant, neither proprietor can diminish the quantity or injure the quality of the water, which would otherwise naturally descend. He "has a right to what may be called the ordinary use of the water flowing past his land; for instance, to the reasonable use of the water for his domestic purposes . . . and this without regard to the effect which such use may have in case of a deficiency upon proprietors lower down the stream. But further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided he does not thereby interfere with the rights of other proprietors either above or below him. Subject to this condition, he may dam up the stream for the purpose of a mill, or divert the water for the purpose of irrigation; but he has no right to interrupt the regular flow of the stream if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury."³¹

This is applicable to an artificial stream, of which the origin is unknown, and as to which it may be presumed from the user of the stream that it was originally constructed upon the terms that all the riparian proprietors should have at least the same rights in regard to the use of the water as they would have had if the stream had been a natural one.³²

Injury to
lower
riparian
proprietor.

A riparian proprietor has a right, by means of waterwheels and machinery erected by him for that purpose, to pump up water from a natural stream flowing past his land, to a reservoir, and to convey it thence by pipes to his dwelling-house upon another estate at a distance from the stream; and he may there apply such water to his domestic and other necessary purposes of utility, provided he take only a reasonable quantity with reference to the size of the stream and the rights of his neighbours; but he has no right to take more water by means of the wheels and machinery than he would have a right to take otherwise.³³

A riparian owner who had been deprived by a colonial statute of his common law right, and was given no statutory right, to an undiminished flow, was held unable to prevent an upper riparian owner from diverting water to his prejudice.³⁴

A railway company whose line crossed a stream in the immediate neighbourhood of one of their stations were held to be entitled to take a reasonable quantity of water for supplying their engines and for the general purposes of the station, as it appeared that the abstraction of water did no damage in wet weather and never slackened the working of the plaintiff's mill for more than a few minutes a day.³⁵ But this was subsequently overruled by the House of Lords.³⁶

A riparian proprietor has a right to the natural stream of water flowing through the land in its natural state; and if the water be polluted by a proprietor higher up the stream so as to occasion damage in *law*, though not in *fact*, to the first-mentioned proprietor, it gives him a good cause of action against the upper proprietor, unless the latter has gained a right by long enjoyment or grant.³⁷

On the other hand, the abstraction of water from a natural stream, openly and under a claim of right for a period of twenty years, to a tenement not abutting on the stream, will create no easement to have pure water flow down the stream to the point of abstraction.³⁸

The justices of Kent took water for the county gaol from a navigable river without the permission of the company who had the control of the river under a private Act. In an action for trespass, it was held that the purposes to which the water was applied by the defendants were more extensive than those for which a riparian proprietor could insist on appropriating a stream as it passed his land; and that the company need not prove actual damage to the navigation, because

(31) *Miner v. Gilmour* (1859), 12 Moo. P. C. 156; 7 W. R. 328.

(32) *Bailey & Co. v. Clark Son & Moreland*, L. R. 1902, 1 Ch. 649; 71 L. J. Ch. 396; 86 L. T. 309.

(33) *Earl of Norbury v. Kitchin* (1862), 3 F. & F. 292; 7 L. T. 685; 6 Jur. (N.S.) 132. In *Cardiff Cpn. v. Barry Ry. Co.* (1916, Neville, J.), 85 L. J. Ch. 316; 114 L. T. 229; 80 J. P. 261; 14 L. G. R. 535, an action for excessive abstraction of water was ordered to be postponed until the end of the war.

(34) *Cook v. Vancouver Cpn.*, L. R. 1914

A. C. 1077; 83 L. J. P. C. 383; 111 L. T. 684.

(35) *Earl of Sandwich v. Great Northern Ry. Co.* (1878), L. R. 10 Ch. D. 707; 49 L. J. Ch. 225; 43 J. P. 429.

(36) *McCartney v. Londonderry and Lough Swilly Ry. Co.*, L. R. 1904 A. C. 301; 73 L. J. P. C. 73; 91 L. T. 105; following *Swindon Water Co. v. Wilts and Berks Canal Co.*, post, p. 793 (40).

(37) *Wood v. Waud*, post, p. 794 (52).

(38) *Stockport Water Co. v. Potter* (1864), 3 H. & C. 300; 10 L. T. 748.

the Legislature intended to give them such an interest in all the water of the river for the purposes of navigation as was interfered with by the abstraction of any of such water.³⁹ Sect. 332, n.

A company were empowered to maintain and keep navigable a canal, and for that purpose to supply it with water from all springs and streams which had been or should be found within two thousand yards of the canal. Under this power they diverted the water of a stream within the prescribed limits by means of a new channel into the canal, and purchased a riparian tenement. It was held that, though they had suffered no present damage, the company were entitled to an injunction to restrain a water company from diverting the water of the stream so as to cause injury to the navigation of the canal.⁴⁰ This was followed in a case in which it was held that a local board had only the ordinary rights of a riparian owner, and that the diversion of the water of a stream for the purpose of sending it in large quantities to a reservoir to supply a town was not within those rights; and that, as the defendants were diverting water for a purpose which was not legal, actual pecuniary damage was not necessary to give a right of action or suit. Damages were not given, but the board were restrained from abstracting or diverting water from the brook so as to injuriously affect the supply of water flowing through the plaintiff's land.⁴¹ And in an Irish case millowners obtained an injunction to restrain improvement commissioners from taking water from a river under a special water Act, or interfering with its flow, otherwise than as authorised by the Act, although no actual damage was proved.⁴²

A rural district council, who owned land adjoining a lake, were restrained from taking water from the lake to supply their district, even though no actual present damage might be suffered by riparian owners below.⁴³

A corporation were empowered by statute to erect a reservoir near a river, and on its completion to divert the water, but they were required to discharge down the river a certain quantity of compensation water. They were prevented by the nature of the ground from completing the reservoir, but diverted the water and discharged down the river more than its natural flow, though less than the quantity required by the statute. It was held that the riparian proprietors could recover at common law for any damage sustained by the diversion of the water, but not for failure to comply with the statutory requirement to discharge the compensation water.⁴⁴ Compensation water.

A water company were liable, on complaint by the party interested, to a penalty of £5 a day for failing to send a prescribed quantity of compensation water down a stream. Though the company had not entirely constructed their authorised works, they had interfered with the stream, and were held liable to the penalty; but as this was a penalty and not a liability to pay money compensation, the justices were held to be entitled to reduce it to a nominal amount under either sect. 4 or sect. 16 of the Summary Jurisdiction Act, 1879.⁴⁵

A local Act of 1884, under which a local authority were acquiring a stream, allowed "the owners lessees and occupiers" of certain furnaces to take, along an existing watercourse, compensation water not exceeding a specified quantity in "any working day." At the time of the passing of the Act the furnaces were worked by a company under lease from the tenant for life, and the company were paying rent for a wayleave over part of the watercourse which did not belong to their lessor. In 1890 the company ceased to use the furnaces; in 1895 they gave up the wayleaves; and in 1898 the lessor assented to the works being dismantled. In the meantime the watercourse was allowed to get into disrepair, and the water entering it escaped and was lost before reaching the site of the furnaces. In 1909 the local authority diverted the stream so as to prevent any water from entering the watercourse. In an action brought against them by the lessor it was held by

(39) *Medway Navigation Co. v. Earl of Romney* (1861), 9 C. B. (N.S.) 575; 30 L. J. C. P. 236; 7 Jur. (N.S.) 846; 4 L. T. 87.

(40) *Swindon Water Co. v. Wilts and Berks Canal Co.* (1875), L. R. 7 H. L. 697; 45 L. J. Ch. 638; 33 L. T. 513.

(41) *Owen v. Davies* (1874), W. N. 175; *Times*, July 25. See also *Mason v. Shrewsbury and Hereford Ry. Co.* (1871), L. R. 6 Q. B. 578; 40 L. J. Q. B. 293; 25 L. T. 239; and *A.G. v. Great Eastern Ry. Co.* (1871), L. R. 6 Ch. 572; 19 W. R. 788.

(42) *Herron v. Rathmines and Rathgar Improvement Comrs.*, L. R. 1892 A. C. 498;

67 L. T. 658.

(43) *Roberts v. Gwyrfai R.D.C.* (C. A.), L. R. 1899, 2 Ch. 608; 68 L. J. Ch. 757; 81 L. T. 465; 64 J. P. 52.

(44) *Waller v. Manchester Cpn.* (1861), 6 H. & N. 667; 30 L. J. Ex. 293; 7 Jur. (N.S.) 635. See also the *Yeovil Case* and others cited *ante*, p. 134, and the *Staffordshire Potteries Case*, *ante*, p. 768 (59).

(45) 42 & 43 Vict. c. 49, ss. 4, 16 (see now Probation of Offenders Act, 1907, s. 1, *ante*, p. 657). *Cooke or Davies-Cooke v. Hawarden Water Co.* (1907, K. B. D.), 96 L. T. 906; 71 J. P. 223; 5 L. G. R. 731.

Sect. 332, n.

Neville, J., that the right to the compensation water did not depend on the continuance of the works at the furnaces, and was not abandoned merely by disuse of the water while it was not wanted; but an injunction was refused, because the plaintiff had so far suffered no damage from the diversion of the stream.⁴⁶

**Injury to
upper
riparian
proprietor.**

Milowners were restrained from diverting water from a river so as to leave the natural channel near the mill at times bare of water, whereby the passage of salmon up the river was obstructed to the injury of the proprietor of the fisheries above the mill.⁴⁷

**Prescriptive
right.**

A prescriptive right to take water from a stream in a particular way at a particular place does not authorise taking the water in any other way or at any other place.⁴⁸

**Artificial
stream.**

Martin, B., said that it was competent to the owners of adjoining closes abutting on a stream to agree together to take the water through a goit from the close of one to the close of the other, returning the water to the stream in the close of the latter, and that though the right to a flow of water in a goit was an incorporeal hereditament, and could not be created so as to bind the original grantor and his heirs except by deed, yet actual possession and enjoyment of it under a parol agreement, though conferring no title as against the original grantor and his heirs, gave a right of action against a wrongdoer.⁴⁹ In the same case Bramwell, B.,⁵⁰ said that a riparian proprietor, subject to the rights of those opposite and down the stream, might divert the water where it flowed by his land, and grant the right or mode of enjoyment to another person. And Channell, B., said that if two adjoining riparian proprietors agreed to divert the stream, so that it should run in two channels instead of one, the water passing again into the old stream below their land and flowing down to the lower proprietors as before, the case was different, the goit would be to all intents and purposes a mere stream, and any person having land upon it would have the right of a riparian proprietor to use the water in any way not interfering with others. There was no reason why the law applicable to ordinary running streams should not be applicable to such a stream, for it was a natural stream or flow of water, though flowing in an artificial channel; and it had been held that an artificial stream might be on the same footing as a natural one, as regards the rights of riparian proprietors.⁵¹

No action will lie for an injury by the diversion of an artificial watercourse, where the enjoyment of it depends upon temporary circumstances, and is not of a permanent character, and where the interruption is by a person who stands in the nature of a grantor.⁵²

An implied grant of a right to the passage of water was enforced, though its origin was "precarious," and in spite of the equitable doctrine of notice.⁵³

But where a dwelling-house, which had for many years been supplied through pipes with water from a reservoir, was leased for ninety-nine years with all waters and watercourses, liberties, privileges, easements, and appurtenances, and the lessors were only yearly tenants of the reservoir, it was held that the lessees of the house had a right to the supply of water so long as the lessors remained tenants of the reservoir.⁵⁴

Abstraction of Water Percolating Underground.

**Right of
landowner to
deal with
underground
water.**

A district council may sink wells for the purpose of obtaining a supply of water, even though the underground water is diverted from a stream in which it has hitherto flowed, and damage is thereby occasioned to property on the banks of the stream. For it was decided by the House of Lords that the owner of an ancient water-mill on a river had no right of action against a local board, as owners of land

(46) *Hanbury v. Llanfrechfa Upper U.D.C.* (1911), 75 J. P. 307; 9 L. G. R. 360.

(47) *Pirie & Sons v. Earl of Kintore*, L. R. 1906 A. C. 478; 75 L. J. P. C. 96.

(48) *M'Intyre v. M'Gavin*, L. R. 1893 A. C. 268; 57 J. P. 548.

(49) *Nuttall v. Bracewell* (1866), L. R. 2 Ex. 1; 36 L. J. Ex. 1; 15 L. T. 313; 12 Jur. (N.S.) 989; 4 H. & C. 714, followed in *Holker v. Porritt*, ante, p. 791 (30).

(50) *Distinguishing Hill v. Tupper* (1863), 2 H. & C. 121; 32 L. J. Ex. 217; 8 L. T. 792.

(51) In *Sutcliffe v. Booth* (1863), 32 L. J. Q. B. 136; 9 Jur. (N.S.) 1037.

(52) *Wood v. Waud* (1849), 3 Ex. 748; 18 L. J. Ex. 305; 13 Jur. 472; approved in *Rameshur Pershad Narain Singh v. Koonj Behari Pattuk* (1878, P. C.), L. R. 4 A. C. 121; and see *Burrows v. Lang*, L. R. 1901, 2 Ch. 502; 70 L. J. Ch. 607; 84 L. T. 623.

(53) *Schwann v. Cotton* (C. A.), L. R. 1916, 2 Ch. 459; 85 L. J. Ch. 689; 115 L. T. 168. *Dalton v. Angus* (1881), L. R. 6 A. C. 740; 50 L. J. Q. B. 689; 44 L. T. 844, considered.

(54) *Key v. Neath R.D.C.* (1906, C. A.), 95 L. T. 771; 71 J. P. 57; 4 L. G. R. 1174. See also *Lewis v. Meredith*, L. R. 1913, 1 Ch. 571; 82 L. J. Ch. 255; 108 L. T. 549.

adjacent to the river, who had dug a deep well on their own land, and thereby diverted the underground waters, not known to be formed into a stream flowing in a defined channel, which otherwise would have percolated into the river, although the board did not use the water for purposes connected with their land, but pumped it up and carried it off in pipes to supply persons resident in the neighbourhood, many of whom had no right as owners to the use of the water at all.⁵⁵

In a later case a claim arose under the Waterworks Clauses Act, 1847, which enables the undertakers to make drains, etc., and provides that, in the exercise of their powers, they shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers. A person was possessed of a well, and a waterworks company, by making a drain, drew off the water which percolated into the well, and by the same means drew it off by percolation after it had found its way into the well. It was held that, as no action could be maintained for this injury, so no compensation could be claimed for it under the statute.⁵⁶ In some cases, therefore, works planned by public boards in pursuance of their statutory powers may be carried out, though they tend to the injury of neighbouring landowners; and notice to such landowners need not be given, or their rights purchased by the board before commencing the works. Thus, the Metropolitan Board of Works, in making a sewer, cut a high-road contiguous to certain lands in such a manner that they withdrew the water of an ancient spring, and laid dry a rivulet and a series of ponds extending three-quarters of a mile. Upon a bill filed by the landowners claiming an immemorial right to the spring, the court would not restrain the defendants in the execution of the works, or compel them to make the sewer water-tight, or to do any act to restore the ancient flow of water. In such case the landowners were held to be without any remedy in equity, and their only remedy was to claim compensation under the Metropolis Management Act, 1855, for the damage done to their property by the works of the board.⁵⁷ The estate in the last-cited case was situated upon a bed of gravel, which was itself embedded in a basin of clay extending under the estate and under the lands adjoining; and the water, which rose through the gravel bed by means of natural springs, was collected in a pond, and thence, overflowing the edge of the clay basin, formed a rivulet, which supplied other ponds, and was used by the prosecutor for watering his gardens and horses. The defendants, in the course of making their sewer, cut through two beds of gravel and clay at a short distance from the estate, and the effect of the cutting was to drain the springs in the gravel, and to prevent them from finding their way into the pond, and from supplying the rivulet and the other ponds. On application for a *mandamus* to assess compensation in the manner authorised and directed by the Lands Clauses Act, the Court of Queen's Bench held that the case came within the principle of the decision in *Chasemore v. Richards*,⁵⁸ and that, therefore, there would be no right of action had the act been that of an adjoining proprietor, and that there was no right to compensation under sect. 69 of that Act. Held also (Cockburn, C.J., *dissentiente*), that there was no right to compensation at all.⁵⁹

Even where a person had sold a well or spring and the sole right to the water therein, with the right to conduct the water to a certain house for ever, it being expressed in the conveyance that the intent and meaning of the parties was that the plaintiff should be absolutely entitled to the well or spring rights and premises unconditionally, and without any denial, interruption, disturbance, claim, or demand whatsoever of the defendant, his heirs or assigns, or any other person whomsoever, it was held that in an ordinary conveyance of a spring with the water flowing from it, the spring-head with the defined stream of water flowing from it was meant; that that was all that was to be conveyed in the present case, and there was nothing in the words of the conveyance to include the extraordinary right of preventing the vendor from interfering by means of subterranean operations with the water before it formed the spring-head.⁶⁰ And in deciding that the

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Right of landowner to deal with underground water—

continued.

(55) *Chasemore v. Richards* (1859), 7 H. L. C. 349; 29 L. J. Ex. 81; 5 Jur. (N.S.) 873.

(56) *New River Co. v. Johnson* (1860), 2 E. & E. 435; 29 L. J. M. C. 93; 1 L. T. 295; 6 Jur. (N.S.) 374.

(57) *Stainton v. Woolrych and Metropolitan Bd. of Works* (1857), 23 Beav. 225; 26 L. J. Ch. 300; 3 Jur. (N.S.) 257.

(58) *Supra*.

(59) *Reg. (Stainton) v. Metropolitan Bd. of Works* (1863), 3 B. & S. 710; 32 L. J. Q. B. 105; 9 Jur. (N.S.) 1009.

(60) *Brain v. Marfell* (1879), 41 L. T. 455; 44 J. P. 56. See also *Whelan v. Leonard* (C. A., 1.), 1917 Ir. K. B. 323, where action by one of two tenants under same landlord, as to alleged unlawful use of well, was dismissed.

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lessor of land, including two ponds, and "the right to the water in the said ponds and in the streams leading thereto," was entitled to sink a tank outside the demised land and intercept the water percolating through marshy ground from a spring forty yards from the ponds, Lord Watson said: "A subterraneous flow of water may in some circumstances possess the very same characteristics as a body of water running on the surface; but, in my opinion, water, whether falling from the sky or escaping from a spring, which does not flow onward with any continuity of parts, but becomes dissipated in the earth's strata, and simply percolates through or along those strata, until it issues from them at a lower level, through dislocation of the strata or otherwise, cannot with any propriety be described as a stream. And I may add that the insertion of a common rubble or other agricultural drain in these strata, whilst it tends to accelerate percolation, does not constitute a stream, as I understand that expression." Lord Halsbury, L.C., however, who differed from the majority, considered that a "stream" consisted of water in motion from one place to another as distinguished from stagnant water.⁶¹

In an action for an injunction to restrain the diversion of certain water, an interlocutory application for an order to permit the plaintiffs to enter the defendant's land to ascertain whether the water flowed in a defined channel or not, was refused by Farwell, J., the plaintiffs having given no *prima facie* evidence that there was such a channel.⁶² And at the trial of the action it was held that there was no right in lower riparian owners to water flowing in an upper defined underground channel, unless the course of such channel was known or could be easily and inevitably inferred, without recourse to exploratory excavations.⁶³

Motive not material.

And in another case, notwithstanding the fact that it was found upon the evidence that, as alleged by the plaintiffs, a landowner was not acting *bonâ fide* in sinking shafts in his own land near the reservoir belonging to the plaintiffs, for the purpose of draining the water from some beds of stone, which he said that he desired to work, the House of Lords held that, if he were otherwise entitled to do what he intended, his motive was immaterial, and that he could not be restrained on the ground that his object was to extort money from the plaintiffs. The House also held that the special Act of the water company, whose undertaking the plaintiffs had acquired, did not entitle the plaintiffs to an injunction, although it contained a provision prohibiting any person other than the company from diverting, altering, or appropriating, in any other manner than by law they might be legally entitled, any of the waters supplying or flowing from certain streams and springs, or from sinking any well or pit, or doing any act, matter, or thing whereby the waters of those springs might be drawn off or diminished in quantity.⁶⁴

Pollution of underground water.

When a well is supplied by water which percolates through the earth, and does not flow through any defined channel, although the owner of the well is not entitled to the water until it actually enters his well, the occupier of adjoining property will be restrained from using a cesspool therein in such a manner as to pollute the water coming through his property and supplying the well.⁶⁵

Appropriation of underground water.

The defendants by works not executed "in due course of mining" intercepted water percolating underground, and turned it into a disused mine on their own property, whence it percolated to and damaged the plaintiff's property. The defendants, it was held, were not liable, because if they had done nothing the same amount of water would still have percolated through the old mine to the plaintiff's property. The mere fact of intercepting water does not amount to an appropriation of or give a person command over the water as a thing which he can control, so as to prevent him from restoring it to its freer flow from his own to his neighbour's land, and to the condition in which it was before his operations; and every one is entitled to deal with water on his own land so long as while dealt with he does not cause it to go on his neighbour's land in such a way as to affect such land in any other manner than it had been previously affected, and to impose an additional burden.⁶⁶

Running silt.

A distinction is drawn between underground water and a stratum of quicksand,

(61) *McNab v. Robertson*, L. R. 1897 A. C. 129; 66 L. J. P. C. 27; 75 L. T. 666; 61 J. P. 468.

(62) *Bradford Cpn. v. Ferrand* (No. 1) (1902), 86 L. T. 497.

(63) *Bradford Cpn. v. Ferrand* (No. 2), L. R. 1902, 2 Ch. 655; 87 L. T. 388; 67 J. P. 21.

(64) *Bradford Cpn. v. Pickles*, L. R. 1895 A. C. 587; 64 L. J. Ch. 759; 73 L. T. 353; 60 J. P. 3. See also, as to "motives," the

Worsborough Case (re extraordinary traffic), *post*, Vol. II., p. 1783 (4); and *Snushall v. Kaikoura C.C.*, L. R. 1923 A. C. 459, re proceeding for public nuisance.

(65) See *Womersley v. Church*, *ante*, p. 97 (24).

(66) *West Cumberland Iron Co. v. Kenyon* (1879, C. A.), L. R. 11 Ch. D. 782; 48 L. J. Ch. 793; 40 L. T. 703; 43 J. P. 731.

or sand loaded with stagnant water, known as "running silt." Thus, an injunction to restrain a gas company from excavating their land for the erection of a gasometer so as to injure adjoining property by the abstraction of such running silt, was confirmed by the Court of Appeal, on the ground that the plaintiff's premises were not supported by a stratum of water, and that they were let down by a shifting of the sand under them caused by the company.⁶⁷

The distinction, however, was held by Lord Alverstone, C.J., not to apply to brine formed in and percolating from the rock salt under a large area in Cheshire and collected in open spaces in the plaintiffs' rock-salt mines, these mines being connected together underground by passages and other channels so as to form one large reservoir of brine. The defendant was held to have committed no actionable wrong by pumping brine from a shaft, which he had acquired the right to use, although he thereby obtained brine partly formed by the dissolution of the plaintiffs' rock salt.⁶⁸ And the same learned judge subsequently held that no action could be maintained in respect of the withdrawal of support from land by lowering the level of subsoil water, which had not flowed in a defined stream.⁶⁹

Abstraction of Surface Water.

A landowner has a right to appropriate surface water which flows over his land in no definite channel, although the water is thereby prevented from reaching a watercourse which it previously supplied.⁷⁰ And again, an owner of land has an unqualified right to drain it for agricultural purposes, in order to get rid of mere surface water, the supply of the water being casual, and its flow following no regular or definite course; and a neighbouring proprietor cannot complain that he is thereby deprived of such waters which otherwise would have come to his land.⁷¹ So also an owner may drain his land, though he thereby cause a subsidence of the land of his neighbour.⁷²

Authority to abstract water from a navigable river, given by certain colonial water commissioners to a water power company, was held *ultra vires* as being a serious interference with the navigability of the river and not justified by the colonial Acts.⁷³ But where a navigation company failed to prove that they owned the water, and the defendants disclaimed any right to interfere with the navigation, the Court of Appeal held that there was no cause of action, though the defendants had taken water "without reference to the requirements of the navigation."⁷⁴

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Right of landowner to deal with surface water.

Interference with navigation.

Sect. 333. Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid, whether any sewers drains culverts or pipes substituted under the powers of this Act for sewers drains culverts or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply quality or fall of water in any such reservoir canal river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in manner by this part of this Act provided. The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers canals docks harbour and basins.⁷⁵

Arbitration as to alteration of sewers injuriously affecting supply of water etc.
L.G., s. 74.

Sect. 334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.

Saving for mines, etc.
N.R. 1855, s. 44.

(67) *Jordeson v. Sutton Southcoates and Drypool Gas Co.*, L. R. 1899, 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815; 63 J. P. 692. See also *Trinidad Asphalt Co. v. Ambard*, L. R. 1899 A. C. 594; 68 L. J. P. C. 114; 81 L. T. 132, *re pitch*.
(68) *Salt Union, Ltd. v. Brunner Mond & Co.*, L. R. 1906, 2 K. B. 822; 76 L. J. K. B. 55; 95 L. T. 647.
(69) *English v. Metropolitan Water Bd.*, L. R. 1907, 1 K. B. 588; 76 L. J. K. B. 361; 96 L. T. 573; 71 J. P. 313; 5 L. G. R. 384.
(70) *Broadbent v. Ramsbotham* (1856), 11 Ex. 602; 25 L. J. Ex. 115.
(71) *Rawstron v. Taylor* (1855), 11 Ex. 369;

25 L. J. Ex. 33.
(72) *Popplewell v. Hodgkinson* (1869), L. R. 4 Ex. 248; 38 L. J. Ex. 126; 20 L. T. 578. Applied in *English's Case*, *supra*. But see *Jordeson's Case*, *supra*.
(73) *Burrard Power Co. v. Regem*, L. R. 1911 A. C. 87; 80 L. J. P. C. 69.
(74) *A.G. (Sheffield & S. Yorks. Navigation Co.) v. Great Northern Ry. Co.*, L. R. 1909, 1 Ch. 775; 78 L. J. Ch. 577; 73 J. P. 41.
(75) This refers to differences arising under ss. 331 and 332: the last clause refers to s. 329. As to proceedings on arbitration under the Act generally, see ss. 179-181.

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Note.

Application
of enactment.

A local authority having constructed a sewer through land in which there were mines, the owners claimed compensation for damage in consequence of their not being able to work the mines which lay under and gave support to the sewer, and for the risk of the mines being damaged by percolation from the sewer. It was held, first, that the local authority were entitled to have the sewer supported by the ground beneath it, and therefore the mineowners were entitled to compensation in respect of the loss of the right to work the mines beneath the sewer²; and, secondly, that, as there could be no percolation from the sewer into the mines unless caused by a wrongful act on the part of the mineowners in withdrawing support from the sewer, the mineowners could neither claim compensation under the Act nor recover by action in respect of such percolation. In the course of giving judgment in this case, Lindley, L.J., said: "There is a puzzling question as to the effect of sect. 334. The appellant's counsel put it that you must not prevent a mineowner from working his mines; that is to say, you cannot expect him to refrain from working his mines in order to leave your sewer alone. The language of the first part of the section, I think, goes that length; but logically it goes this length too, that mines are out of the Act altogether, and Mr. Jelf saw that, and therefore would not push it so far, and he said, 'notwithstanding the general language of that Act, we certainly have a right to make sewers through mines, and if necessary to buy the mines.' He was compelled to put an illogical and inconsistent construction upon those general words; but when you look at the section altogether, and look at the last part of it, you see at once that the construction sought to be put upon it cannot possibly be the right one. I admit it is a struggling with the words, and a straining of the words; but when you see there are certain portions of the Act which, if this section is confined to them, make the section utterly insensible and inconsistent with the other sections, which you cannot really do without dislocating the whole scheme of the Act, I have no hesitation whatever in putting on this section a construction which makes it sense, by saying that it applies to those groups of sections which apply to nuisances."³

A local Act of 1854,⁴ which incorporated provisions of the Towns Improvement Clauses Act, 1847,⁵ relating to prevention of smoke, expressly exempted works such as those of the appellants. A local Act of 1872⁶ imposed a penalty, to be recoverable as if imposed under the Public Health Acts, for emitting smoke from furnaces used for the purpose of trades to which the Nuisances Removal Act, 1855,⁷ extended, that Act not extending to works such as those of the appellants. The present Act⁸ gave the Local Government Board power to amend local Acts, and the present section contains a saving clause in favour of works such as those of appellants. The Local Government Board Provisional Orders Confirmation (No. 15) Act, 1893,⁹ imposed a penalty for emitting smoke from works such as those of the appellants, and contained no saving clause and no provision that it was to be construed as one with the present Act. It was held that, notwithstanding the exemptions contained in the earlier Acts, and the saving clause in the present section, the appellants could be convicted in respect of the breach of the Act of 1893.¹⁰

Saving for
mines, etc.

The section only exempts the proprietors of the businesses mentioned from any penalties or liabilities imposed by the statute, and does not prevent an action from lying against them at the suit of the Attorney General in respect of any public nuisance created by them, or at the suit of the local authority in respect of any injury to their property, though it might protect them from an action at the suit of a local authority that was not a party injured, and whose right of action was governed by sect. 107.¹¹

If a nuisance, caused by the smoke from the chimney of a mine, can be prevented without obstructing the efficient working of the mine, then the chimney is just as

(2) But now see P. H. (Support of Sewers) Act of 1883, quoted *ante*, p. 63.

(3) *In re Dudley Cpn. and Earl Dudley's Trustees* (1881), L. R. 8 Q. B. D. 86; 51 L. J. Q. B. 121; 45 L. T. 733; 46 J. P. 340. See also *Norris v. Barnes*, *ante*, p. 184 (33).

(4) Bolton, 17 & 18 Vict. c. clix., ss. 115, 116.

(5) 10 & 11 Vict. c. 34, s. 108.

(6) Bolton, 35 & 36 Vict. c. lxxviii., ss. 97, 133.

(7) 18 & 19 Vict. c. 121, s. 44.

(8) See ss. 297, 303, *ante*, pp. 736, 746.

(9) 56 & 57 Vict. c. clxxxix., Sched. (Bolton Order), Art. II. (2).

(10) *Bessemer & Co. v. Gould* (1912, K. B. D.), 107 L. T. 298; 76 J. P. 349; 10 L. G. R. 744; 23 Cox C. C. 145.

(11) *A.G. v. Logan*, L. R. 1891, 2 Q. B. 100; 65 L. T. 162; 55 J. P. 615.

subject to the provisions of the Act relating to nuisances as any other chimney would be, notwithstanding the present section.¹²

Whether a work is a mine or not is a question of fact rather than of law. The legal principle is that the method of working is to be looked to, and not the substance obtained.¹³ Thus, when limestone was obtained by sinking shafts perpendicularly down to the stratum, which was forty or fifty yards below the surface, and the stratum was worked by roads and gateheads, and the stone raised to the surface by machinery, or carried underground to a tunnel, the property was held to be a mine, and therefore not rateable under the then existing law.¹⁴ And where clay was obtained by sinking similar shafts, the works were held to be clay mines.¹⁵

A slate quarry worked underground by shafts driven into the side of a hill was considered to be a mine within the meaning of the Metalliferous Mines Regulation Act, 1872,¹⁶ an Act which gives certain protection to the workers.¹⁷ But a slate quarry, worked without shafts, though carried to a depth of thirty yards, and described as a mine in a special case stated by quarter sessions, was held not to be a mine¹⁸; and the same was held with regard to clay pits worked without mining.¹⁹

On the other hand, for the purposes of the Income Tax Act, 1842,²⁰ a slate quarry worked by underground levels was a quarry, and not included in the expression "mines of coal, tin, lead, copper, mundic, iron, and other mines."²¹

Clay, forming the surface or subsoil of land purchased by a water company for a reservoir, and being absolutely necessary for the construction of the reservoir, was held not to come within the meaning of mines and minerals in the reservation in sect. 18 of the Waterworks Clauses Act, 1845.²² Clay forming the surface or subsoil and constituting "the land" purchased for the purposes of the undertaking was held not to be a "mineral" within the provisions of the Railways Clauses Consolidation Act, 1845, excepting mines and minerals from conveyances to the company, unless expressly purchased.²³ But fireclay from 60 to 140 feet below the surface, and not forming part of the subsoil, was held to be a mineral for that purpose²⁴; and beds of ironstone and limestone, worked by open or surface workings, were held included.²⁵ Kaolin or china clay, obtained from china clay rock by washing, is a mineral within the same exception,²⁶ but not sandstone.²⁷ As to oil shale,²⁸ and natural gas,²⁹ see the cases cited below.

Having regard to the object of the Act, gravel and sand were held to be "minerals" within the meaning of the Quarries Act, 1894, which requires notice of accidents to be given to the Inspector of Mines.³⁰

A brick kiln, near the entrance to a mine from which fireclay and coal were obtained for the brickworks, was held to be a building "erected in connection with a mine and used exclusively for the working of such mine" within the meaning of a clause exempting such buildings from the operation of bye-laws as to new buildings.³¹

Where a person who had purchased land subject to a reservation of minerals opened quarries for getting sandstone which lay at a considerable depth below the surface, Lord Alverstone, C.J., held that the sandstone was included in the term "minerals" and granted an injunction against him.³²

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Meaning of mine.

Meaning of minerals.

(12) *Patterson v. Chamber Colliery Co.* (1892), 56 J. P. 200.

(13) *Rex v. Dunsford* (1835), 2 A. & E. 568; 4 N. & M. 349; 1 H. & W. 93.

(14) *Rex v. Sedgley Inhabitants* (1831), 2 B. & Ad. 65.

(15) *Rex v. Brettell* (1832), 3 B. & Ad. 424.

(16) 35 & 36 Vict. c. 77, s. 11, now expressly applied to quarries by Act of 1894. See *ante* p. 177.

(17) *Sims v. Evans* (1875), 41 L. T. 576n.

(18) *Rex v. Woodland Inhabitants* (1802), 2 East 164.

(19) *Rex v. Brown* (1807), 8 East 528.

(20) 5 & 6 Vict. c. 35, Sched. A.

(21) *Jones v. Cwmorthen Slate Co.* (1880, C. A.), L. R. 5 Ex. D. 93; 49 L. J. Ex. 110; 41 L. T. 575; 44 J. P. 168.

(22) *Glasgow Lord Provost v. Farie* (1887), L. R. 13 A. C. 657; 58 L. J. P. C. 33; 60 L. T. 274. See also *post*, Vol. II., p. 1213.

(23) *In re Todd Birlestone & Co. and North Eastern Ry. Co.*, L. R. 1903, 1 K. B. 603; 72 L. J. K. B. 337; 88 L. T. 366; 67 J. P. 105.

(24) *Caledonian Ry. Co. v. Glenboig Fireclay Co.*, L. R. 1911 A. C. 290; 80 L. J. P. C. 128; 104 L. T. 657; 75 J. P. 377.

(25) *Midland Ry. Co. v. Robinson* (1889), L. R. 15 A. C. 19; 59 L. J. Ch. 442; 62 L. T. 194; 54 J. P. 580.

(26) *Great Western Ry. Co. v. Carpalla China Clay Co.*, L. R. 1910 A. C. 83; 79 L. J. Ch. 117; 101 L. T. 785; 74 J. P. 57.

(27) *North British Ry. Co. v. Budhill Coal Co.*, L. R. 1910 A. C. 116; 79 L. J. P. C. 31; 101 L. T. 609.

(28) *Marquis of Linlithgow v. North British Ry. Co.*, *ante*, p. 480 (3).

(29) *Barnard Oil Co. v. Farquharson*, L. R. 1912 A. C. 864; 82 L. J. P. C. 30; 107 L. T. 332.

(30) *Scott v. Midland Ry. Co.*, L. R. 1901, 1 Q. B. 317; 70 L. J. K. B. 228; 83 L. T. 737; 65 J. P. 135.

(31) *Tylecote v. Morton* (1901), 85 L. T. 692; 66 J. P. 136.

(32) *Greville v. Hemingway* (1902), 87 L. T. 443. But see the *Budhill Co. Case*, *supra* (27).

Sect. 334, n.

Per Lord Herschell : “ I think that the word ‘ minerals ’ imports, *primâ facie*, and apart from any context, all substances other than the vegetable matters forming the ordinary surface of the ground.” ³³

Saving for
collegiate
bodies and
Government
departments.

P.H. 1872, s. 56.

Sect. 335. Any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867, shall apply in substitution for the last-mentioned provisions.

Note.

Sewage
Utilization
Acts.

The collegiate and other corporate bodies, and the Government departments above mentioned, were included in the “ sewer authorities,” to whom the Sewage Utilization Acts applied.³⁴ The provisions of the repealed Acts corresponding respectively to those of the present Act will be found under the marginal notes to the sections of the present Act. A list of the abbreviations there used is given in the Note to sect. 5.³⁵ See also sect. 313, which substitutes the present Act for the Sanitary Acts repealed by it.

Defence of
the Realm.

By the Defence of the Realm Act, 1860,³⁶ the Secretary of State for War, “ without any writ being issued or other legal proceeding being adopted,” may “ stop up or divert or alter the level of any highway, way, sewer, drain, or pipe over, through, under, or adjoining any lands comprised in any ” declaration issued by him under the Act, specifying the lands required for certain fortifications and works, and deposited with the clerk of the peace for the county; “ he, if necessary, previously making, opening, or laying down another good and sufficient way, sewer, drain, or pipe in lieu of that stopped up or diverted.” He may also “ alter the course and level of any river not navigable, brook, stream, or watercourse, and any branch of any navigable river (such branch not itself being navigable) within or adjoining ” any lands taken by him for the defence of the realm, “ making compensation for any damage sustained by reason of the exercise of such powers, such compensation to be determined and paid in like manner as other compensation under this Act, or as near thereto as circumstances admit.”

Naval works.

These provisions are, in connection with the purchase of land for the Navy, extended to the Admiralty by the Naval Works Act, 1895.³⁷

Military
lands.

The following provision is contained in Part I. of the Military Lands Act, 1892,³⁸ in reference to stopping up footpaths : “ (1) Where a footpath crosses or runs inconveniently or dangerously near to any land leased under this Act, that footpath may, with the consent of the [*vestry* ³⁹] of the parish in which the same is situate, and on the certificate of two justices that the footpath to be substituted is convenient for the public, be stopped up or diverted. (2) The provisions of the Highway Act, 1835, as to the obtaining of a certificate and the stopping up or diverting a highway where a person other than the inhabitants or vestry are desirous of stopping up, diverting, or turning a highway shall apply so far as practicable to the obtaining of a certificate, and the stopping up or diverting a footpath under this section; with this exception, that the certificate of the justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public.” Part II. of the same Act,⁴⁰ which enables the Secretary of State to make bye-laws for regulating the use of land appropriated for military purposes and for securing the public against danger, enacts that “ a bye-law under this Act shall not interfere with any highway, unless made with the consent of the authority having control of the repair of the roads of the town, district, parish, or other area in which the highway is situate, but where

(33) In *Glasgow Lord Provost v. Farie*, ante, p. 799 (22); quoted by Lord Alverstone, C.J., in *Greville v. Hemingway*, ante, p. 799 (32).

(34) 30 & 31 Vict. c. 113, s. 2.

(35) Ante, p. 42.

(36) 23 & 24 Vict. c. 112, ss. 40, 41. As to Air Force, see P. C. Order, April 27, 1918, S. R. O. (No. 538), I., p. 66.

(37) 58 & 59 Vict. c. 35, s. 2.

(38) 55 & 56 Vict. c. 43, s. 13. See also Defence Act, 1842 (5 & 6 Vict. c. 94), s. 16, and D. R. Regulations, Nov. 28, 1914, r. 5.

(39) Now, in rural districts, parish council or parish meeting (see L. G. Act, 1894, ss. 6 (1) (a), 19 (4), post, Vol. II., pp. 2001, 2023) and district council (*ibid.*, s. 13 (1)).

(40) 55 & 56 Vict. c. 43, s. 16.

it appears to the authority that any highway crosses or runs inconveniently or dangerously near to any land the use of which can be regulated by bye-laws under this Act, the authority may consent to a bye-law providing to such extent as seems reasonable for the temporary diversion from time to time of the highway, or for the restriction from time to time of the use thereof. Any such highway, if a footpath, may (without prejudice to any other power of stopping up or diverting the same) be stopped up or diverted in the manner in which a footpath crossing or running inconveniently or dangerously near to any land leased under Part I. of this Act may be stopped up or diverted." Bye-laws proposed to be made under the Act are to be published before being made, and the Secretary of State is required to receive and consider all the objections which may be made to them.⁴¹ The foregoing provisions with respect to bye-laws are extended by the Military Lands Act, 1900,⁴² to lands for the time being appropriated or used by the Admiralty for any purpose of the Navy, and to the sea or tidal waters on which such land abuts, or over which rifle or artillery practice from such land is carried on. Compensation is payable to persons injuriously affected by such bye-laws, whether they are made under the Act of 1892 or the Act of 1900, and the bye-laws are subject to the consent of the Board of Trade where they injuriously affect any public right.⁴³ The "public rights" referred to are defined as meaning rights of navigation, anchoring, grounding, fishing, bathing, walking, or recreation; and "land" is defined as including the bed of the sea or any tidal water, and any right of interference with the free use of any land.⁴⁴ See also sect. 6 of the Defence of the Realm (Acquisition of Land) Act, 1916.⁴⁵

The Act of 1892 was applied to yeomanry corps,⁴⁶ and to the Royal Naval Volunteer Reserve,⁴⁷ as though they were volunteer corps.

The Military Manœuvres Acts, 1897 and 1911, provide for the making of Orders in Council authorising "the execution of military manœuvres within specified limits and during a specified period not exceeding three months." These orders may not specify "the same limits or any part thereof more than once in any period of five years,"⁴⁹ unless the county or borough council consent.⁵⁰ Drafts of proposed Orders in Council,⁵¹ and orders by the Military Manœuvres Commission⁵² (which has to be formed with local representatives whenever an Order in Council is made under the Act⁵³), must be sent to district and other councils. Public and private water supplies may not be unduly interfered with,⁵⁴ nor, among other things, may burial grounds,⁵⁵ antiquarian remains or natural features of exceptional interest or beauty,⁵⁶ or any public or common rights,⁵⁷ be prejudicially affected. Orders may be made by justices closing, for not more than forty-eight hours, public and private rights of way,⁵⁸ or authorising general or field officers to suspend the use of such rights for not more than six hours.⁵⁹ Full compensation is to be paid out of moneys to be provided by Parliament for damage, etc.⁶⁰

The court will restrain the use of a rifle range, though certified by the Secretary for War, if it appears to the court that the range is not safe to persons in the neighbourhood, or to passers-by on the highway.⁶¹

As to the provision of aerodromes by urban district councils, see sect. 8 of the Air Navigation Act, 1920.⁶²

Sect. 336. Nothing in or done under this Act shall affect any outfall or other works of the [London County Council] (although beyond the metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away, abridge, or prejudicially affect any right power authority jurisdiction or privilege of the [London County Council].

Sect. 335, n.
Military lands—
continued.

Military manœuvres.

Rifle ranges.

Aerodromes.

Saving for
[London County Council].
P.H. 1872, s. 57.

(41) 55 & 56 Vict. c. 43, s. 17 (1).
(42) 63 & 64 Vict. c. 56, s. 2, adapted as to territorial force by S. R. O. 1912 (No. 1184), p. 1211.
(43) *Ibid.*
(44) *Ibid.*, s. 3.
(45) Set out *post*, Vol. II., p. 2276.
(46) 55 & 56 Vict. c. 43, s. 19, now repealed by Territorial Army and Militia Act, 1921 (11 & 12 Geo. V. c. 37), s. 4 (1), Sched. II.
(47) 8 Edw. VII. c. 25, s. 1.
(49) 60 & 61 Vict. c. 43, s. 1 (1).
(50) 1 & 2 Geo. V. c. 44, s. 1 (1).

(51) 60 & 61 Vict. c. 43, s. 1 (2).
(52) *Ibid.*, s. 5 (2).
(53) *Ibid.*, s. 4.
(54) *Ibid.*, s. 2 (b).
(55) *Ibid.*, s. 2 (1).
(56) *Ibid.*, s. 2 (2).
(57) *Ibid.*, s. 2 (3).
(58) *Ibid.*, s. 3.
(59) 1 & 2 Geo. V. c. 44, s. 3.
(60) 60 & 61 Vict. c. 43, s. 6.
(61) *Bannister v. Bigge* (1865), 11 L. T. 760; 11 Jur. (N.S.) 276; 29 J. P. 531.
(62) 10 & 11 Geo. V. c. 80, s. 8.

Sect. 336, n.
Metropolitan
main drain-
age.

Note.

The Metropolitan Board of Works (now the London County Council ⁶²) were originally empowered and required by the Metropolis Management Act, 1855, ⁶³ to make such sewers and works with the consent of the Public Works Commissioners, as they might think necessary for preventing all or any of the sewage within the metropolis from flowing or passing into the river Thames *in or near* the metropolis; but, by the amending Act of 1858, ⁶⁴ additional powers were given to them to construct works for the improvement of the main drainage of the metropolis, and for preventing, as far as practicable, the sewage from passing into the river *within* the metropolis. Under these Acts intercepting sewers have been constructed on both sides of the river, the outfall sewers extending eastwards to Barking on the north, and to Crossness on the south side of the river.

The London County Council are exempted in a similar manner from the operation of the Rivers Pollution Prevention Act, 1876. ⁶⁵

Saving for
 payment in
 certain cases
 to local
 authority.
 See L.G. Am.
 s. 8.

Sect. 337. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act 1858 Amendment Act 1861, to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district: Provided that any such sum shall cease to be payable, if and when the connexion between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connexion is re-established, the yearly sum shall again become payable, and so from time to time.

Note.

Drainage
of premises
without the
district.

The repealed enactment to which reference is here made, ⁶⁶ enacted as follows: "Where already or hereafter any premises not being within the limits of the district of the local board have a drain communicating, directly or indirectly, with a sewer within the district, and maintained by the local board, and any sewage from the premises flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the local board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or, failing agreement between them, as on the application of the local board is determined by two justices; and the yearly sum so agreed on or determined shall be private improvement expenses, and shall be charged on the premises, and be paid and recoverable accordingly, as if the premises were within the district: provided, that the yearly sum so charged shall cease to be payable if and when the connection between the drain from the premises and the sewer is discontinued, so that a proportionate part thereof up to the time of the discontinuance shall alone be payable; but if after the discontinuance the connection be re-established the yearly sum shall again become payable, and so from time to time." Sect. 22 of the present Act now provides for the drainage of premises without the district into the sewers of the local authority, and sect. 28 for the connection of the sewers of one local authority with those of another.

P.H. 1874,
 ss. 3, 4.

Sect. 338. [*Saving for acts of authorities under certain local Acts.*¹]

Saving for
 certain local
 boards.
 L.G., s. 5.

Sect. 339. Nothing in this Act shall affect the composition of any local board constituted by any Order in Council or any provisional order made under the Public Health Act, 1848, and confirmed by Parliament, or the qualification or number of members of any such board; but any such Order in Council, or order so confirmed, or the Act confirming any such last-mentioned order may be repealed altered or amended in manner provided by this Act.

Note.

Local boards
of health.

The Acts ² confirming the provisional orders here mentioned were passed previously to the Local Government Act, 1858. The present section is superseded

(62) See L. G. Act, 1888, s. 40 (8), *post*, Vol. II., p. 1924.

(63) 18 & 19 Vict. c. 120, s. 135.

(64) 21 & 22 Vict. c. 104, s. 1.

(65) See s. 18, *post*, Vol. II., p. 1754.

(66) 24 & 25 Vict. c. 61, s. 8.

(1) Repealed, as obsolete, by S. L. R. Act, 1883.

(2) 12 & 13 Vict. c. 94; 13 & 14 Vict. cc. 32,

90, 108; 14 & 15 Vict. cc. 80, 98, 103; 15 & 16 Vict. cc. 42, 69; 16 Vict. c. 24; 16 & 17 Vict. c. 126; 17 & 18 Vict. c. 53; 18 & 19 Vict. c. 125; 19 & 20 Vict. c. 26; 20 Vict. c. 3; 20 & 21 Vict. c. 22; 21 Vict. c. 10. The places to which these Acts refer were mentioned in some former editions of this work, and it is not considered necessary to repeat the list now.

by the Local Government Act, 1894,³ so far as the elected and *ex-officio* members of district councils are concerned. As to the manner of revoking provisional orders which is provided by the present Act, see sect. 297, sub-sect. (5).

The constitution of the local authority for the parish of Aldershot is peculiar; for it consists partly of persons elected by the ratepayers of the parish, and partly of persons nominated by the military authorities. It consists of twelve members, nine of whom are to be elected by the ratepayers and three are to be nominated from time to time by the Secretary of State for War for the time being. One-third of the members elected by the ratepayers go out of office annually; but the three persons nominated by the Secretary for War are to hold office during his pleasure, and he is further empowered from time to time to fill up vacancies arising among persons so nominated.⁴ The Local Government Act, 1894,⁵ enacts that "nothing in this Act shall affect any powers of the Secretary of State under the Public Health Supplemental Act for Aldershot, 1857, or the position of persons nominated under those powers." The other members are elected as in the case of other district councils.

With regard to Oxford, see sect. 342 and the Note to that section.

The district of Woolwich was formerly subject to a local board of health constituted by a provisional order confirmed by the Public Health Supplemental Act, 1852 (No. 2),⁶ under which three persons were to be nominated members of the board by the superintendent of the dockyard, the officers commanding the Royal Artillery and the Royal Engineers, and the storekeeper of the Ordnance. That Act expressly exempted Woolwich Dockyard from the provisions of the Public Health Act, 1848.⁷ The Metropolis Management Act, 1855, placed the district under the jurisdiction of the Metropolitan Board of Works, and required the local board of health to contribute to the expenses of that board; but the Act was not applied generally to the district.⁸

The Public Health Act, 1891, applied certain sections of the present Act to Woolwich,⁹ though it made the board the sanitary authority for the execution of the Act of 1891.¹⁰ Certain provisions of the Local Government Act, 1894, were also applied to the district.¹¹

The London Government Act, 1899, however, required that a scheme should be made for placing Woolwich under the general law applying to metropolitan boroughs, and for the repeal of the application thereto of the provisions of the Public Health Acts and other enactments not applying to London, and for the application of the Metropolis Management Acts and other London Acts.¹² And schemes have been made accordingly, by which the district has become a metropolitan borough and is subject to the same law as other metropolitan boroughs, except that certain saving clauses, necessitated by the fact that it had previously been subject to different legislation, were introduced into the schemes.

The repeal, however, of the application of the present Act to Woolwich, by the London Government Act, 1899, and the schemes made under that Act, do not prevent the partial exemption from general district rates under sect. 211 (1, b) from still applying to that district.¹³

Sect. 340. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications :

- (1.) That no person shall be punished for the same offence both under a local Act and this Act; and
- (2.) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act.¹⁴

Sect. 341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament law or

Sect. 339, n.

Aldershot.

Oxford.

Woolwich.

Saving for proceedings under local Acts. P.H. 1872, s. 55.

Powers of Act to be cumulative. P.H., ss. 65, 134. N.R. 1855, s. 43. San. 1866, s. 55. S.U. 1867, s. 19. San. 1868, s. 9. P.H. 1872, s. 59.

(3) See ss. 21-24, *post*, Vol. II., pp. 2033-2038.

(4) 20 & 21 Vict. c. 22.

(5) See s. 59 (6), *post*, Vol. II., p. 2094.

(6) 15 & 16 Vict. c. 69, s. 4.

(7) *Ibid.*, s. 2.

(8) 18 & 19 Vict. c. 120, s. 238.

(9) 54 & 55 Vict. c. 76, s. 102.

(10) *Ibid.*, s. 99.

(11) See L. G. Act, 1894, ss. 31, 33, 46, 48, 79, 80, *post*, Vol. II., pp. 2050-2110.

(12) 62 & 63 Vict. c. 14, s. 19.

(13) *London and India Docks Co. v. Woolwich B.C.*, L. R. 1902, 1 K. B. 750; 71 L. J. K. B. 394; 86 L. T. 619; 66 J. P. 484. Also cited *ante*, p. 581 (18).

(14) See also s. 341 and Note, *infra*.

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custom, and such other powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

Note.**Cumulative effect of the Act.**

Sect. 111 is similar to the present section and sub-sect. 1 of the preceding section, but refers only to the nuisance clauses of the Act, sects. 91-111.

Where an authority may have acted under either of two powers, they are to be deemed to have acted under that which was more beneficial to themselves.¹⁵

The effect of the provision that the powers of the present Act are to be "cumulative" was discussed in the cases cited below.¹⁶ As to the meaning of "under this Act," see the Note to sect. 174.¹⁷

Conflict of general and special Acts.

The second qualification in sect. 340 was relied upon in answer to a claim by an urban authority under a local Act for expenses incurred in executing works of paving, etc., in a street within their district which was repairable by the inhabitants at large, on the ground that sect. 149 of the present Act imposed upon the authority the duty of executing such works at the expense of the district. The Court of Appeal, however, decided that the present section showed that the rule that a general Act does not, in the absence of an express indication of its intention to do so, repeal a special Act, applied, and that the powers, obligations, and duties ordained by the special Act were still to be carried on and were not touched by the present Act.¹⁸

The provisions of sect. 16 of the present Act giving power to construct sewers under streets were, however, held to defeat to a certain extent those of a local Improvement Act, which was passed a few days after the Sewage Utilization Act, 1865, and contained a saving clause for the powers which the corporation had independently of such local Act, though special provisions as to a particular property in the local Act were to be read as excepted out of general provisions contained in the same or another Act. *Per Jessel, M.R.*: "When you have a saving clause, and you find another enactment which does directly affect the subject-matter of the saving clause, then I think the natural and proper construction is to say that the saving clause was intended to be an exception out of the Act, and not that it was put in *ex abundanti cautela*."¹⁹

The following are instances of the general rule *generalalia specialibus non derogant*:—

An Act which authorised the lord of a manor and his heirs to break up the pavement of the streets of a town, for the purpose of laying down water-pipes to convey water to and through the town, from his estate, was held not to be affected by a subsequent Act, which vested the same streets and pavements in a public body, and empowered them to sue any person who broke them up.²⁰

Wood, V.-C., after saying that "whenever the Legislature has enacted that certain powers of a special character shall be vested in a corporate body, or any body of commissioners, for the express purpose of carrying out a special object which the Legislature has in view, no subsequent Act, giving in merely general terms powers which, by their generality, apply to the powers of the special character given by the Act, will override the special powers so delegated to the particular body of commissioners or corporation," held that a railway company were empowered to build a station abutting upon a street in the metropolis, without the consent of the district board, notwithstanding the provisions of the Metropolis Local Management Act, 1855: their local Act, which preceded the Act of 1855, having authorised them to build it.²¹

(15) *The Ettrick or Prehn v. Bailey* (1881, C. A.), L. R. 6 P. D. 127; 45 L. T. 399; 4 Asp. M. C. 465. See also *Corsellis' Case*, ante, p. 556 (12).

(16) *Tod Heatley's Case*, ante, p. 208 (20); the *Ross Case*, ante, p. 565 (27); and *Blake's Case*, ante, p. 648 (15). See also *post*, Vol. II., p. 1962.

(17) *Ante*, pp. 455, 456.

(18) *Ashton-under-Lyne Cpn. v. Pugh*, L. R. 1898, 1 Q. B. 45; 66 L. J. Q. B. 32; 77 L. T. 583; 61 J. P. 788; see also *Lodge v. Huddersfield Cpn.*, L. R. 1898, 1 Q. B. 847; 67 L. J.

Q. B. 568; 78 L. T. 422; 62 J. P. 387; affirmed in C. A., 62 J. P. 515.

(19) *Taylor v. Oldham Cpn.* (1876), L. R. 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. 696. See also *In re Bolton Estates Act*, 1878 W. N. 65.

(20) *Goldson v. Buck* (1812), 15 East 372. See also cases cited *post*, Vol. II., p. 1962 (23).

(21) *London & Blackwall Ry. Co. v. Limehouse Bd. of Works* (1856), 3 Kay & J. 123; 26 L. J. Ch. 164; see also *Fitzgerald v. Champneys* (1861), 2 John. & H. 31; 30 L. J. Ch. 777; 7 Jur. (N.S.) 1006; 5 L. T. 233.

A school board that had purchased land compulsorily for a playground were, by reason of the special power given to them to purchase it for that purpose, held not to be bound to set back the fence in accordance with a notice from the county council²² to the distance of twenty feet from the centre of the adjoining road.²³

So also a railway company, having compulsorily purchased land under a special Act which authorised them to use it for making a subway with all necessary buildings, etc., were held to be entitled to erect a station on the land without conforming to the building line of the street.²⁴

On the other hand, a water company, authorised by their special Act, passed in 1897, to erect a water tower in a specified place, were held not to be exempt from the bye-laws of the district council with respect to new buildings. Sect. 93 of the Waterworks Clauses Act, 1847,²⁵ by which nothing in that or the special Act was to exempt the undertakers from any Act for improving the sanitary condition of towns and populous districts which might be passed in the same session of Parliament as the special Act or in any future session, was held not to imply an exemption from the Public Health Act, 1875.²⁶ And in a subsequent case it was held that a gas company, authorised by their special Act to erect such gasworks as they thought fit upon certain specified land, were subject to the provisions of the London Building Act, 1894, with respect to the position of new buildings in streets.²⁷ So also a local authority in one case, and a company in another, although authorised by special statutory provisions to construct works for the purposes of electric lighting under the streets, were held to be bound to give notice of their intention so to construct such works to the district surveyor under the London Building Act, 1894, sect. 145, although in the latter of the two cases the statutory powers had been granted subsequently to the passing of that Act.²⁸

So also there is no such inconsistency between the provisions of the Education Acts and the building regulations of the Board of Education as to exempt the London County Council, as education authority, from sending to the district surveyor a building notice under the London Building Act, 1894,²⁹ in respect of the erection of a public elementary school.³⁰

And the provisions of special Waterworks Acts, authorising the construction of reservoirs according to certain deposited plans and sections, but not giving details as to the method of construction to be adopted, were held not to be inconsistent with the provisions of the London Building Act, 1894, placing all buildings and structures in London under the supervision of the district surveyor; and the surveyor was accordingly held entitled to his fees in respect of the construction of such reservoirs.^{30a}

Where a company were empowered by a special Act of 1894 to execute certain specified works in connection with a dock undertaking authorised by an earlier Act, and in connection therewith to make and maintain all necessary and proper buildings and other works within specified limits, the court held that the company could erect buildings in substitution for buildings (not specially authorised by the earlier Act) which they removed in the course of executing the specially authorised works, without notice to the local authority. *Per* Lord Alverstone, C.J.: "It seems to us that dealing with a statutory undertaking as to which both the rights and the obligations are imposed by statute upon a particular body, express enactment, or a clear implication, is necessary in order to transfer the responsibility to a body acting under a general statute."³¹

(22) Under 41 & 42 Vict. c. 36, ss. 6, 8.

(23) *London C.C. v. London Sch. Bd.*, L. R. 1892, 2 Q. B. 606; 62 L. J. M. C. 30; 56 J. P. 791. See also *London C.C. v. District Surveyors' Assoc.*, *infra*.

(24) *City & South London Ry. Co. v. London C.C.*, L. R. 1891, 2 Q. B. 513; 60 L. J. M. C. 149; 65 L. T. 362; 56 J. P. 6.

(25) 10 Vict. c. 17, s. 93.

(26) *Uckfield R.D.C. v. Crowborough Water Co.*, L. R. 1899, 2 Q. B. 664; 68 L. J. Q. B. 1009; 81 L. T. 539.

(27) *London C.C. v. Wandsworth Gas Co.* (1900), 82 L. T. 562; 64 J. P. 500.

(28) *Whitechapel Bd. of Works v. Crow* (1901), 84 L. T. 595; 65 J. P. 549; followed in *Charing Cross Electricity Supply Cpn. v. Woodthorpe* (1903), 88 L. T. 772; 67 J. P. 286; 1 L. G. R. 551. Followed in *County of*

London Electric Supply Co. v. Perkins (1908, K. B. D.), 98 L. T. 870; 72 J. P. 133; 6 L. G. R. 344. See also *Lewis and Salome v. Charing Cross Euston & Hampstead Ry. Co.* (Warrington, J.), L. R. 1906, 1 Ch. 508; 75 L. J. Ch. 282; 94 L. T. 732; 70 J. P. 221; 4 L. G. R. 432.

(29) 57 & 58 Vict. c. cxxiii., s. 145.

(30) *London C.C. v. District Surveyors' Association*, L. R. 1909, 2 K. B. 138; 78 L. J. K. B. 729; 100 L. T. 890; 73 J. P. 291; 7 L. G. R. 569.

(30a) *Moran & Son v. Marsland* (K. B. D.), L. R. 1909, 1 K. B. 744; 78 L. J. K. B. 346; 100 L. T. 374; 73 J. P. 114; 7 L. G. R. 493.

(31) *Surrey Commercial Docks Co. v. Bermondsey B.C.*, L. R. 1904, 1 K. B. 474; 73 L. J. K. B. 293; 90 L. T. 123; 68 J. P. 155; 2 L. G. R. 356.

Sect. 341, n.

Conflict of
general and
special Acts—
continued.

Sect. 342.

L.G., s. 82.
27 & 28 Vict.
c. 68.
28 & 29 Vict.
c. 108.

Oxford.*Oxford.*

Sect. 342. [*Constitution of local board of the Oxford district.*]

Note.

By sect. 6 the borough of Oxford was not to be deemed a borough under the present Act, but was included in the local government district of Oxford. It was formerly under the government of improvement commissioners, acting under local Acts,³² who adopted the Local Government Act, 1858, and in 1865 obtained a provisional order,³³ which repealed the local Acts except in relation to Magdalen Bridge and the Mileways, the markets and the gasworks.

In 1889 the Local Government Board, in pursuance of the Local Government Act, 1888,³⁴ by the City of Oxford Order, 1889, confirmed by Act of Parliament,³⁵ extended the City and abolished the local board, transferring their powers, etc., to the corporation as urban sanitary authority.

As to the general district rate in Oxford, see the Note to sect. 211.

Sect. 228 of the present Act contains a saving for the liability of the University to contribute to paving expenses, etc., under the local Acts. It also provides for the settlement of certain disputes as to expenses by arbitration and for the recovery of rates from the University. And the corporation may make agreements for supplying water to the colleges and halls under sect. 67.

REPEAL OF ACTS.

Repeal of Acts
in Schedule V.

Sect. 343. [*The Acts specified in the first and second parts of Schedule V. to this Act are hereby repealed to the extent in the third column in the said parts of that schedule mentioned, with the following qualification; (that is to say,) That*] so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

[*Provided also, that this repeal shall not affect—(a.) Anything duly done or suffered under any enactment hereby repealed; or (b.) Any right or liability acquired accrued or incurred under any enactment hereby repealed; or (c.) Any security given under any enactment hereby repealed; or (d.) Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or (e.) Any investigation legal proceeding or remedy in respect of any such right liability security penalty forfeiture or punishment as aforesaid; and any such investigation legal proceeding and remedy may be carried on as if this Act had not been passed.*]

Note.

**Marginal
references to
repealed Acts.**

Under the marginal notes to sect. 5 and the following sections of the present Act will be found abbreviated references to the corresponding sections repealed by the present section and consolidated by the present Act. A list of the Acts in which such sections occur, with the abbreviations used in those marginal notes, will be found in the Note to sect. 5.¹

Repeals.

The words in italics in the present section, and Part I. of Sched. V., were repealed by the Statute Law Revision (No. 2) Act, 1893, but not so as to revive the repealed enactments. Sect. 38 of the Interpretation Act, 1889,² is similar to the repealed proviso.

Part I. of Sched. V. had this Note at its commencement: "Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes"; and this Note at its end: "Of the above Acts, the following (namely), 'The Public Health Act, 1848,' and 'The Local Government Act, 1858,' and 'The Local Government Act (1858) Amendment Act, 1861,' and 'The Local Government Act Amendment Act, 1863,' are in this Act referred to as 'The Local Government Acts.'" See also the Note at the commencement of Sched. V.

The Acts enumerated in Part I. of that Schedule as wholly repealed (as regards England) except where otherwise indicated, were:—

1848—11 & 12 Vict. c. 63 (Public Health).

(32) 11 Geo. III. c. xix.; 21 Geo. III. c. xlvii.; 52 Geo. III. c. lxii.; 5 & 6 Wm. IV. c. lxix.; and 11 & 12 Vict. c. xxxvii.

(33) Confirmed by 28 & 29 Vict. c. 108.

(34) See ss. 52, 54, *post*, Vol. II., p. 1927.

(35) 52 Vict. c. xv.

(1) *Ante*, p. 42.

(2) *Post*, Vol. II., p. 1971.

- 1851—14 & 15 Vict. c. 28 (Common Lodging Houses), all “except so far as relates to the Metropolitan Police District.”³
- 1853—16 & 17 Vict. c. 41 (Common Lodging Houses), all “except so far as relates to the Metropolitan Police District.”
- 1855—18 & 19 Vict. c. 116 (Diseases Prevention), all “except so far as relates to the Metropolis.”⁴
- 1855—18 & 19 Vict. c. 121 (Nuisances Removal, England), all “except so far as relates to the Metropolis.”⁴
- 1858—21 & 22 Vict. c. 98 (Local Government).
- 1860—23 & 24 Vict. c. 77 (Nuisances Removal), all “except so far as relates to the Metropolis.”⁴
- 1861—24 & 25 Vict. c. 61 (Local Government (1858) Amendment).
- 1863—26 & 27 Vict. c. 17 (Local Government Act Amendment).
- 1863—26 & 27 Vict. c. 117 (Nuisances Removal, England (Amendment)), all “except so far as relates to the Metropolis.”⁴
- 1865—28 & 29 Vict. c. 75 (Sewage Utilization).
- 1866—29 & 30 Vict. c. 41 (Nuisance Removal (No. 1)), all “except so far as relates to the Metropolis.”⁴
- 1866—29 & 30 Vict. c. 90 (Sanitary), Parts I., II., and III., “except so far as relates to the Metropolis.”⁵
- 1867—30 & 31 Vict. c. 113 (Sewage Utilization).
- 1868—31 & 32 Vict. c. 115 (Sanitary), all “except so far as relates to the Metropolis.”⁴
- 1869—32 & 33 Vict. c. 100 (Sanitary Loans), all “except so far as relates to the Metropolis.”⁴
- 1870—33 & 34 Vict. c. 53 (Sanitary), all “except so far as relates to the Metropolis.”⁴
- 1872—35 & 36 Vict. c. 79 (Public Health), all “except so far as relates to the Metropolis.”⁶
- 1874—37 & 38 Vict. c. 89 (Sanitary Law Amendment), all “except so far as relates to the Metropolis or the Metropolitan Police District.”⁷

Sect. 343, n.
Repeals—
continued.

Part II. of Sched. V., which was repealed by the Statute Law Revision Act, 1883, but not so as to revive the repealed enactments, repealed the following Acts:—The Public Health Supplemental Act, 1849, except the short title and the confirmation of provisional orders relating to Carmarthen, Chatham, Coventry, Croydon, Durham, Gloucester, Kendal, Lancaster, Leicester, New Windsor, Sheerness, Taunton, Uxbridge, Ware, and Worcester⁸; the Public Health Supplemental Act, 1850 (No. 2), except the short title and the confirmation of provisional orders relating to Ashby-de-la-Zouch, Preston, Sandgate, Swansea, Wigan, and Wolverhampton⁹; and the first Public Health Supplemental Act, 1852, except the short title and the confirmation subject to alterations of provisional orders relating to Banbury, Burnham, Calne, Gainsborough, Rotherham and Kimberworth, Worksop, and Worthing.¹⁰

These Acts, and the subsequent Acts confirming provisional orders made under the Sanitary Acts, were printed among the public general Acts until 1867, since which year such Acts have been placed among the local and personal Acts of each session.

The re-enacted provisions in Part III. of Sched. V. are set out.¹¹

As to the continuance of the sanitary authorities existing at the passing of the present Act, and their officers and servants, bye-laws, etc., see sect. 326.

Reference should also be made to the general provisions with regard to the effect of the repeal of enactments contained in the Interpretation Act, 1889.¹² See also the Note to sect. 1 of the present Act.

**Effect of
 repeals.**

(3) Sect. 14, extended by 16 & 17 Vict. c. 41, s. 11; s. 9, amended by 37 & 38 Vict. c. 89, s. 46; ss. 6, 8, Sched., repealed by S. L. R. Act, 1875; ss. 2 in part, 17, repealed by S. L. R. Act, 1892; s. 16, repealed from “and the restrictions” by S. L. R. Act, 1894.

(4) Now wholly repealed by P. H. (London) Act, 1891.

(5) As to ss. 44, 51, and 52 of this Act, see Note to re-enactments, *post*, p. 842. Sect. 41 is still in force in London: see P. H. (London) Act, 1891, s. 142, Sched. IV.

(6) As to ss. 34-38 and 48 of this Act, see

Note to re-enactments, *post*, p. 843. Sects. 34-36 are the only sections that still apply in London: see P. H. (London) Act, 1891, s. 142 (5).

(7) Repealed as to London, except ss. 46, 49, as to common lodging houses, by P. H. (London) Act, 1891: see s. 142 and Sched. IV.

(8) 12 & 13 Vict. c. 94, ss. 1, 12, Sched.

(9) 13 & 14 Vict. c. 90, ss. 1, 7, Sched.

(10) 15 & 16 Vict. c. 42, ss. 1-5, 16, Sched.

(11) *Post*, p. 836.

(12) See ss. 11, 38, and Notes, *post*, Vol. II., pp. 1964, 1971.

Sect. 343, n.

An order of justices to discontinue sending forth black smoke from a chimney was made under the Nuisances Removal Act, 1855, and the Sanitary Act, 1866,¹³ on the 24th of May, 1875; and a summons was taken out upon an information charging the respondent with having, on the 12th of August, 1875, the day after this Act received the royal assent, disobeyed the order, and was dismissed by the justices; but it was held that the justices were wrong in dismissing it, as a liability had been incurred by the respondent under the repealed enactment.¹⁴

Again, a valuation and rate having been duly made before the passing of the present Act were held to be good by virtue of the saving clause.¹⁵

As to the effect of repeals on work in progress under bye-laws, see the cases cited in the Note to sect. 157.¹⁶ If a penalty has been incurred, the repeal of the enactment under which it was incurred was held not to affect the six months' limitation in sect. 11 of the Summary Jurisdiction Act, 1848.¹⁷

Effect of re-enactment.

The change of position of a clause by its repeal and re-enactment in a subsequent statute does not alter its effect.¹⁸

(13) 18 & 19 Vict. c. 121, s. 13; 29 & 30 Vict. c. 90, s. 19.

(14) *Barnes v. Eddleston* (1876), L. R. 1 Ex. D. 102; 45 L. J. M. C. 162; 33 L. T. 822; 40 J. P. 663.

(15) *Reg. v. Yorkshire (W. R.) JJ.* (1876), L. R. 1 Q. B. D. 220; 45 L. J. M. C. 97; 35 L. T. 358; 40 J. P. 820.

(16) *Ante*, p. 395.

(17) 11 & 12 Vict. c. 43, s. 11. *Reg. v. Cluer* (1897), 67 L. J. Q. B. 36; 77 L. T. 439.

(18) *Morisse v. Royal British Bank* (1856), 1 C. B. (N.S.) 67; 26 L. J. C. P. 62; 3 Jur. (N.S.) 137; *Wallace v. Blackwell* (1856), 3 Drew. 538; 25 L. J. Ch. 644; 2 Jur. (N.S.) 656.

Sched. I.,
Part I., r. 1.

SCHEDULES.

SCHEDULE I.

RULES AS TO MEETINGS AND PROCEEDINGS.

Note.

By sect. 317, "The Schedules to this Act shall be read and have effect as part of this Act."

By sect. 199, "Meetings of local boards shall be held, and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and any improvement commissioners may, if they think fit, adopt all or any of such rules."

The last-quoted section, and the present Schedule, so far as it is unrepealed, are applied by the Local Government Act, 1894,¹ to all urban and rural district councils other than borough councils, and also to boards of guardians, subject, however, to certain modifications as regards the chairman and vice-chairman, and to the powers of the Minister of Health as regards guardians.

As to the law of meetings, see the work mentioned below.²

Incorporation
of schedules.
Application of
Schedule I.

Law of
meetings.

(1.) RULES APPLICABLE TO LOCAL BOARDS.

Rule 1. Every local board shall from time to time make regulations with respect to the summoning notice place management and adjournment of their meetings, and generally with respect to the transaction and management of their business under this Act.

P.H., s. 34.
P.H. 1874, s. 27.

Note.

The Local Government Board expressed the opinion that a board of guardians might, under the present rule, make regulations as to the conduct of their business which would have the effect of superseding provisions of the General Consolidated Order, such as the provision of Art. 47 of that Order that tenders shall not be opened otherwise than at a meeting of the board, although the rule does not itself, in the absence of such regulations, supersede the General Order. On the other hand, however, it would appear that the Minister of Health may in turn supersede any such regulations that the guardians may make by virtue of the saving for the powers of the Minister with respect to the proceedings of guardians contained in sect. 59 (4) of the Act of 1894.

Proceedings
of guardians.

Meetings of borough councils are governed by the Municipal Corporations Act, 1882.³

Borough
councils.

Local boards were formerly required ⁴ to make *bye-laws* for the summoning of their meetings and the transaction of their business. But, under the present rule, *regulations* are to be made for those purposes; and such regulations do not, as in the case of bye-laws, require the confirmation of the Minister of Health: see sect. 188.

Regulation of
proceedings.

The regulations must be subject to the rules of this Schedule, and to the provision of sect. 199 that a non-municipal urban district council "shall hold an annual meeting and other meetings for the transaction of business under this Act *once at least in each month*, and at such other times as may be necessary for properly executing their powers and duties under this Act": moreover, the regulations may not be unreasonable.

If the district council have no bye-laws or regulations in force prescribing the mode of conducting business at their meetings, they may, subject to the rules of this Schedule, conduct it in such manner as they may from time to time determine. There is no general rule of law, for instance, which requires notice of intention to move a resolution to be given by a member before he makes the motion, or to prevent the board from rescinding a resolution at any time after it has been passed; though they cannot render the rescission of a resolution retrospective, so as to

(1) See s. 59, *post*, Vol. II., p. 2094.
(2) "Blackwell's Law of Meetings," 1922 ed., by R. A. Glen.
(3) 45 & 46 Vict. c. 50, s. 22, Sched. II.

And see s. 198 of the present Act, *ante*, p. 554.
(4) By 11 & 12 Vict. c. 63, s. 34.

Sched. I.,
Part I., r. 1, n.

annul any effect which such resolution may have had, or any action which may have taken place in pursuance of it, while it was in force: they can only rescind the resolution as regards the future. But after the council have once adopted a regulation with respect to the transaction of their business, such regulation will, if reasonable, be binding upon the council at subsequent meetings until it is duly rescinded altered or superseded.

A bye-law requiring a month's notice to be given by the clerk to each member of a local board of the intention to alter or rescind a resolution was held to be reasonable and valid; but doubt was expressed by Blackburn, J., as to the validity of a further clause of the same bye-law, requiring at least the same number of members to pass the alteration or rescission as were present at the meeting when the resolution was adopted.⁵

Where a bye-law required a month's notice to be given of intention to move the alteration or rescission of any resolution, it was held that a resolution dismissing an officer was a fresh and independent resolution, and not a rescission of the original notice appointing him; and that therefore it did not require the month's notice to be given.⁶

Language.

In 1911 the Local Government Board informed a parish council that their proceedings might be carried on in Welsh, but that the minutes should follow the language employed, and that, where there were persons present who did not understand the language in which a motion was proposed, its effect should be stated in the language understood by those persons before a vote was taken. As to the use of the Irish language, see the case cited below.⁷

Minutes.

The Local Government Board intimated that an urban district council, who wished to have their minutes printed and signed, instead of written, might make regulations with that object under the present rule. Further with regard to the minutes, see the preceding paragraph, and rule 10 and the Note thereto.

Notice of
meeting.

As to the necessity for specifying the proposed business in the notice convening the meeting, see the cases cited below.⁸

Place of
meeting.

Under sect. 197, an urban district council "shall, from time to time, provide and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act." The meetings of a district council are not, if it can be avoided, to be held upon premises licensed for the sale of intoxicating liquors.⁹

Admission of
strangers and
the press.

Rural district councils may use the board rooms of poor law guardians.¹⁰ It is entirely within the discretion of the council to admit persons other than representatives of the press to their meetings. A person who is not a councillor has no right to be present if the council have a regulation to the contrary.¹¹

The Local Authorities (Admission of the Press to Meetings) Act, 1908,¹² provides as follows:—"1. Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest. 2. For the purposes of this Act the expression 'local authority' means—(a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or provisional order; and a parish meeting under the provisions of the Local Government Act, 1894; (b) An education committee and a joint education committee, established under [sect. 6] of the Education Act, [1921 ¹³], so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval; (c) A board of guardians, and a joint committee constituted in pursuance

(5) *Mayer v. Burslem Loc. Bd.* (1875), 39 J. P. 437.

(6) *Ex parte Richards* (1878), L. R. 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. 684; 42 J. P. 614.

(7) *McBride v. McGovern*, 1906 Ir. K. B. 181, a case relating to the name on a cart which, being in Irish characters, was held not to be in "legible letters."

(8) *Longfield P.C. v. Wright*, ante, p. 527

(8), and post, Vol. II., p. 2116 (4); *Rex v. McDonald*, ante, p. 745 (28).

(9) L. G. Act, 1894, s. 61, post, Vol. II., p. 2096.

(10) *Ibid.*, s. 59 (3).

(11) See *Tenby Cpn. v. Mason* (C. A.), L. R. 1908, 1 Ch. 457; 77 L. J. Ch. 230; 98 L. T. 349; 72 J. P. 89; 6 L. G. R. 233.

(12) 8 Edw. VII. c. 43, ss. 1-5.

(13) 11 & 12 Geo. V. c. 51, s. 6.

of sect. 8 of the Poor Law Act, 1879,¹⁴ and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor; (d) A central body and a distress committee under the Unemployed Workmen Act, 1905;¹⁵ (e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or provisional order; (f) Any other local body which has, or may hereafter have, the power to make a rate. The expression 'rate' means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate. The expression 'representatives of the press' means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings."

Sched. I.,
Part I., r. 1, n.

The Local Government Board expressed the opinion that a member of an urban district council could not be suspended for the remainder of any meeting of the council, unless this course were authorised to be taken where the appropriate circumstances arose, by a regulation of the council under the present Schedule; but that every deliberative body is empowered to protect itself in its deliberations, and that if these deliberations are materially obstructed by the disorderly conduct of any person present thereat, whether a stranger or a member, the general body are justified in removing that obstruction by requiring such person to leave the meeting, and, if such requisition is not obeyed, using such an amount of force as may be necessary to compel his retirement; and that this view applies in the case of the meetings of an urban district council. They point out that it is desirable that any force which it may be necessary to use in any case of the kind should be applied by an officer or servant of the council, or where the opportunity offers, by a peace officer; and that the council must determine how far in any particular instance there is or is not such conduct as materially obstructs or disturbs their deliberations.¹⁶ See also the Public Meetings Act, 1908.¹⁷

Suspension of
members.

An adjourned meeting is not to be considered a fresh meeting, but only a part or continuation of the original meeting, and unless the regulations of the council require notice of adjourned meetings to be given such notice is not necessary.¹⁸

Adjournment.

The chairman has no right to interrupt or postpone the business of a meeting by adjournment, his duty in the chair being merely to regulate the proceedings, and to forward the business so far as he can, and so far as it is such as the meeting can legally entertain and proceed upon. But although the right of adjourning the meeting is not generally vested in the chairman, but in the whole of the members present, it seems that the chairman may, of his own authority, adjourn a meeting for the *bonâ fide* purpose of forwarding or facilitating business, as, for instance, to take a poll where a poll is demandable and has been duly demanded, or if circumstances of violent interruption make it unsafe or seriously difficult to proceed with the business at the time. In such cases the question will turn on the intention and effect of the adjournment.¹⁹

In the case cited below,²⁰ a mayor's ruling was upset in *mandamus* proceedings. An erroneous ruling does not give a cause of action in the absence of malice.²¹

Chairman's
ruling.

For the directions of the Local Government Board as to correspondence between local authorities and their office, see the Note to sect. 199.²²

Official cor-
respondence.

(14) 42 & 43 Vict. c. 54, s. 8.

(15) *Post*, Vol. II., p. 2185.

(16) See also "Blackwell's Law of Meetings," 1922 ed., at pp. 15-17, 48-54.

(17) *Post*, Vol. II., p. 1863.

(18) See *Scadding v. Lorant* (1851), 3 H. L. Cas. 418; 15 Jur. 955.

(19) See *Stoughton v. Reynolds* (1735), 2 Str. 1045; Fortescue, 168; *Rex v. Archdeacon of Chester* (1834), 1 A. & E. 342; *Reg. v.*

D'Oyley (1840), 12 A. & E. 139; *Roger's Eccles. Law*, tit. Vestry; *Rex v. Doris* (1908), 45 Ir. L. T. 267.

(20) *Rex v. Sunderland Cpn.*, *post*, Vol. II., p. 2091. See full note of case in "Blackwell's Law of Meetings," 1922 ed., at pp. 37-39.

(21) *Breay v. Browne* (1896, Q. B. D.), 41 Sol. J. 159.

(22) *Ante*, pp. 554, 555.

Sched. I.,
Part I., r. 2.

Rule 2. No business shall be transacted at any such meeting unless at least one third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required.

Note.

Quorum.

Where resignations had reduced the number of members below a quorum, the remaining members could not fill up the vacancies under rule 65 of Sched. II.¹ With regard to filling up casual vacancies, see the provisions of the Municipal Corporations Act, 1882,² as applied to district councils, boards of guardians, metropolitan borough councils, and the Woolwich Local Board, by the Local Government Act, 1894,³ and the orders of the Local Government Board under that Act.

**Defamatory
statements at
meetings.**

The privilege of judges (including county court judges and recorders) is absolute.⁴ In an action of slander for words spoken by a member at a licensing meeting of the London County Council, it was held that the defendant was not entitled to absolute immunity from liability for the words spoken, the duties of the council in dealing with music and dancing licences being administrative and not judicial.⁵ Statements at meetings of military service tribunals were held absolutely privileged.⁶

Per Lord Herschell: Where an imputation made against a person "is an imputation not of misconduct in an office, but of unfitness for an office, and the office for which he is said to be unfit is not an office of profit, but one merely of what has been called honour or credit, the action will not lie unless the conduct charged be such as would enable him to be removed from or deprived of that office." An action for slander in imputing habitual drunkenness to a town councillor was therefore held not to be maintainable.⁷

A defamatory statement at a meeting of a board of guardians as to the collection of rates by the plaintiff was held privileged in the absence of malice.⁸

**Libellous
reports of
meetings.**

Damages were recovered against the proprietor of a newspaper in an action for libel for having published, though without comment, the report of the medical officer of health of a metropolitan vestry, which was read at a meeting of the vestry, and contained certain libellous matter. The court held that, although it would be the duty of the vestry in accordance with the Metropolis Management Act to publish their medical officer's report and sell copies to any one applying for them, the defendant had no right to anticipate the publication, or give it a wider circulation, and it was doubted whether, even after the publication by the vestry, it would have been lawful to publish the report either with or without comment.⁹

A similar action was brought against the publisher of a newspaper for publishing an account of a meeting of a board of guardians, at which a statement or report was made by the chairman of the house committee, alleging misconduct in the medical officer of the union. The Court of Appeal held that, though the matter was one of public interest, yet as the meetings of the poor law guardians are not necessarily public, and the report was only an *ex parte* statement grievously affecting the character of the medical officer, and might or might not be true, the guardians would have done well not to have admitted strangers, and the publication was not privileged within the principle applicable to such cases.¹⁰

(1) *Newhaven Loc. Bd. v. Newhaven Sch. Bd.* (1885), L. R. 30 Ch. D. 350; 53 L. T. 571; 34 W. R. 172.

(2) 45 & 46 Vict. c. 50, ss. 40, 66.

(3) See s. 48 (4), *post*, Vol. II., p. 2083.

(4) *Tughan v. Craig*, 1918 Ir. Ch. 245.

(5) *Royal Aquarium Soc. v. Parkinson*, L. R. 1892, 1 Q. B. 431; 61 L. J. K. B. 409; 66 L. T. 513; 56 J. P. 404. See also *Attwood's Case*, *infra* (20); *George v. Goddard* (1861), 2 F. & F. 689, as to vestry meeting; and *Pittard v. Oliver*, L. R. 1891, 1 Q. B. 474, as to meeting of board of guardians (presence of reporters does not affect privilege without malice). But see *Barratt v. Kearns* (C. A.), L. R. 1905, 1 K. B. 504; 74 L. J. K. B. 318; 92 L. T. 255, as to evidence, not on oath, before bishop's commission of inquiry under Pluralities Acts (held absolutely privileged); and *Slack v. Barr* (1918, Sc., S.), 82 J. P. 91, similar decision *re* arbitration tribunal under Munitions of War Act, 1915 (5 & 6 Geo. V. c. 54).

(6) *Copartnership Farms v. Harvey-Smith*

(Sankey, J.), L. R. 1918, 2 K. B. 405; 88 L. J. K. B. 472; 118 L. T. 541; 16 L. G. R. 687. But a letter sent to the military representative by a member of such a tribunal was held privileged in the absence of malice, see *Gerhold v. Baker* (1918, C. A.), 35 T. L. R. 102; 63 Sol. J. & W. R. 135; W. N. 368.

(7) *Alexander v. Jenkins*, L. R. 1892, 1 Q. B. 797; 61 L. J. Q. B. 634; 66 L. T. 391; 56 J. P. 452.

(8) *Mapey v. Baker* (1909, C. A.), 73 J. P. 289; 7 L. G. R. 636. See also *Smith v. Wall* (1915, Darling, J.), 79 J. P. Jo. 195.

(9) *Popham v. Pickburn* (1862), 7 H. & N. 891; 31 L. J. Ex. 133; 8 Jur. (N.S.) 179; 5 L. T. 846.

(10) *Purcell v. Sowler* (1877), L. R. 2 C. P. D. 215; 46 L. J. C. P. 308; 36 L. T. 416; 41 J. P. 789. See also *Macnamara v. Shaw & Co.* (1910, Ridley, J.), Loc. Gov. Chron. 1146; 1 Glen's Loc. Gov. Case Law 68, where comment was held unfair. But see *Sharman's Case*, *post*, p. 815 (27).

Where there was a libel reflecting on the administration of the funds of a charitable society, an action by four officers on behalf of all the members was held not to lie.¹¹

Comment on the conduct of a poor law guardian in his public capacity was held "fair" in the case cited below.¹² A town councillor's butter was found by the council's inspector to be adulterated, but the council accepted the explanation offered and took no proceedings against their member. A local paper commented severely on this under the heading, "Corrupt state of Hastings public affairs—A mass of corruption." The councillor was awarded £200 damages.¹³

In the case cited below,¹⁴ a newspaper comment on the conduct of the architect to a school board was held "fair." An interlocutory injunction to restrain a local authority from publishing the report of a special committee on their treasurer's accounts was refused.^{14a}

The plaintiff was served with closing orders in respect of certain house property of his, the defendant L. being the mover of the resolution. During the progress of a subsequent local inquiry L. handed a typewritten statement about the filthy condition of the houses to the defendant C., who published it in his paper under the heading "Whateley Road Slums." During the hearing of the plaintiff's case L., by his counsel, withdrew the imputations on the plaintiff's character, and was ordered to pay the plaintiff's costs. Judgment for 40s. was given against C., as he did not appear.¹⁵

In an action for slander by one borough councillor against another for words spoken by the latter to other councillors outside the council chamber, the defendant pleaded privilege and absence of malice. The Court of Appeal held that the plaintiff was entitled to interrogate the defendant as to the information on which he based his belief that the words spoken were true, and the steps which he had taken to ascertain whether they were true.¹⁶

An action by the matron against the medical superintendent of an isolation hospital, in respect of an alleged libel contained in a report by the defendant to the joint hospital committee, was twice tried, the jury having disagreed on the first occasion. At the first trial Lord Alverstone, C.J., in summing up, said that it was the duty of the defendant to make a full statement about the management of the hospital, and that if the jury believed that the report was written *bonâ fide* and without malice they ought to find a verdict for the defendant; and at the second trial Grantham, J., pointed out that if the defendant stated what was untrue from an ulterior motive, nursing some grievance of his own, or went out of his way to exaggerate things improperly, or made the charges recklessly, not caring whether they were true or untrue, they ought to find for the plaintiff, but not if he honestly believed what he had written to be true, and was actuated solely by a sense of duty.¹⁷

The case cited below was one where a hospital matron sued a ratepayer for libelling her to the Local Government Board for Scotland.¹⁸

A letter written by a medical man to a relieving officer to the effect that a professional nurse, who was seeking to obtain a certificate as a dispenser of medicine, was of unsound mind, with a view to the relieving officer taking proceedings with respect to her under the Lunacy Acts, was held to be privileged.¹⁹

A private person served upon an applicant for renewal of an on-licence, the clerk to the licensing justices, the superintendent of police, and the owners of the

Sched. I.,
Part I., r. 2, n.

Libel on
corporation.

Libel on
member.

Libel on
officer.

Libel by
member.

Libel by
officer.

Libel by
ratepayer.

Libel by
doctor.

Libel by
private
person.

(11) *Jenkins v. John Bull, Ltd.* (1910, Phillimore, J.), 45 L. J. Jo. 262; 1 Glen's Loc. Gov. Case Law 68.

(12) *Collins v. John Bull, Ltd.* (1910, Phillimore, J.), *Times*, Apr. 9, pp. 3, 4; 1 Glen's Loc. Gov. Case Law 68.

(13) *Cox v. Twentieth Century Press, Ltd.* (1911, Darling, J.), 2 Glen's Loc. Gov. Case Law 146. See also *Nuttall v. Toulmin & Sons* (1912, Bray, J.), 76 J. P. Jo. 113; 3 Glen's Loc. Gov. Case Law 104, *re* saying brewer unfit to be town councillor.

(14) *Leng & Co. v. Langlands* (1916, H. L., S.), 114 L. T. 665; 32 T. L. R. 255. See also *Baird v. Wallace-James* (1916, H. L., S.), 85 L. J. P. C. 193 (libel on medical officer by president of local charity). But see *Benjafield v. Crusha* (1910, Ridley, J.), *Times*, July 8, p. 3; 1 Glen's Loc. Gov. Case Law 69, where a medical officer received £100; *Siddall v. Wallasey Cpn.* (1915, Sankey, J.),

79 J. P. Jo. 196, where a solicitor was awarded £250; and *Lee v. Wimbledon Cpn.* (1923), where an electricity manager recovered £250 from the mayor.

(14a) *Plant v. East Ham U.D.C.* (1919, Joyce, J.), *Times*, May 19, p. 5, col. ii.

(15) *Arlidge v. Conolly and Lawrence* (1911, Grantham, J.), 2 Glen's Loc. Gov. Case Law 147.

(16) *Elliott v. Garrett*, L. R. 1902, 1 K. B. 870; 71 L. J. K. B. 415; 86 L. T. 441.

(17) *Martin v. Allen* (1901, Leeds Assizes), 65 J. P. 524, 809. At second trial, jury awarded £100 and judgment was entered for this and costs, including costs of first trial. Further as to libels by officers, see *ante*, p. 708 (14).

(18) *Cowper v. Lord Balfour of Burleigh*, *ante*, p. 256.

(19) *Dowling v. Dods* (1900, C. A.), 64 J. P. 745, n.

Sched. I.,
Part I., r. 2, n.

premises, a defamatory notice of his intention to oppose the renewal on the ground that the applicant was unfit to hold a licence. It was held, in an action for libel, on a question of law raised on the pleadings and set down for trial—(1) that the licensing justices were not a court in law; (2) that, even if they were, the defendant did not come within the category of persons who could claim privilege on this ground; and (3) that, even if he could claim privilege, such claim did not cover his notices to the superintendent and the owners of the premises.²⁰

Trade libel.

A member of a local authority wrote letters to the papers, and made speeches in the council chamber and elsewhere, condemning the plaintiff's electric tramway system. The jury awarded the plaintiffs £12,000 damages. The Court of Appeal, while admitting that the statements were "inaccurate, intemperate, and tainted by political prejudice," held that the words used, as understood by reasonable fair-minded men, were incapable of a defamatory meaning in the sense of personal imputation upon the plaintiffs, and entered judgment for the defendant with costs. *Per* Cozens-Hardy, M.R.: "The words used, though directly disparaging goods, may also impute such carelessness, misconduct, or want of skill in the conduct of his business by the trader as to justify an action for libel. . . . It seems to me extravagant to argue that an attack upon the system must be regarded as an imputation upon the owner of the patents who supplies the parts and licenses the use of the system."²¹

Slander.

An accusation by a tax collector against a taxpayer of tampering with a receipt for tax was followed by an assault upon the taxpayer and repetition of the slander to neighbours and in the collector's office. A preliminary objection to the cause of action, on the ground that the tax collector's acts were outside the scope of his authority, was sustained, and the action was dismissed with costs.²² Calling a lunatic asylum superintendent a "quack" was held sufficiently defamatory to found an action for slander,²³ but not imputing adultery to a schoolmaster.²⁴

Maintenance
and
champerty.

Accusations of dishonesty against the secretary of a trade union rendered the union in danger of collapsing, and the union accordingly paid the irrecoverable costs of successful libel and slander actions by their secretary and other officers (£949). It was held that such payment amounted to "maintenance," and was therefore *ultra vires*, and that the secretary must return the above sum to the funds of the union. *Semble*, if the arrangement had been that the union was to receive the damages it would also have been "champertous."²⁵

Statutory
privilege for
newspapers.

By the Law of Libel Amendment Act, 1888,²⁶ "a fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by

(20) *Attwood v. Chapman*, L. R. 1914, 3 K. B. 275; 83 L. J. K. B. 1666; 111 L. T. 726; 79 J. P. 65.

(21) *Griffiths & Bedell v. Benn* (1911), 27 T. L. R. 346; 55 Sol. J. & W. R. 358; 2 Glen's Loc. Gov. Case Law 146.

(22) *Glasgow Cpn. v. Lorrimer or Riddell*, L. R. 1911 A. C. 209; 80 L. J. P. C. 175; 104 L. T. 354; 48 Sc. L. R. 399.

(23) *Chisholm v. Grant*, 1914 S. C. (S.) 239;

51 Sc. L. R. 202; 5 Glen's Loc. Gov. Case Law 109.

(24) *Jones v. Jones*, L. R. 1916, 2 A. C. 481; 85 L. J. K. B. 1519; 115 L. T. 432.

(25) *Oram v. Hutt* (C. A.), L. R. 1914, 1 Ch. 98; 83 L. J. Ch. 161; 110 L. T. 187; 78 J. P. 51. *Alabaster v. Harness*, L. R. 1895, 1 Q. B. 339; 64 L. J. Q. B. 76; 71 L. T. 740, followed.

(26) 51 & 52 Vict. c. 64, s. 4.

law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit. For the purposes of this section ‘public meeting’ shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.”

It was held that this enactment protected publication in a newspaper of defamatory remarks about a borough council’s cemetery superintendent taken from the agenda paper.²⁷

As to criminal proceedings for libel, see the case cited below.²⁸

Rule 3. Every local board shall from time to time at their annual meeting appoint one of their number to be chairman for one year at all meetings at which he is present.

Note.

Rule 11 provides for the holding of the “annual meeting.” The chairman of a district council or board of guardians need not be a member of the council or board.¹ The chairman of a district council is, unless personally disqualified, an *ex-officio* justice of the peace.² As to disqualifications, see sect. 46 of the Local Government Act, 1894, and the Note thereto.³

The Local Government Board were of opinion that the chairman of an urban district council elected from outside the council remains in office (unless he resigns or becomes incapable of acting) until his successor is elected at the annual meeting, and that he is entitled to exercise the right of giving a casting vote under rule 8; but that if he is elected from among the councillors, he ceases to be chairman on the 15th April in any year in which he goes out of office as councillor, but subject to this may act as chairman until his successor is elected at the annual meeting.

A rule for a *quo warranto* was made absolute (and a verdict was subsequently given for the Crown and judgment of ouster obtained), requiring the defendant to show by what authority he claimed to exercise the office of chairman of an urban district council, on the grounds (1) that he had presided as chairman at his own election to the chair; (2) that he was not elected by a majority of lawful votes; (3) that he improperly rejected the votes of members who had not actually made their declarations; (4) that he improperly rejected the nomination of another candidate; and (5) that he conducted the election with undue haste, so as to prevent certain persons from making declarations of acceptance of office, and others, who had made their declarations from having them attested.⁴

With reference to the question of the right of an outgoing chairman to preside over the election of his successor, the Local Government Board expressed the opinion that the outgoing chairman is entitled to preside and to exercise the right of giving a casting vote until the election of his successor, unless he was appointed from among the councillors who went out of office on 15th April.⁵

Under a provisional order extending a borough, which provided that all the existing aldermen and councillors should go out of office, and that for the purposes of the election of a town councillor the existing mayor should perform the duties devolving on the mayor under the Municipal Corporations Acts, it was held that the existing mayor was entitled to preside and vote at the election of a new mayor.⁶

In a case in which the outgoing chairman of an urban district council had been elected from among the councillors, who retired together triennially, the Divisional Court held that the newly-elected members had the right at their first meeting to appoint a temporary chairman to preside over the election of a chairman for the ensuing year; and that the outgoing chairman, whether re-elected or not, had no right as such outgoing chairman to take the chair and preside over the election of his successor, even though the calendar year from the date of his election as chairman of the council had not expired.⁷

A candidate for the office of chairman may not preside at the meeting of the council during the election to fill that office.⁸

See also the Notes to Sched. I. of the Local Government Act, 1894.⁹

Sched. I.,
Part I., r. 2, n.

Criminal libel.

Annual
meeting.
Chairman.

Election of
chairman.

(27) *Sharman v. Merritt & Hatcher, Ltd.* (1916, Shearman, J.), 32 T. L. R. 360.
(28) *Rex v. Russell, ante*, p. 708 (24).
(1) See L. G. Act, 1894, ss. 20 (7), 24 (4), 59 (1), *post*, Vol. II., pp. 2025, 2038, 2094.
(2) *Ibid.*, s. 22, *post*, Vol. II., p. 2034.
(3) *Post*, Vol. II., p. 2068.
(4) *Reg. v. Reynolds*, MS. and 1896 Loc. Gov. Chron. 900. See also *Rex (Moore) v. Moriarty*, 1915 Ir. K. B. 375.
(5) *Times*, 5th May, 1898.
(6) *Bland v. Buchanan*, L. R. 1901, 2 K. B. 75; 70 L. J. K. B. 466; 84 L. T. 390; 65 J. P. 404.
(7) *Rex (Beesley) v. Rowlands* (1910), L. R. 1910, 2 K. B. 930; 80 L. J. K. B. 123; 103 L. T. 311; 74 J. P. 453; 8 L. G. R. 923. See also *Rex v. Jackson, post*, Vol. II., p. 1998.
(8) See “Blackwell’s Law of Meetings,” 1922 ed., at pp. 31-35.
(9) *Post*, Vol. II., p. 2115.

Sched. I.,
Part I., r. 4.

Rule 4. If the chairman so appointed dies resigns or becomes incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying resigning or becoming incapable would have been entitled to continue in office, and no longer.

Rule 5. If the chairman is absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat.

Note.Vice-
chairman.

Any urban or rural district council, other than a borough council, and any board of guardians, may appoint a vice-chairman to hold office during the term of office of the chairman, and to act during his absence.¹⁰ It is expressly provided in the case of guardians, but not in that of district councils, that the vice-chairman may be elected from outside.¹⁰

Rule 6. The names of the members present, as well as of those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

Note.Record of
votes.

In 1908 the Local Government Board refused to sanction the appointment of an inspector of nuisances, because of non-compliance with the present rule, though in the same year they expressed the opinion that it need not be complied with if no member had voted against the resolution.

The corresponding provisions of the Public Health Act, 1848, merely required the record of the voters' names, unaccompanied by any statement as to whether the respective votes were given for or against the question, and left it open to some doubt whether the majority required was a majority of those present or of those voting. See rule 10 with regard to the minutes of proceedings.

Rule 7. Every question at a meeting shall be decided by a majority of votes of the members present, and voting on that question.

Note.

Majority.

The requisite majority to carry a resolution is not therefore necessarily a majority of the members present, if they do not all vote on it.

At a mayor's election in Ireland, out of forty-nine members of the council present at the election, twenty-two voted for A, twenty-one for B, and six did not vote at all. It was held that a provision¹ that "all acts done by the council may be done and decided by the majority of the members who shall be present at any meeting, the whole number at such meeting not being less than one-third of the whole council," required a majority for the candidate elected of all the members present. As there was no such majority, the election was declared void.²

In a London case,^{2a} an action for a declaration that a rescinding resolution was invalid because not passed by a two-thirds majority was held to need the fiat of the Attorney-General, though three of the plaintiffs were members of the defendant council and as such liable to be surcharged if the resolution was invalid and acted upon, and the other two plaintiffs were employees of the council whose salary would be reduced if the resolution was valid and acted upon.

In view of the present rule the Local Government Board stated that a regulation to the effect that a resolution should not be rescinded unless two-thirds of the members present voted for the rescission would not be valid.³ But one providing for one month's notice giving the terms of the proposed rescinding resolution was held valid.⁴ Further as to rescinding resolutions, see the cases cited below.⁵

In the case of boards of guardians, Art. 155 of the General Consolidated Order of the 24th July, 1847, provides that every officer to be appointed by such a board under the order shall be appointed by a majority of the guardians present at a

⁽¹⁰⁾ See L. G. Act, 1894, ss. 20 (7), 59 (2), *post*, Vol. II., pp. 2025, 2094.

(1) M. C. (Ireland) Act, 1840, 3 & 4 Vict. c. 108, ss. 83, 92.

(2) *Rex (Sisk) v. Donovan* (C. A., I.), 45 Ir. L. T. 24; 130 L. T. Jo. 310; 2 Glen's Loc. Gov. Case Law 56. See also *In re Horsley; Ex parte Orde* (1871), L. R. 6 Ch. App. 881; 40 L. J. Bk. 60; 25 L. T. 400; distinguished in *In re Baum; Ex parte Evans* (1880, C. A.), L. R. 13 Ch. D. 424; 49 L. J. Bk. 25; 42

L. T. 384.

(2a) *Hurley v. Stepney B.C.* (1923), *Times*, July 21; 58 L. J. Jo. 352.

(3) But see *Rex (Casey) v. Tralee U.D.C.*, 1913 Ir. K. B. 59; 46 Ir. L. T. 279; 4 Glen's Loc. Gov. Case Law 27.

(4) See *Mayer's Case*, *ante*, p. 810 (5).

(5) *Leek's Case*, *ante*, p. 121 (27); *Richards' Case*, *ante*, p. 527 (5); and *per* Ross, J., in *Weir v. Fermanagh C.C.*, 1913 Ir. Ch. at p. 67.

meeting of the board, which meeting must consist of not less than three guardians. But the Local Government Board expressed the opinion that the present rule repeals this provision so far as it is inconsistent with such provision, and that therefore the appointment of an officer need not necessarily be made by a majority of the guardians present at the meeting, but only by a majority of those present *and voting* on the question.

Sched. I.,
Part I.,
r. 7, n.

Rule 8. In case of an equal division of votes the chairman shall have a second or casting vote.

Note.

If the person in the chair does not vote, and the voting is equal, he may declare the resolution carried or lost, as he thinks fit; but this is by virtue of his power to vote as a member, and is not a casting vote.⁶

Casting vote.

Rule 9. The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board, or in the election or selection or qualification of any members thereof.

P.H., s. 29, and
see s. 19.

Note.

It was also enacted by Sched. II., rule 70 (now repealed), that all acts and proceedings of any person disqualified, disabled, or not duly qualified, or who had not made and subscribed the declaration required by the Act, should, if done previously to the recovery of the penalty mentioned in the Act, be valid and effectual to all intents and purposes. The personal interest of a member who secured the passing of a resolution did not invalidate the proceedings.⁷

Voting by
unqualified
persons.

Rule 10. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

Note.

It is customary for local authorities,⁸ in order to ensure the correctness of the record of their proceedings, to have the minutes of each of their meetings read at the commencement of the next meeting, and then for the members present to pass the minutes which have been read, or resolve that they (or rather their correctness) be confirmed, on which they are signed by the presiding chairman. The General Consolidated Order of the Poor Law Commissioners requires this to be done in the case of the minutes of boards of guardians, and a provision is contained in the Metropolis Management Act, 1855,⁹ for signing the minutes of vestries and district boards (now the metropolitan borough councils).

Reading of
minutes.

It is sometimes supposed that the resolutions of the authority are inoperative or invalid unless and until this "confirmation" has taken place, but this supposition is incorrect. The object is that the minutes, which are the permanent record and the *prima facie* evidence of the acts of the authority, shall be as accurate as possible: they are read in order that the members may have the opportunity of calling attention to inaccuracies in them, and when these have, if necessary, been corrected, may declare them to be accurate; and the chairman then signs them by way of attestation.¹⁰

Confirmation
of minutes.

A point that an inspector had not proved his authority to prosecute was not allowed to be taken on an appeal by special case, as it had not been taken before the justices.¹¹

Proof of
resolution.

In an action in the Chancery Division the minute book of a local board was

Inspection of
council
minutes.

(6) L. G. Bd. Opinions, 1908, based on observations of judges in *Nell v. Longbottom*, *post*, Vol. II., p. 1827.

(7) *Murray v. Epsom Loc. Bd.*, *post*, Vol. II., p. 2071.

(8) Unless the minutes are printed and circulated to members before the meeting and it is resolved at the meeting that they

be "taken as read"—L. G. Bd. Decision, 1908.

(9) 18 & 19 Vict. c. 120, s. 60.

(10) See *per* Lord Campbell, C.J., in *Reg. v. York Cpn.* (1853), 1 E. & B. 594; 17 Jur. 667. But see footnote (8), *supra*.

(11) *Kates v. Jeffery*, *ante*, p. 231 (43).

**Sched. I.,
Part I.,
r. 10, n.**

**Inspection of
committee
minutes.**

**Destruction of
old books.**

ordered to be deposited in the Record and Writ Clerks' Office in London for inspection, notwithstanding that it was in constant use by the board.¹²

The minutes of a committee of a local authority recording proceedings with reference to litigation pending, or litigation which it is contemplated may take place, are privileged from production.¹³

With reference to the right of a burgess to inspect minutes,¹⁴ it was held that the right extended to such minutes of proceedings of committees of the council as were laid before the council, whether the proceedings of the committee were approved or not.¹⁵

The Local Government Board considered that, though there is no objection to the council disposing of books and papers which have clearly become useless, any documents likely to be found of use at a future time as evidence of matters in which the council have an interest should be carefully preserved; and that no books of any kind should be disposed of until at least six years old. In the case of guardians, the Board expressed the opinion that under no circumstances should minute books of the proceedings of the board, of whatever age, be destroyed; and it is no doubt advisable that the old minute books of district councils should also be preserved.

As to the destruction of documents relating to exemptions from military service, see the Circular of the Minister of Health of the 27th March, 1922.^{15a}

Rule 11. The annual meeting of a local board shall be held as soon as may be convenient after the fifteenth of April in each year.

Note.

**Annual
meeting.**

By rule 3 the chairman is to be elected at the annual meeting, which is the first meeting after the annual election. The 15th April is the day on which the retiring members go out of office and the newly-elected members come in.¹⁶

The Local Government Board stated in 1912 that a chairman who has been elected from among the councillors ceases to be chairman on the 15th April in the year when he goes out of office as a councillor, and that, subject to this, he is entitled to act as chairman until his successor has been appointed at the annual meeting. They also stated that, at any meeting on the 15th April, the newly-elected members would be entitled to attend and the retiring members would not; that the newly-elected members come into office and the outgoing members retire at the earliest moment of the 15th April; and that a meeting on that date would not be the "annual meeting."¹⁷

L.G., s. 24 (8).

Rule 12. The first meeting of a local board for a district constituted after the passing of this Act shall be held at such place and on such day (not being more than ten days after the completion of the election) as the returning officer may by written notice to each member of the board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman for one year at all meetings at which he is present.

Rule 13. [Nothing in these rules contained with respect to the appointment of chairman shall apply to the Oxford district, and in that district a chairman shall be appointed as heretofore.¹⁸]

(2.) RULES APPLICABLE [to Committees of Local Authorities, other than Councils of Boroughs, and] TO JOINT BOARDS.

Note.

**Proceedings
of committees
and joint
boards.**

"So much of" the present Schedule "as relates to committees" was repealed by the Local Government Act, 1894,¹ and the words "committee or" before the words "joint board," in rules 1 to 3 and 7, are accordingly omitted. The proceedings of committees of district councils are regulated by the Act of 1894.² In

(12) *A.G. v. Whitwood Loc. Bd.* (1871), 40 L. J. Ch. 592; 19 W. R. 1107.

(13) *Bristol Cpn. v. Cox* (1884), L. R. 26 Ch. D. 678; 53 L. J. Ch. 1144; 50 L. T. 719.

(14) Under M. C. Act, 1882, s. 233, *post*, Vol. II., p. 1838.

(15) *Williams v. Manchester Cpn.* (1897), 45 W. R. 412; 13 T. L. R. 299; *Loc. Gov. Chron.* 341.

(15a) 20 L. G. R. (Orders) 64.

(16) See L. G. Act, 1894, ss. 20 (6), 23 (6), *post*, Vol. II., pp. 2025, 2037.

(17) See also *Rex v. Rowlands*, *ante*, p. 815 (7).

(18) As to Oxford, see the Note to s. 342. (1) See s. 89, and Sched. II., *post*, Vol. II., p. 2113.

(2) See s. 56, and Sched. I., Part IV., *post*, Vol. II., pp. 2091, 2117.

the case of a joint board the following rules are compulsory, unless the order forming the board contains different rules : see sect. 282. Generally as to joint boards, see sects. 280-282.

Sched. I.,
Part II., n.

- Rule 1.** A joint board may meet and adjourn as it thinks proper.
- Rule 2.** The quorum of a joint board shall consist of such number of members as may be prescribed by the authority that appointed the joint board, or, if no number is prescribed, of three members.
- Rule 3.** A joint board may appoint a chairman of its meetings.

Note.
As no time is limited for the duration of the office held by the person appointed, he will, unless he is expressly appointed for a limited time, or resigns the office, remain chairman as long as the joint board exists, and he remains a member of such board.

Tenure of
office.

- Rule 4.** If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.
- Rule 5.** Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question.³
- Rule 6.** In case of an equal division of votes the chairman shall have a second or casting vote.⁴
- Rule 7.** The proceedings of a joint board shall not be invalidated by reason of any vacancy or vacancies amongst their members, or any defect in the mode of appointment of such joint board or of any member thereof.⁵
- Rule 8.** Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.⁶

SCHEDULE II.

[(1.) RULES FOR ELECTION OF LOCAL BOARDS.]

Note.
The present Schedule was repealed by the Local Government Act, 1894,¹ and provisions are made by that Act, and the rules made in pursuance of the Act, for the election of both urban and rural district councils.²

Repeal.

Notwithstanding this repeal, however, a considerable portion of the Schedule remains in force, and may occasionally have to be acted upon (namely, where a poll of owners and ratepayers is taken on the question of the establishment of a market under sect. 166 of the present Act), by virtue of rule 6 of Sched. III., which applies it, as far as can be, to a poll of owners and ratepayers taken under that Schedule. The rules which appear to be so applicable are therefore set out below.

* * * * *
Wards.
* * * * *

- Rule 8.** No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward.
 - Rule 9.** Subject, as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the [district council], or in case of the first election to the returning officer, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he does not give such notice he shall not be entitled to vote for any ward in which he does not reside.
- L.G., s. 24 (4).
P.H. 1874, s. 25.

(3) See Note to Rule 7, ante, p. 816.
(4) See Note to Rule 8, ante, p. 817.
(5) See Note to Rule 9, ante, p. 817.
(6) See Note to Rule 10, ante, p. 817.

(1) See s. 89, and Sched. II., post, Vol. II., p. 2113.
(2) See *ibid.*, ss. 23, 24, 48, and Notes, post, Vol. II., pp. 2037, 2038, 2082.

Sched. II.,
Part I., r. 10.
P.H., s. 20.

Qualification of Electors, Scale of Voting, and Register of Owners.

Rule 10. The word "owner," when used in relation to the right of voting [*at any election of a local board*], shall mean any person for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rackrent, or any person receiving on his own account, or as mortgagee or other incumbrancer in possession, the rackrent of any such property.

Note.

Meaning of
owner.

The difference between the definition of "owner" as here given, and that which is given in sect. 4 for the general purposes of the Act, should be particularly noticed. Thus, a trustee may be deemed the owner of property for all purposes of the Act, except for the purpose of voting at a poll under the present Schedule. Corporations aggregate may vote as owners, but only by proxy: see rules 14 and 16.

Rackrent is defined by sect. 4.

It is not necessary that the register of owners and proxies, formerly required to be kept under rule 19, should now be kept, or where there is one, that it should be brought up to date, in the event of a poll being taken under the present Schedule: see rule 6 of Sched. III.

Rule 11. A person shall not be deemed a ratepayer or be entitled to vote as such [*at any such election*] unless he has been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this Act, except rates which have been made or become due within the six months immediately preceding.

Note.

Meaning of
ratepayer.

The term "person" is defined by sect. 4,³ but the term "ratepayer" is not defined otherwise than by the present rule, which only defines it in a negative way.

If the name of the person rated were omitted from the rate, he would not be deprived of his right to vote, provided that the property were described, and the rate received from him.⁴

The present rule does not require the ratepayer to reside in the district; and though rule 44 seems to assume that every ratepayer will have a residence within it, it does not necessarily follow that a non-resident ratepayer is disqualified from voting.

The agent of a candidate agreed to pay the rates of voters, but, as they were not actually paid until after the poll closed, the votes were held to be bad, under a local Improvement Act which required voters to have paid their rates; and *per* Cockburn, C.J., they would have been bad even if the person who paid the rates had been shown to be the agent of the voters and to have had the money in hand to pay the rates.⁵

In a case in which A and B occupied property jointly, and B was assessed in respect of it, while A paid the rates without being called upon to do so, it was held that A was not "rated."⁶

Owners of
small tene-
ments.

A person, who, without being actually rated, becomes liable to pay and pays the rates for the occupier under sect. 3 of the Poor Rate Assessment and Collection Act, 1869, is clearly not entitled to vote as a ratepayer; but different views are taken on the question whether an owner who is actually rated under sect. 4 of the same Act, and pays the rates, is entitled to vote as a ratepayer as well as the occupier.⁷ The Act does not expressly deprive the owner of any qualification which the actual rating and payment of rates would confer on him; and a person who thus compounded for rates under a local Act was held to be qualified for election as member of a board of guardians,⁸ although the occupiers of his premises had been held to be entitled to vote as ratepayers at the election.⁹

In a case, however, in which proceedings were taken against a member of a metropolitan vestry for voting without being duly qualified, Lindley, L.J., seems to have considered sects. 7 and 19 of the Act to be inconsistent with the right of

(3) *Ante*, p. 14.

(4) See 32 & 33 Vict. c. 41, s. 19; and *Reg. v. Hulme Inhabitants* (1843), 4 Q. B. 538; 12 L. J. M. C. 100.

(5) *Reg. v. Briggs* (1864), 29 J. P. 423.

(6) *Moss v. Lichfield Overseers* (1844), 7

Man. & G. 72.

(7) 32 & 33 Vict. c. 41, ss. 3, 4.

(8) *Reg. v. Hampton* (1866), 6 B. & S. 939; 12 Jur. (N.S.) 587; 13 L. T. 433; 30 J. P. 246.

(9) *Ibid.*, 6 B. & S. 923; 13 L. T. 433; 12 Jur. (N.S.) 583; 30 J. P. 244.

the owner to vote in vestry,¹⁰ since there was no re-enactment of the provision of the repealed Small Tenements Act, 1850,¹¹ that "every such owner so rated as aforesaid shall have . . . the same right to vote in vestry as if he were an occupier duly rated in respect of the same tenement."¹²

As to the removal of sex disqualifications, see the Act of 1919.^{12a}

The Poor Law Amendment Act, 1867,¹³ contains the following enactment: "Where any corporation aggregate, joint stock or other company, commissioners, or public trustees shall be rated, any officer of such corporation, company, commissioners, or public trustees from time to time appointed by the governing body thereof whose name shall be sent in writing to the overseers before the first day of March in any year, to be entered in the rate-book under the name of such corporation, company, commissioners, or public trustees, shall be entitled to vote in respect of the property assessed as if he were assessed in his own name for the same, and in the case of a parish divided into wards shall vote in that ward where the principal office of the corporation, company, commissioners, or public trustees shall be situated, if any, or otherwise in that ward where the greatest part of the property assessed shall be situated." As to voting by companies under the Shops Acts, see the case cited below.¹⁴ See also rule 15, *post*.

Rule 12. Owners of and ratepayers in respect of property situated within the district for which the [*election*] is held shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person is entitled to vote is rated to the poor rate on a rateable value of less than £50, he shall have one vote; if such rateable value amounts to £50 and is less than £100, he shall have two votes; if it amounts to £100 and is less than £150, he shall have three votes; if it amounts to £150 and is less than £200, he shall have four votes; if it amounts to £200 and is less than £250, he shall have five votes; and if it amounts to or exceeds £250, he shall have six votes.

Note.

An alien cannot exercise any franchise, nor can a minor or a person of unsound mind. These common law disqualifications are no doubt applicable to the right of voting under Sched. III.; but rule 6 of that Schedule, which only applies such incidents as to qualification of electors as are provided by the rules in the present Schedule, does not apply disqualifications for voting at elections which are imposed by other enactments, such as the provision of the Divided Parishes and Poor Law Amendment Act, 1876,¹⁵ under which no person is entitled to vote "in the election to an office under the provisions of any statute" who is in receipt of relief given to himself or his wife or child, or who has been in receipt of such relief on any day during the year last preceding the election.

Relief by guardians granted to an unemployed person, and declared to be "on loan," was held to disqualify him, under sect. 46 (1) (b) of the Local Government Act, 1894, for membership of a district council.^{15a} But by sect. 9 (1) of the Representation of the People Act, 1918,^{15b} "a person shall not be disqualified from being registered or from voting as a local government elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms."

As to felons, see the Forfeiture Act, 1870¹⁶; and as to persons guilty of corrupt practices and corruption generally, see the Acts of 1883 and 1884,¹⁷ and the Acts of 1889, 1906, and 1916.¹⁸

A person who has been excused payment of rates on the ground of poverty will be disqualified from voting as a ratepayer, but not a bankrupt if he pays his rates.

As to women, see sects. 4 and 42 and Sched. VI. of the Representation of the People Act, 1918.¹⁹

Rule 13. Any person who is owner and also *bonâ fide* occupier of the same

(10) 32 & 33 Vict. c. 41, ss. 7, 19.

(11) 13 & 14 Vict. c. 99, s. 6.

(12) *Mogg v. Clarke* (1885, C. A.), L. R. 16 Q. B. D. 79; 55 L. J. Q. B. 69; 53 L. T. 890; 50 J. P. 342.

(12a) *Post*, Vol. II., p. 1805.

(13) 30 & 31 Vict. c. 106, s. 10. See also rr. 15, 16, *infra*.

(14) *Evans & Co.'s Case*, *post*, Vol. II., p. 2245.

(15) 39 & 40 Vict. c. 61, s. 14; and see 48 & 49 Vict. c. 46, s. 2.

(15a) *Chard v. Bush*, Loc. Gov. Chron.,

July 14, 1923, p. 421; 58 L. J. Jo. 328. A contention to the contrary based on P. L. Am. Act, 1834, 4 & 5 Wm. IV. c. 76, s. 58, and Relief Regulation Order, 1911, Art. XIII. (10 L. G. R. (Orders) 17), was not accepted. See also cases cited *post*, Vol. II., pp. 2069-2082.

(15b) *Post*, Vol. II., p. 2284.

(16) 33 & 34 Vict. c. 23, s. 2.

(17) *Post*, Vol. II., pp. 1845, 1859.

(18) *Ante*, pp. 545, 546.

(19) *Post*, Vol. II., pp. 2282, 2290, 2298.

Sched. II.,
Part I.,
r. 11, n.

Women.

Voting by
corporations.

P.H., s. 20.

Disqualifica-
tions.

Sched. II., property shall be entitled to vote both in respect of such ownership and of such
Part I., r. 13. occupation.

Rule 14. Owners may give their votes either personally or by proxy.

Note.

Register. The town council of a borough were held not to be bound to keep a register of owners and proxies, with a view to its use on an occasion when a poll under Sched. III. might be demanded.²⁰ And as it will be equally unnecessary for a district council to keep such a register, rules 18, 19, 22 and 24-30, relating to the making and revision of the register are omitted.
Owners and proxies desirous of voting under Sched. III. will, however, have to send in claims under rule 20 of the present Schedule.

Rule 15. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of the three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the Form M in Schedule IV. to this Act.

Note.

Stamp duty. The appointment of a proxy is a "letter of attorney" or an "instrument of procuration" so as to require a ten-shilling stamp under the Stamp Act, 1891.²¹

Rule 16. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons.

Rule 17. Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners.

* * * * *

Rule 20. A claim by an owner or proxy [*to be entered on the register*] shall state his name and address within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof.

Note.

Claims to vote. In order to be entitled to vote at a poll of owners and ratepayers under Sched. III., an owner or proxy must send in a claim containing the particulars above mentioned to the summoning officer in pursuance of rule 6 of that Schedule; for district councils will not need to keep registers of owners and proxies.

Rule 21. A claim by an owner or proxy may be made by writing in the Form L in Schedule IV. to this Act.

* * * * *

Rule 23. Claims [*and objections*] shall be sent to the chairman of the [district council] [*on some one of the first six days of March*], and a claim or objection sent at any other time shall not be admitted by the chairman.

Note.

Time to claim. Claims to vote at a poll under Sched. III. are to be sent in at least fourteen days before the last day appointed for delivery of the voting papers: see rule 6 of that Schedule, *post*.

* * * * *

[Election.]

Rule 36. The returning officer shall . . . not less than fourteen days before the last day appointed for delivery to him of [*nomination papers*], publish a notice, signed by him, and specifying— * * *

(20) *Ward v. Sheffield Cpn.* (1887), L. R. of Attorney." See *Reg. v. Kelk* (1840), 12 19 Q. B. D. 22; 56 L. J. Q. B. 418. A. & E. 559.
(21) 54 & 55 Vict. c. 39, Sched. tit. "Letter

The mode of voting [*in case of a contest*];
The day or days on which the voting papers will be delivered and the day on which they will be collected; and
The place for the examination and for the casting up of the votes;
and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed.

Sched. II.,
Part I., r. 36.

P.H., s. 21.

Note.

For the purposes of a poll under Sched. III., the summoning officer is to be the returning officer, and is to give notice in the same manner as the returning officer was required by the present rule to give the notice of election; but as there is no "delivery of nomination papers," the notice of the poll should apparently be published not less than fourteen days before the day fixed for the delivery of voting papers.

Notice of poll.

Parochial notices are published by being affixed on or near to the principal door of each church and chapel of the Church of England in the parish.¹ Notices posted on the side panels of the porch to the southern door of a church were held properly posted²; and an objection to the validity of a rate because it had been published on an iron gate to a churchyard, and not on the usual notice board near the gate, was overruled.³ If there is no parish church, notices may be posted in some public and conspicuous place in the parish, *e.g.*, a school door, or a Wesleyan chapel door.^{3a}

The summoning officer must arrange the dates for the several events here mentioned so that there may be three clear days between the delivery and collection of the voting papers, and that the examination of votes may commence on the day after the collection. Acts appointed to be done on a Sunday, Christmas Day, Good Friday, or a bank holiday, or fast or thanksgiving day, are to be done on the following day : see rule 66 and the Note thereto.

Rule 37. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote [*at the election*].

Rule 38. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the [*election*] is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer. Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds.

* * * * *

Rule 43. . . . the returning officer shall cause voting papers, in the Form [N] contained in Schedule IV. to this Act, to be prepared and filled up. . . .

Note.

For the purpose of a poll under Sched. III., the voting paper will be in the Form O contained in Sched. IV.

The provision in the Public Health Act, 1848,⁴ requiring the voting papers to be filled up by the returning officer with the number of votes to which each voter was entitled, was held to be directory only, and not compulsory.⁵ Therefore if there should be any mistake in the number of votes assigned in the voting papers, or if none be assigned, the returning officer, when he reckons up the votes, will have to assign to each voter the proper number to which he is entitled. But, *semble*, *per* Blackburn and Mellor, JJ., the chairman might be liable to a penalty⁶ for omitting to fill up the voting papers in the form provided by the Act.

A case under the Municipal Corporations Act, which raised the question whether the penny stamp on "voting paper at meetings," imposed by the Stamp Act,⁷ applied to municipal elections, would seem to show also that voting papers at a poll

Form of
voting paper.

Stamp duty.

(1) 7 Wm. IV. & 1 Vict. c. 45, s. 2. And see *Reg. v. Whipp* (1843), 4 Q. B. 141; 3 G. & D. 372; 12 L. J. M. C. 64; 7 Jur. 194; *Ormerod v. Chadwick* (1847), 16 M. & W. 367; 16 L. J. M. C. 143; *Reg. v. Deverell and Warblington Overseers* (1854), 3 E. & B. 372; 23 L. J. M. C. 121; 18 Jur. 494.
(2) *Edwards v. Hatton* (1866, Ct. of Arches), L. R. 1 A. & Ecc. 21; 30 J. P. 211.
(3) *Empson v. Metrop. Bd. of Works* (1861, Q. B.), 25 J. P. 677.
(3a) *Reg. v. Wolferstan*, L. R. 1893, 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. 429; 58 J. P. 133, *re* highway rate.
(4) 11 & 12 Vict. c. 63, s. 24, and Sched. A.
(5) *Reg. v. Lofthouse or Lockhouse* (1866), L. R. 1 Q. B. 433; 35 L. J. Q. B. 145; 12 Jur. (N.S.) 619; 14 L. T. 359; 30 J. P. 453; 7 B. & S. 447.
(6) Under 11 & 12 Vict. c. 63, s. 28.
(7) 33 & 34 Vict. c. 97, now 54 & 55 Vict. c. 39.

Sched. II.,
Part I.,
r. 43, n.

under Sched. III. do not require such stamps, although the poll is taken in connection with a "meeting."⁵

Rule 44. The returning officer shall, three days at least before the day of collection of the voting papers, cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address stated in the [*register or*] claim of each owner and proxy, and at the residence within the district of each ratepayer entitled to vote therein.⁶

P.H., s. 25.

Rule 45. Each voter shall write his initials in the voting paper delivered to him [*against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote*], and shall sign such voting paper.

Note.

Signature to
voting papers.

If the signature be omitted, the voting paper will be bad.⁷ The signature should be the voter's usual signature, and it would be no valid objection that the Christian name was denoted by an initial letter.⁸

The form of voting paper given in Schedule IV., Form O, contains directions to the voter with reference to the mode of filling up the paper. These directions, which are part of the statute (see sect. 317, *ante*), require the voter, whether he votes in his own right or as proxy, not merely to sign his name, but to subscribe "his name and address at full length;" and in the case of an illiterate voter, the directions require him "to make his mark *instead of initials*," and require the witness to attest "such mark."

A note on the form of nomination paper given in the schedule to the Municipal Elections Act, 1875,⁹ requiring the number on the burgess roll of a subscribing burgess to be inserted, was held to be mandatory and not directory.¹⁰

With regard to illiterate voters, it appears to be intended that the witness shall write the voter's initials in the column headed "in favour of," or in that headed "against," as the case may be, that the voter shall then make his mark at the foot of the voting paper, and, lastly, that the witness shall subscribe the voter's name and address and also his own, though it is not expressly required that the address shall be added in this case.

Rule 46. Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

Rule 47. Any voter unable to write shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against the [*name of every candidate*] for [*whom*] the voter intends to vote.¹¹

Rule 48. The returning officer shall cause the voting papers to be collected on the day of collection [*(which shall not be later than the seventh of April)*] by such persons as he may appoint.¹²

Rule 49. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter, nor unless the same is collected by the persons appointed for that purpose: Provided—(a.) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid, he shall, on personal application before the day of collection to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him: (b.) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same, the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes.

* * * * *

(5) *Reg. v. Strachan* (1872), L. R. 7 Q. B. 463; 41 L. J. Q. B. 210; 26 L. T. 835; 36 J. P. 727.

(6) As to the "computation of time," see the cases cited *post*, Vol. II., pp. 2102-2106, and also, as to reckoning Sundays, *Rowberry v. Morgan* (1854), 9 Ex. 730; 23 L. J. Ex. 191; 18 Jur. 452.

(7) *Reg. v. Tart* (1859), 1 E. & E. 618; 28

L. J. Q. B. 173; 5 Jur. (N.S.) 679.

(8) *Reg. v. Avery* (1852), 18 Q. B. 576; 21 L. J. Q. B. 428; 17 Jur. 272.

(9) 38 & 39 Vict. c. 40, now repealed.

(10) *Henry v. Armitage* (1883), L. R. 12 Q. B. D. 257; 53 L. J. Q. B. 111; 50 L. T. 4; 48 J. P. 424.

(11) See Note to r. 45, *supra*.

(12) See r. 66 and Note, *post*.

Counting of Votes.

Rule 51. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend at the place appointed for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; he shall cast up such of the votes as he finds to be valid, and to have been duly given, collected, or received, and shall ascertain the number of such votes for each [candidate]. . . .

Sched. II.,
Part I., r. 51.
P.H., s. 27.

Note.

It was ruled by Lord Campbell, C.J., at *nisi prius* that the duties of the chairman or returning officer were not merely ministerial, but judicial, and therefore his certificate of the return of the candidates elected was conclusive as far as the validity of the votes was concerned, and no scrutiny of the votes could be held under a *quo warranto*.¹³

Duty of
returning
officer.

And in a later case the returning officer had, by mistake, put down votes to one candidate which the voting papers showed had been given for another, and had omitted to reckon certain votes, and also had received as valid votes which were invalid, but as to which he had made no examination, his attention not having been called to them. It was held by the Court of Appeal that, as to the first and second classes of votes, the duty of the returning officer to cast up the votes was merely ministerial, but that as to the third class he had to exercise a judicial duty, and as to this his certificate was conclusive.¹⁴

* * * * *

Rule 53. The returning officer shall also cause to be made a list containing [the names of the candidates, together with (in case of a contest)] the number of votes given for each, [and the names of the persons elected,] and shall sign and certify such list, and shall deliver the same, together with the [nomination and] voting papers which he has received, to the [district council] at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

Note.

After a poll under Schedule III., the summoning officer is required to send a copy of the resolution passed to the Minister of Health, and publish it in the district. As he is also to perform the duties of a returning officer under the present schedule, so far as the same are applicable to such a poll, he should in pursuance of the present rule certify the result of the poll to the council, stating the number of votes given in favour of and against the resolution, whether it is passed or not, and should deliver over the voting papers to the council at their next meeting.

Certificate.

Rule 54. Such list shall during office hours be open to public inspection, together with all other documents relating to the [election], for six months after the [election], without fee or reward; and the returning officer shall, as soon as may be after the completion of the [election], cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices within the parts for which the election has taken place.

* * * * *

General Provisions.

Rule 66. Whenever the day appointed for the performance of any act in relation to any [election] is a Sunday, Christmas Day, or Good Friday, a Bank holiday, or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid; and in that case on the day following such excluded day.

P.H., s. 23.

Note.

These are by the Bank Holidays Act, 1871,¹ Easter Monday, the Monday in Whitsun week, the first Monday in August, and the 26th day of December, if a week-day, and, by the Holidays Extension Act, 1875,² the 27th day of December when the 26th falls on a Sunday.

Bank
holidays.

(13) *Reg. v. Cross* (1852, at Cambridge Assizes), 19 L. T. (O.S.) 35; 16 J. P. 214. (1) 34 & 35 Vict. c. 17, Sched.
(14) *Reg. v. Collins* (1876), L. R. 2 Q. B. D. (2) 38 Vict. c. 13, s. 2.

Sched. II.,
Part I., r. 67.
P.H., s. 30.

Rule 67. The necessary expenses attendant on any [*election*] and such reasonable remuneration to the returning officer and other persons for services performed or expenses incurred by them in relation thereto as may be allowed by the [district council], shall be paid out of the general district rates levied under this Act.

Note.

Remunera-
tion.

The court refused to order a local board to pay a reasonable compensation to a person conducting the poll upon a suggestion that an inadequate sum had been allowed; as the board had a discretion as to what sum they might think reasonable to allow, and the exercise of their discretion in this respect was not subject to review.³

P.H., s. 28.

Rule 68. If the returning officer refuses or neglects to comply with any of the provisions of this schedule relating to [*elections*], he shall be liable to a penalty not exceeding fifty pounds; and any person employed for the purposes of any such [*election*] by or under the returning officer who is guilty of any such neglect or refusal shall be liable to a penalty not exceeding five pounds.

Note.

Negligence
of returning
officer.

This penal provision only applies to neglect or disregard of clear and undoubted directions, not to mere mistakes upon doubtful points,⁴ or to unsubstantial errors,⁵ though the neglect need not be "wilful."⁶

It was held that an officer presiding at a municipal election under the Ballot Act, 1872,⁷ having undertaken and entered upon a ministerial duty, was liable for the negligent performance thereof; but that he would not be responsible for the negligence of his clerk in the performance of such duties as he might legally delegate to him, the relation of master and servant not existing between them; *per* Bovill, C.J., however, he was only liable if the omission were wilful.⁸

If a returning officer, without malice or improper motive, but exercising his judgment, in a manner within his jurisdiction, honestly refuses to receive the vote of a person entitled to vote at an election no action will lie against him at the suit of such person.⁹ On this principle it has been held, in an action against a returning officer for refusing the vote of an inhabitant at the election of a member of Parliament, that the malice of the defendant is an essential ingredient to support such an action.¹⁰

The duty is imposed on the presiding officer of ascertaining before the voter deposits a voting paper in the ballot box whether the official mark is on such paper.¹¹

With regard to making a returning officer who has failed to conduct an election properly respondent in an election petition, and with regard to the liability of the returning officer for costs in such event, see sect. 88 of the Municipal Corporations Act, 1882,¹² and the Note thereto.

Party
aggrieved.

The chairman of a local board of health was charged with neglect to deliver the voting papers to the board at their meeting after the election, pursuant to the Act.¹³ The prosecutor, a member of the board, had not been a candidate at the election, the persons returned at the election were properly elected, and the prosecutor had not obtained the consent of the Attorney General to prosecute. He was held not to be a party aggrieved within sect. 253 of the present Act, and the justices had therefore no jurisdiction to convict.¹⁴

L.G., s. 13 (5).

Rule 69. Any person who fabricates in whole or in part or alters defaces destroys abstracts or purloins any voting paper, or personates any person entitled to vote at any [*election*], or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interferes with the delivery or collection of any voting

(3) *Ex parte Metcalfe* (1856), 6 E. & B. 287; 2 Jur. (N.S.) 1245; 4 W. R. 490.

(4) *Summerhill v. Coley* (1868), 32 J. P. 821.

(5) *Hunt v. Hibbs* (1860), 5 H. & N. 123; 29 L. J. Ex. 222; 1 L. T. 379; 24 J. P. 118.

(6) *King v. Burrell* (1840), 12 A. & E. 460; 9 L. J. Q. B. 337; 4 Jur. 1109; 4 P. & D. 207.

(7) 35 & 36 Vict. c. 33.

(8) *Pickering v. James* (1873), L. R. 8 C. P. 489; 42 L. J. C. P. 217; 37 J. P. 679; s.c. *nom. Jones v. Pickering*, 29 L. T. 210.

(9) *Tozer v. Child* (1857), 7 E. & B. 377; 26 L. J. Q. B. 151; 3 Jur. (N.S.) 409; 5 W. R.

287.

(10) *Drewe v. Coulton* (1787), 1 East 563, n.; *Milward v. Sergeant*, *ibid.*, 567, n.; *Cullen v. Morris* (1819), 2 Stark. 577. See also *Pryce v. Belcher* (1847), 4 C. B. 866; 16 L. J. C. P. 264.

(11) *Ackers or Akers v. Howard* (1886), L. R. 16 Q. B. D. 739; 55 L. J. Q. B. 273; 54 L. T. 651; 50 J. P. 519.

(12) *Post*, Vol. II., p. 1814.

(13) 11 & 12 Vict. c. 63, s. 27: see rule 53 of the present schedule.

(14) *Reg. v. Blanshard* (1866), 30 J. P. 280.

papers, or delivers any voting paper under a false pretence of being lawfully authorised so to do, shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment with or without hard labour for any period not exceeding three months.

Sched. II.,
Part I., r. 69.

Note.

As rule 6 of Schedule III. expressly applies the provisions as to penalties in rule 68 of the present schedule to a poll of owners and ratepayers, it is doubtful whether the general words “ in all respects whatsoever ” in the first-mentioned rule can be taken to apply the present rule (to which no such express reference is made) to such a poll. As to the recovery of penalties under the present Act, see sect. 251.

Penalties.

The wife of a voter, in the absence of her husband, promised his vote, and not being able to write, placed a mark on the voting paper, which was attested by a witness who was canvassing for the candidate to whom the promised vote was given. He did this, and placed the voter’s initials against the name of the candidate, believing that the wife was authorised to fill up the voting paper, and that he was not acting contrary to the Act. On an information for fabricating a voting paper, it was held that he had not fabricated a voting paper within the meaning of the Act.¹⁵ Again, where certain persons went to the houses of voters who were marksmen, to assist in filling up the voting papers, and having obtained the express or implied consent of the voters or members of their families, filled up the papers with the proper names and marks of the voters, and put their own names as attesting witnesses, without obtaining the actual signatures or marks of the parties themselves, it was held that this did not constitute the offence of forgery at common law; *sed quære*, whether it amounted to an indictable misdemeanour. The defendants having been indicted separately, Crompton, J., on the application of their counsel, and with the consent of the counsel for the prosecution, permitted all the cases to be tried together.¹⁶

Fabrication of
voting paper.

Writing the voter’s initials in pencil on the voting paper was held not to amount to “ fabrication ” or “ falsely assuming to act,” in the absence of fraud, the voter having been told to fill in the initials in ink.¹⁷ Where a candidate in an election of members of a local board called upon one of the voters and filled in her initials against his name, it was held that this did not constitute either “ falsely assuming to act for the voter ” or a “ fabrication of votes ” within the present rule.¹⁸ But where a person went to a voter’s house, and, the voter’s mother and brother telling him the voting paper was not filled up, offered to fill it up and then put in a candidate’s name without asking them which candidate, and the paper was afterwards counted for that candidate, it was held that, though there might have been evidence to convict of fabricating a voting paper, the conviction for assuming to act was wrong, as it was not proved that the voter did not afterwards agree to the filling up of the paper.¹⁹

It would seem that the offence of personation is not committed unless the voter personated is entitled to vote at the time of the election; thus the personation of one who had died previously to an election of guardians was held not to have been an offence under the Poor Law Amendment Act, 1851,²⁰ under which it is an offence to “ personate any person entitled to vote at such election.”²¹

Personation of
voters.

An unsuccessful candidate, who would have been successful if the votes given in a fabricated voting paper had been given for instead of against him, may lay the information for the penalty as being a “ party aggrieved ” within sect. 253; and *per* Lush, J., “ he would be aggrieved whether the fabricated votes turned the election or not.”²²

Party
aggrieved.

* * * * *

Rules 70-75 of the present Part of Schedule II. have no bearing on polls (see the Note at the commencement of the present Schedule), and are accordingly omitted.

Omitted rules.

(15) *Aberdare Loc. Bd. v. Hammett* (1875), L. R. 10 Q. B. 162; 44 L. J. M. C. 49; 32 L. T. 20; 39 J. P. 598; *Wickham v. Phillips* (1883), 47 J. P. 612.

(16) *Reg. v. Hartshorn* (1853, Staffordshire Assizes), 6 Cox C. C. 395.

(17) *Gough v. Murdoch* (1887), 57 L. T. 308; 35 W. R. 836; 51 J. P. 471.

(18) *In re Knighton Election; Gough v. Murdoch* (1887, Q. B. D.), 57 L. T. 308; 51 J. P. 471; 33 W. R. 836.

(19) *Bell v. Morson* (1879, Q. B. D.), 40 L. T. 128; 43 J. P. 174, n.

(20) 14 & 15 Vict. c. 105, s. 3.

(21) *Whiteley v. Chappell* (1868), L. R. 4 Q. B. 147; 38 L. J. M. C. 51; 19 L. T. 355; 33 J. P. 244. See also *post*, Vol. II., p. 1858.

(22) *Verdin v. Wray*, *ante*, p. 661 (7).

Sched. II.,
Part II., n.
Repeal.

[(II.) PROCEEDINGS IN CASE OF LAPSE OF LOCAL BOARD.]
Note.

This Part of the present Schedule was also repealed by the Local Government Act, 1894,²³ which authorises the county council to order a new election to be held, and a temporary council to be formed, in case of the lapse of a district council

SCHEDULE III.

RULES AS TO RESOLUTIONS OF OWNERS AND RATEPAYERS.

L.G., s. 13 (1).

Rule 1. For the purpose of passing a resolution of owners and ratepayers under this Act, a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners, resident in the district or place with respect to which the resolution is to be passed.

Note.

Resolution of
owners and
ratepayers.

The only occasion on which it is now necessary for a resolution of owners and ratepayers to be passed, is when an urban district council propose to establish a market under sect. 166 of the present Act. The powers of that section can only be exercised with the consent of the owners and ratepayers of the district expressed by resolutions passed in the manner provided by the present Schedule.

Formerly such resolutions were required to be passed before the constitution of a local government district; ¹ the division of a district into wards; ² the election of a new local board on the lapse of an existing board; ³ the formation into a highway parish of the "excluded part" of an urban sanitary district; ⁴ or the promotion of or opposition to a Bill in Parliament by an urban sanitary authority.⁵

The Local Government Board considered that an urban district council could not charge upon the rates the expenses of holding a poll of inhabitants on the question of amalgamation with an adjoining borough.

With regard to the meaning of "owner," see the definition in sect. 4, and the Note thereto.⁶ But see also Rule 10 of Schedule II., and the Note to that rule. With regard to the meaning of the term "residence," see the Note to sect. 20 of the Local Government Act, 1894.⁷

Rule 2. The summoning officer of such meeting shall be—In boroughs, the mayor; In Improvement Act districts, the chairman of the improvement commissioners; In [county ⁸] districts, the chairman of the [district council ⁸];

* * * * *

If any summoning officer appointed by the [Minister of Health] dies, becomes incapable, or refuses or neglects to act, the [Minister of Health] may appoint another officer in his room.

Rule 3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a court of summary jurisdiction.

L.G., s. 13 (2).

Rule 4. The summoning officer shall, on such requisition as aforesaid, fix a time and place for holding such meeting, and shall forthwith give notice thereof—By advertisement in some one or more of the local newspapers circulated in the district or place; By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.⁹

L.G., s. 13 (3).

Rule 5. The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside, in which case the meeting on assembling shall choose one of its number as chairman, who may with the consent of a majority of the persons present, adjourn the same from time to time.

(23) See s. 59 (5), *post*, Vol. II., p. 2094.
(1) See s. 272, *ante*, p. 721.
(2) 38 & 39 Vict. c. 55, Sched. II., Part I., r. 6.
(3) *Ibid.*, Sched. II., Part II., r. 2.
(4) See s. 216, *ante*, p. 597, and H. Act, 1882, 45 & 46 Vict. c. 27, s. 9.
(5) See B. F. Act, 1872, s. 4, *post*, Vol. II., p. 1700.
(6) *Ante*, p. 15.
(7) *Post*, Vol. II., pp. 2027-2032.
(8) See footnote (6), *ante*, p. 7.
(9) See footnote (1), *ante*, p. 823.

Note.

It does not appear that fresh notice need be given of an adjourned meeting. In the case of vestry meetings, it has been held that such meetings held by adjournment are to be considered as part of the original meetings; and that in the absence of any express provision as to notice, no notice is necessary for the adjourned meeting.¹

Sched. III.,
r. 5, n.
Adjournment.

Rule 6. The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption : Provided, that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O, in Schedule IV. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in Schedule II. to this Act; except that in districts or places where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days before the last day appointed for delivery of the voting papers, he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. to this Act to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.

L.G., s. 13 (4).

For the purposes of such poll the summoning officer shall be the returning officer, and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this schedule.

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting.

Note.

Per Jessel, M.R., " according to the common law of the country . . . votes at all meetings are taken by show of hands," though if a poll be taken a scale of voting may be applicable.²

Show of
hands.

Where several different matters are dealt with at the same meeting, a poll with respect to any one of them must be demanded at once, before the meeting proceeds with any other matter. Thus, where a meeting was held to elect waywardens under the Highway Act, 1862, for several different townships, and no poll was demanded until all the elections had taken place, the chairman ruled that the demand for a poll on two of the elections was too late, and refused a poll. On a rule for a *mandamus* to reassemble the meeting, and proceed to an election of waywardens for the two townships, it was held that the proceeding in respect of each township was a separate election, and that the demand for a poll was too late, as it should, in each case, have been made upon the declaration of the show of hands.³

The above provision as to the poll being taken by the summoning officer is in accordance with a case in which it was held that if a poll be demanded, the functions of the chairman will thereupon cease, and the poll should be taken, and all things connected with it carried out by the summoning officer.⁴ And if a poll be demanded and the chairman refuse to grant it, and no resolution be come to, but the consideration of the question be adjourned to another and distant day, a *mandamus* will not lie against the chairman to take a poll, for after the meeting is dissolved the chairman's functions are at an end. In such a case the proceedings must commence *de novo*.⁵

Poll..

At a meeting of owners and ratepayers, a ratepayer demanded a poll; and another seconded the demand " if necessary," but was told by the town clerk that it was

(1) *Scadding v. Lorant* (1851), 3 H. L. C. 418; 15 Jur. 955; *Kerr v. Wilkie* (1860), 6 Jur. (N.S.) 383; 1 L. T. 501; 24 J. P. 211. See also Note to Sched. I., r. 1, ante, p. 811.

(2) *In re Horbury Bridge Coal, etc., Co.* (1879), L. R. 11 Ch. D. 115; 48 L. J. Ch. 341; 40 L. T. 353.

(3) *Reg. v. Thomas or St. Asaph Vicar* (1883), L. R. 11 Q. B. D. 282; 52 L. J. Q. B. 671.

(4) *Ex parte Littleborough Loc. Bd.* (1870), 22 L. T. 437; 35 J. P. 118.

(5) *Reg. v. Bird* (1864), 28 J. P. 279; 39 L. T. (O.S.) 286, n.

Sched. III.,
r. 6, n.

not necessary. The first-mentioned ratepayer, having subsequently withdrawn his demand, the second was held entitled to insist on the poll being taken. *Seemle*, per Darling, J., a demand for a poll cannot be withdrawn after the close of the meeting.⁶

At a parish meeting for the election of parish councillors, C. and S. were elected by show of hands. A poll was then demanded by an unqualified person, and held, and L. and M. were elected. At the first meeting L. and M. signed the declaration and took their seats. C. and S. were prevented from signing. On cause being shown in *mandamus* proceedings directing the chairman to convene a meeting to allow C. and S. to sign, it was held that the proper remedies were (1) election petition, (2) application to the county council,⁷ or (3), per Wright, J., by injunction to restrain the chairman from preventing C. and S. from signing.⁸

There must at least be fourteen clear days between the day on which the claim is received by the summoning officer and the last day appointed for delivery of the voting papers.⁹

L.G., s. 19.

Rule 7. A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the [Minister of Health]; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.¹⁰

L.G., s. 23.

Rule 8. Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; in the case of a resolution so passed by owners or ratepayers in any urban district, such costs shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act.

Note.

Costs.

The first part of the present rule applies only to the case of a meeting held for the purpose of passing a resolution under sect. 272, now superseded; but the latter part applies to meetings held for the purpose of consenting to the establishment of a market.

If the resolution is negatived by the meeting, the costs will be paid by the persons who summoned such meeting or by their sureties: see rule 3.

SCHEDULE IV.

FORMS.

Note.

Forms and
notices.

As to the force of these forms, see sect. 317, and as to the authentication of notices, see sect. 266. Sect. 267 contains provisions with respect to the mode of addressing notices to the owners and occupiers of premises, and with respect to the service of notices.

Summary
proceedings.

By the Summary Jurisdiction Rules, 1915, rule 60, "the forms in the schedule hereto, or forms to the like effect, may be used, with such variations as circumstances may require." The schedule referred to gives (amongst others), in Part I., forms for an information or complaint in summary proceedings other than for a civil debt, summons to defendant, orders for payment of money and for other matters, warrant for apprehension, warrants of distress and commitment, conviction, order for payment of money or for other matters, etc.; and, in Part II., forms applicable to proceedings for the recovery of a civil debt.¹

(6) *Rex (Bradley) v. Dover Cpn.*, L. R. 1903, 1 K. B. 668; 72 L. J. K. B. 210; 88 L. T. 296; 67 J. P. 81; 1 L. G. R. 266.

(7) See L. G. Act, 1894, s. 48 (5), *post*, Vol. II., p. 2083.

(8) *Reg. (Cole) v. Miles* (1895), 64 L. J.

Q. B. 420; 72 L. T. 502; 59 J. P. 407.

(9) See *post*, Vol. II., p. 2104.

(10) As to publication of notices, see Note to r. 36, *ante*, p. 823.

(1) See "Oke's Magisterial Formulist," 1922 Ed., pp. 1 *et seq.*

FORM A.

Sched. IV.,
Form A.

Form of Notice requiring Abatement of Nuisance.²

To [person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be].

TAKE notice that under the provisions of the Public Health Act, 1875, the [describe the local authority], being satisfied of the existence of a nuisance at [describe premises or place where the nuisance exists], arising from [describe the cause of nuisance, for instance, want of a privy or drain; or for further instance, a ditch or drain so foul as to be a nuisance or injurious to health; or for further instance, swine kept so as to be a nuisance or injurious to health], do hereby require you within from the service of this notice to abate the same, and for that purpose to [state any things required to be done or works to be executed.]

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of Signature of officer }
of local authority }

FORM B.

Form of Summons.³

Summons.

To the owner or occupier of [describe premises], situated at [insert such a description as may be sufficient to identify the premises], or to A.B. of County of [or borough of etc., or district of or as the case may be] to wit. You are required to appear before [describe the court of summary jurisdiction], at the petty sessions [or court] holden at on the day of next, at the hour of in the noon, to answer the complaint this day made to me by that in or on the premises above mentioned [or in or on certain premises situated at No. in the street in the parish of or such other description or reference as may be sufficient to identify the premises], in the district, under the Public Health Act, 1875, of [describe the local authority], the following nuisance exists [describing it, as the case may be], and that the said nuisance is caused by the act or default of the occupier [or owner] of the said premises, or by you, A.B. [or in case the nuisance be discontinued but likely to be repeated, say, there existed recently, to wit, on or about the day of on the premises, the following nuisance [describe the nuisance], and that the said nuisance was caused [etc.], and although the same has since the said last-mentioned day been abated or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under my hand and seal this day of J.S. (L.S.)

FORM C.

Form of Order for Abatement or Prohibition of Nuisance.⁴

To the owner [or occupier] of [describe the premises] situated [give such description as may be sufficient to identify the premises], or to A.B. of

County of [or borough, etc. of district of or as the case may be.] or WHEREAS on the day of complaint was made before Esquire, one of [His] Majesty's justices of the peace acting in and for the county [or other jurisdiction] stated in the margin [or as the case may be], by that in or on certain premises situated in the district under the Public Health Act, 1875, of [describe the local authority] the following nuisance

(2) See ss. 94 and 96, and Notes, ante, p. 830.
pp. 192, 197. (4) See s. 96, ante, p. 197, and Note at p. 830.
(3) See s. 95, ante, p. 196, and Note at p. 830.

Sched. IV.,
Form C.

then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or occupier*] of the said premises [*or was caused by A.B.*]. [*If the nuisance have been removed, say, the following nuisance existed on or about [the day the nuisance was ascertained to exist], and that the said nuisance was caused, etc., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.*]

And whereas the owner [*or occupier*] within the meaning of the said Public Health Act, 1875, [*or the said A.B.,*] hath this day appeared before us [*(or me) describing the court*], to answer the matter of the said complaint [*or in case the party charged do not appear, say, and whereas it hath been this day proved to our (or my) satisfaction that a true copy of a summons requiring the owner [or occupier] of the said premises [or the said A.B.] to appear this day before us [or me]* hath been duly served according to the said Act.]

Now on proof here had before us [*or me*] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or occupier*] of the said premises [*or by the said A.B.,*] we [*or I*], in pursuance of the said Act, do order the said owner [*or occupier, or A.B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify any things required to be done or works to be executed, as for instance, to provide for the cleanly and wholesome keeping of, or, to remove the animal kept so as to be a nuisance or injurious to health; or, for further instance, to cleanse, whitewash, purify, and disinfect the said dwelling-house; or, for further instance, to construct a privy or drain, etc.; or, for further instance, to cleanse or to cover or to fill up the said cesspool, etc.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the court that the nuisance is likely to recur on the premises, say, [And we] [or I] being satisfied that notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [or occupier, or A.B.,] from [here insert the matter of the prohibition, as for instance,] from using the said house or building for human habitation until the same, in our [or my] judgment, is rendered fit for that purpose*].

In case the nuisance were removed before complaint, say, Now on proof here had before us [*or me*] that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [*or I*] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or I*] [*order on local authority to do works*].

Given under the hands and seals of us, [*or the hand and seal of me, describing the court*].

This day of
J.S. (L.S.)
J.P. (L.S.)

FORM D.

Form of Order for Abatement of Nuisance by Local Authority.⁵

To the town council, etc., as the case may be.

County, etc. } WHEREAS [*recite complaint of nuisance as in last form*].
to wit. } And whereas it hath been now proved to our [*or my*] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or persons causing the nuisance, is known or can be found [*as the case may be*]; Now we [*or I*], in pursuance of the said Act, do order the said [*local authority, naming it,*] forthwith to [*here specify the works to be done*].

Given [*etc., as in last form*].

FORM E.

Form of Order to permit Execution of Works by Owner.⁶

County of [*or* } WHEREAS complaint hath been made to me, E.F., Esquire, one
borough, etc.] } of [*His*] Majesty's justices of the peace in and for the county
to wit. } [*or borough, etc.,*] of , by A.B., owner, within the mean-
ing of the Public Health Act, 1875, of certain premises [*describe situation of*

(5) See s. 100, ante, p. 201, and Note at p. 830.

(6) See s. 306, ante, p. 750, and Note at p. 830.

premises so as to identify them], that C.D., the occupier of the said premises, doth prevent the said A.B. from obeying and carrying into effect the provisions of the said Act in this, to wit, that he, the said C.D., doth prevent the said A.B. from [*here describe the works generally according to circumstances, for instance, thus: constructing and laying down, in connexion with the said house, a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of* are entitled to use, such sewer being within one hundred feet of the said premises]: And whereas the said C.D., having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said A.B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C.D. do permit the said A.B. to execute the same in the manner required by the said Act.

Given under my hand and seal, this day of J.S. (L.S.)

FORM F.

Form of Order of Justice for Admission of Officer of Local Authority.⁷

WHEREAS [*describe the local authority*] have by their officer [*naming him*] made application to me, A.B., one of [*His*] Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [*describe situation of premises so as to identify them*], for the purpose of [*describe the purpose as the case may be*], and that such demand has been refused.

Now, therefore, I, the said A.B., do hereby require you [*name the person having custody of the premises*], to admit the said [*name the local authority*], [*or the officer of the said local authority*], to the said premises, for the purpose aforesaid.

Given [*etc., as in last form*].

FORM G.

Form of Notice requiring Owner to sewer, etc., Private Street.⁸

To , the owner of certain premises fronting adjoining or abutting on a certain street called , within the district of [*describe the local authority*].

Whereas the said street is not sewered levelled paved flagged and channelled to the satisfaction of the above-named [*local authority*]; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered, levelled, paved, flagged, and channelled: Now, therefore, the said [*local authority*] hereby give you notice (in pursuance of the Public Health Act, 1875), to sewer, level, pave, flag, and channel the same within the space of [*state the time*], from the date hereof, in manner following; (that is to say,) the sewers to be laid or made [*here describe the mode to be adopted and material to be used*], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the [*local authority*].

Each gully for surface draining, and its connexion with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

The channel stones to be [*here describe the mode to be adopted and the material to be used*]. The curb or side stones to be [*here describe the mode to be adopted and the material to be used*].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the [*local authority*], situate in street, in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done

(7) See s. 102, *ante*, p. 201; also s. 305, *ante*, p. 749; and Note at p. 830.

(8) See s. 150, *ante*, p. 311, and Note at p. 318. This form does not mention the provision of means of lighting or making

good the street. It appears to be intended that the clerk shall sign the notice, rather than the surveyor: see conclusion of Form A, and s. 266, *ante*, p. 709. A form of Notice of Apportionment is given *ante*, p. 329.

Sched. IV.,
Form G.

in a good, workmanlike, and substantial manner, to the satisfaction of the said [local authority], or their surveyor.

Dated this day of .
(Signed)

Clerk to the said [local authority].

FORM H.

*Form of Mortgage of Rates.*⁹

By virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of in consideration of the sum of paid to the treasurer of the said district by A.B. of for the purposes of the said Act, do grant and assign unto the said A.B., his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [the rates mortgaged] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said A.B., his executors, administrators, and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the day of at [place of payment]. Dated this day of one thousand [nine] hundred and .

[To be sealed with the common seal of the local authority.]

FORM I.

*Form of Transfer of Mortgage.*¹⁰

I, A.B., of , in consideration of the sum of paid to me by C.D., of do hereby transfer to the said C.D., his executors, administrators, and assigns, a certain mortgage, bearing date the day of and made by the local authority under the Public Health Act, 1875, for the district of for securing the sum of and interest thereon at per centum per annum [or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security], and all my right estate and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand [nine] hundred and .
A.B. (L.S.)

FORM K.

*Form of Rentcharge.*¹¹

By virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of do hereby declare and absolutely order that the inheritance of the [dwelling-house shops lands and premises, as the case may be], situated in street, in the parish of within the said district, and now in the occupation of shall be absolutely charged with the sum of pounds, paid by of for the improvement by drainage and water supply [as the case may be], of the same dwelling-house shops lands and premises [as the case may be], together with interest for the same from the date hereof at pounds per centum per annum, until full payment thereof; and also all costs incurred by the said his executors, administrators or assigns, under this security, shall be fully paid and satisfied. And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises to the said his executors, administrators and assigns, in manner following; (that is to say,) the interest on such principal sum of pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the day of and the day of in every year, the first payment thereof to be made on the day of next, and such principal sum of pounds shall be paid and payable by equal annual instalments on the day of .

(9) See s. 236, ante, p. 625.

(10) See s. 238, ante, p. 625.

(11) See s. 240, ante, p. 627.

in each of the next succeeding years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.
[To be sealed with the common seal of the local authority.]

Sched. IV.,
Form K.

FORMS L, M, AND N.

Note.

Forms L [*Register of Owners for the District of ——. Notice of Time for making Claims and Objections. Owner's Claim. Claim of Proxy. Form of Objection*]; M [*Appointment of Proxy*]; and N [*Form of Voting Paper at Elections of Members of Local Boards. Voting Paper*] are omitted, as they applied to elections held under Sched. II., which was repealed by the Local Government Act, 1894.¹²

Election
forms.

* * * * *

FORM O.

Form of Voting Paper for Poll taken under Schedule III.¹³
Voting Paper No. ().

At a meeting held on the day of at in the county of it was agreed that the following resolution should be proposed to the owners and ratepayers of .

(Set out the resolution.)

—	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				

(Signed) _____
or the mark of _____
Witness to the mark _____
or proxy for _____

Directions to the Voter.

The voter must write his initials under the heading “ in favour ” or “ against,” according as he votes for or against the resolution, and must subscribe his name and address at full length.
If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.
If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the words “ as proxy for,” with the name of the body of persons for whom he is proxy.
This paper will be collected on the of between the hours of and .

(12) See s. 89, Sched. II., *post*, Vol. II., pp. 2113, 2114. (13) See Sched. III., r. 6, *ante*, p. 829; and Note to r. 1, *ante*, p. 828.

Sched. V.

SCHEDULE V.

PARTS I. AND II.

Note.

Repeal of Sanitary Acts.

For the enactments repealed by Parts I. and II. of the present Schedule and sect. 343, see the Note to that section.¹ Certain portions, however, of these Acts are re-enacted in Part III. of the present Schedule; and sect. 343 contains a general saving for acts, rights, liabilities, securities, penalties, legal proceedings, etc., under the repealed Acts.

The sections of the repealed Acts which correspond to those of the present Act are noted under the marginal notes to the sections of the present Act, and an explanation of these abbreviations is given in the Note to sect. 5.²

Where any provisions of these repealed Acts are referred to in an Act of Parliament, an order of the Secretary of State or Local Government Board, or in any other document, the corresponding provisions of the present Act are, by sect. 313, to be deemed to be substituted for them.

By sect. 4³ the "Sanitary Acts" are defined as meaning certain specified Acts,⁴ and the Acts mentioned in Part I. of the present Schedule.⁵

Metropolis.

With regard to the Metropolis or County of London, reference must now be made to the Public Health (London) Act, 1891, which is substituted for the old Sanitary Acts⁶; except that it expressly enacts that "for the removal of doubts it is hereby declared that so much of the Public Health Act, 1875, as re-enacts sects. 51 and 52 of the Sanitary Act, 1866,⁷ and sects. 34 to 36 of the Public Health Act, 1872,⁸ extends to London."⁹

* * * * *

PART III.

Note.

Re-enactments.

By sect. 343¹⁰ the following enactments "shall be re-enacted . . . and shall be in force as if enacted in the body of this Act"—

[Public Health Act, 1848], s. 83.¹¹

As to interments within churches.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the 31st day of August 1848; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt.

Note.

Burial of ashes.

This enactment does not prevent the placing of an urn containing cremated ashes in the wall of a church, but a faculty for this was refused on the ground of inconvenience in case of alterations, and a faculty for placing the urn below the floor of the church was granted instead.¹²

Maintenance of vaults.

The Burial Act, 1857,¹³ authorises the Privy Council, on the representation of the Secretary of State, "from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health"; and ten days' notice of the intention to make the order is to be given to the churchwardens or persons having the care of the vaults or burial places; the Order in Council is to be published in the *London Gazette*, and the expenses of complying with it are to be paid out of the poor rate. If the persons having the care of the vaults or burial places are not the churchwardens, and if they neglect to comply with the order, the churchwardens of the parish may do what is required.¹⁴ See also the re-enactment

(1) *Ante*, p. 806. Part I. of the present Schedule was repealed by S. L. R. (No. 2) Act, 1893, without reviving the enactments which that Part repealed. Part II. was similarly repealed by S. L. R. Act, 1883.
(2) *Ante*, p. 42.
(3) *Ante*, p. 9.
(4) See footnotes (9) (12) (13) and (1), *ante*, pp. 8, 9.
(5) See list *ante*, p. 806.

(6) See *ante*, p. 5.
(7) Now obsolete, see *post*, p. 843.
(8) *Post*, p. 843.
(9) 54 & 55 Vict. c. 76, s. 142 (5).
(10) *Ante*, p. 806.
(11) 11 & 12 Vict. c. 63, s. 83.
(12) *In re Kerr* (Cons. Ct., L.), L. R. 1894 P. 284. See also *post*, Vol. II., p. 2174.
(13) 20 & 21 Vict. c. 81, s. 23.
(14) 22 Vict. c. 1, s. 1.

of sect. 21 of the Local Government Act (1858) Amendment Act, 1861,¹⁵ with regard to the maintenance of closed burial grounds in proper order.

A bequest of income to the vicar of a parish and his successors, with a direction that the testator's grave be kept in repair and a gift over on failure, was held valid.¹⁶

If the burial ground is subject to the Burial Acts, the following prohibition contained in sect. 9 of the Burial Act, 1855,¹⁷ applies to it: "No ground not already¹⁸ used as or appropriated for a cemetery shall be used for burials under the said Act¹⁹ or this Act, or either of them, within the distance of one hundred yards from any dwelling-house, without such consent as aforesaid," that is, the consent in writing of the owner, lessee, and occupier of the dwelling-house.

That enactment was directed against the actual use of the ground for burials, and did not prevent land within the prescribed distance from being merely included within the boundary of the burial ground²⁰; but it prevented the actual use for burials of ground within the prescribed distance from a dwelling-house, although the house was erected after the burial ground had been appropriated, where the appropriation had taken place after 1885.²¹ But see, now, sect. 1 of the Burial Act, 1906.²²

A burial ground of a parish formed by Order in Council in 1846 out of a larger parish was extended in 1908 independently of the Burial Acts. It was situate in an area in which no new burial ground could be opened without the approval of the Local Government Board. The owner and occupier of a dwelling-house within 100 yards of the extension claimed a declaration that no burial could take place therein without his consent under sect. 9 of the Act of 1855.²³ It was held that the declaration must be refused, as sect. 9 only applied to land appropriated or used as a burial ground under the Burial Acts themselves, and this extension was not so appropriated or used.²⁴

If, on the other hand, the burial ground is not subject to the Burial Acts, but is one to which the Cemeteries Clauses Act, 1847, applies, as, for instance, a cemetery which a district council have established under the powers conferred by the Public Health (Interments) Act, 1879,²⁵ then, under sect. 10 of the Act of 1847,²⁶ "no part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance be prescribed, [one hundred²⁷] yards, except with the consent in writing of the owner, lessee, and occupier of such house."

A Standing Order of the House of Lords provides that "in every Bill for making altering or enlarging any cemetery or burial ground a clause shall be inserted prohibiting the making altering or enlarging such cemetery or burial ground within three hundred yards of any house of the annual value of £50, or of any garden or pleasure ground occupied therewith, except with the consent of the owner lessee and occupier thereof in writing."²⁸

The provision of the section partly re-enacted here, which prohibited the formation of a burial ground without either parliamentary authority or the consent of the General Board of Health [predecessors of the Local Government Board] is not re-enacted.

The Burial Act, 1853,²⁹ however, enacts that "where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of [His] Majesty's principal Secretaries of State, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval."

The Order in Council referred to in the enactment above quoted is an order made

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Part III., n.
Bequest.

Burial
grounds near
houses.

New burial
grounds.

Closing burial
grounds.

(15) *Post*, p. 839.
(16) *In re Davies; Lloyd v. Cardigan C.C.*, L. R. 1915, 1 Ch. 543; 84 L. J. Ch. 493; 112 L. T. 1110; 79 J. P. 291; 13 L. G. R. 437.
(17) 18 & 19 Vict. c. 128, s. 9.
(18) *I.e.*, before the 14th August, 1855, see *Godden v. Hythe Burial Bd.*, *infra* (21).
(19) 15 & 16 Vict. c. 85.
(20) *Lord Cowley v. Byas* (1877), L. R. 5 Ch. D. 944; 37 L. T. 238; 41 J. P. 804.
(21) *Godden v. Hythe Burial Bd.* (C. A.), L. R. 1906, 2 Ch. 270; 75 L. J. Ch. 595; 95 L. T. 129; 70 J. P. 285; 4 L. G. R. 787. See also *Wright v. Wallasey Loc. Bd.* and *Toms*

v. Clacton U.D.C., *post*, Vol. II., p. 2173.
(22) Set out *post*, Vol. II., p. 1637.
(23) 18 & 19 Vict. c. 128, s. 9.
(24) *Clegg v. Metcalf*, L. R. 1914, 1 Ch. 808; 83 L. J. K. B. 743; 111 L. T. 124; 78 J. P. 251; 12 L. G. R. 606. *Greenwood v. Wadsworth* (1873), L. R. 16 Eq. 288; 43 L. J. Ch. 78; 29 L. T. 88, disapproved.
(25) *Post*, Vol. II., p. 1635.
(26) *Post*, Vol. II., p. 1637.
(27) Substituted for 200 by B. Act, 1906, s. 2, *post*, Vol. II., p. 1637.
(28) S. O. H. L. 140.
(29) 16 & 17 Vict. c. 134, s. 6.

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under the same Act,³⁰ which authorises the issue of a prohibitory order by the Privy Council, where the Secretary of State represents that "for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such Secretaries of State, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial ground or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification." A person burying any body, or assisting in the burial of any body, in contravention of the prohibition, is guilty of a misdemeanour.³¹ Persons having rights of burial in churches or burial grounds may, however, in cases where the exercise of such rights will not be injurious to health, obtain licences for burials from the Secretary of State, notwithstanding any such prohibitory order.³²

An order made under the Burial Acts for closing a churchyard is not to include any portion which may have been reserved to the donor of land added to the churchyard under the Consecration of Churchyards Act, 1867; but the reserved portion may be closed under a separate order founded on a special report that the ground is in such a state as to render any further interments therein prejudicial to the public.³³

Closed burial grounds are to be maintained in proper order at the cost of the poor rate or the rates of the urban district council.^{33a}

Fees.

Under sect. 7 of the Fees (Increase) Act, 1923,³⁴ local authorities may be paid a fee in respect of the removal, by order of the Home Secretary, of dead bodies "interred in any place of burial."

Penalties.

With regard to the recovery of penalties, see sect. 251. Since "any person" may recover the penalty, the limitation in sect. 253 does not apply.

[Local Government Act, 1858], s. 49.³⁵

**Local board to
be burial board
in certain cases.**

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate.

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

Note.

Burial boards.

Sect. 49 of the Local Government Act, 1858, is only partially re-enacted here. See also the re-enacted sect. 44 of the Sanitary Act, 1866,³⁶ and the Note thereto. And see sect. 310, with reference to former transfers of powers under the Burial Acts to urban sanitary authorities. The Burial Acts cannot now be adopted for any part of an urban district without the consent of the district council.³⁷

Under the Burial Acts the expenses would have been charged to the poor rate, unless the board thought fit to pay them out of the general district rate or a separate rate in the nature of a general district rate.³⁸

Improvement commissioners, constituted a burial board, had an option of paying their expenses under the Burial Acts out of their improvement rate, or a similar separate rate,³⁹ and with the consent of the Treasury (subsequently the Local Government Board⁴⁰) might mortgage the rate for the purposes of the Acts.⁴¹

The accounts of the urban district council acting as a burial board are to be audited in the same manner as their other accounts.⁴²

Burial Acts.

The Burial Acts, 1852, 1853, 1854, 1855, 1857, 1859, 1860, 1862, 1871, 1880, 1881, 1885, and 1900,⁴³ were given the collective short title of "The Burial Acts, 1852 to 1900,"⁴⁴ and now, with the Act of 1906, "may be cited . . . as the Burial Acts, 1852 to 1906."⁴⁵

(30) 16 & 17 Vict. c. 134, s. 1.

(31) *Ibid.*, s. 3.

(32) *Ibid.*, s. 4.

(33) 30 & 31 Vict. c. 33, s. 11.

(33a) See 24 & 25 Vict. c. 61, s. 21, and Note, *post*, p. 839.

(34) 13 Geo. V. c. 4, s. 7.

(35) 21 & 22 Vict. c. 98, s. 49.

(36) *Post*, p. 842.

(37) See L. G. Act, 1894, s. 62, *post*, Vol. II., p. 2096.

(38) 23 & 24 Vict. c. 64, s. 1.

(39) *Ibid.*, s. 2. See also *ante*, p. 568.

(40) See L. A. (Treasury Powers) Act, 1906,

quoted *post*, Vol. II., p. 2308.

(41) 25 & 26 Vict. c. 100, s. 1.

(42) 23 & 24 Vict. c. 64, s. 3.

(43) 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100; 34 & 35 Vict. c. 33; 43 & 44 Vict. c. 41; 44 & 45 Vict. c. 2; 48 & 49 Vict. c. 21; 63 & 64 Vict. c. 15. Further as to these Acts, see Glen's "District Councillor's Guide," Chap. I., § 15, and Chap. V., § 15.

(44) Short Titles Act, 1896.

(45) 6 Edw. VII. c. 54, s. 3.

The Act of 1855 contained a saving clause for the powers, etc., of the local board of health of a borough which had been constituted a burial board,⁴⁶ and gave the powers conferred by the Burial Acts upon burial boards to any local board of health acting as or created a board by a local Act.⁴⁷

The town council of a borough may have the powers of a burial board conferred upon them by the Privy Council for the purpose of providing burial grounds for parishes wholly or partly in the borough, whose burial grounds have been closed by Order in Council.⁴⁸ The Act of 1857 authorised the Privy Council to constitute a local board or improvement commissioners the burial board for their district in certain cases.⁴⁹

With regard to the adoption and execution of the Burial Acts in rural parishes, see sects. 7 and 53 of the Local Government Act, 1894.⁵⁰

[Local Government Act, 1858, Amendment Act, 1861], s. 21.¹

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass bye-laws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

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Part III., n.**

Urban
authorities may
repair fences
surrounding
burial grounds.

Note.

With regard to burial grounds belonging to parishes or burial board districts, it is enacted by the Burial Act, 1855,² that "in every case in which any Order in Council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or [parish council³], as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses."

**Maintenance
of closed
burial
grounds.**

Under the Open Spaces Act, 1906,⁴ the council of any county, municipal or metropolitan borough, or urban or rural district, or the common council of the City of London, or in certain cases a parish council, or two or more of such councils jointly, may acquire or undertake the entire or partial care and management of a burial ground with a view to the enjoyment of it by the public as an open space, subject in the case of consecrated ground to the licence or faculty of the bishop, and may make bye-laws for its regulation. The Consistory Court of London authorised the construction of footpaths in a portion of a churchyard which had been closed for burials under an Order in Council, also the erection of gates, the removal of high walls which obstructed the free circulation of air, and the planting of trees and flowers, but held that it was not competent to the court to grant a faculty authorising a churchyard to be appropriated as a public garden.⁵

**Burial
grounds as
open spaces.**

The St. Marylebone (Church Rate Abolition) Act, 1898,⁶ vested a closed burial ground in the local authority as an open space, and Sir A. B. Kempe, Ch., held that to grant a faculty for taking a portion to widen a highway would be a breach of the statutory trust.⁷

**Use of burial
grounds for
highway
purposes.**

But a faculty was granted to the incumbent and churchwardens of a church for removing human remains from and setting back the fence of a portion of a churchyard for the purpose of widening a highway, where that portion had been closed for burials by Order in Council; and it appeared that the widening would be a benefit to the congregation attending the church as well as to the public in

(46) 18 & 19 Vict. c. 128, s. 19.

(47) *Ibid.*, s. 20.

(48) 17 & 18 Vict. c. 87, ss. 1, 2.

(49) 20 & 21 Vict. c. 81, s. 4.

(50) *Post*, Vol. II., pp. 2002, 2087.

(1) 24 & 25 Vict. c. 61, s. 21.

(2) 18 & 19 Vict. c. 128, s. 18.

(3) See L. G. Act, 1894, s. 6 (1, b), *post*, Vol. II., p. 2000.

(4) See ss. 9, 10, 11, 15, 16, *post*, Vol. II., pp. 1481, 1483, 1484.

(5) *In re St. George-in-the-East Rector and Churchwardens* (1876), L. R. 1 P. D. 311; following *Reg. v. Twiss* (1869), L. R. 4 Q. B. 407; 38 L. J. Q. B. 228; 20 L. T. 522. But see the *Uxbridge Case*, *post*, p. 840 (10).

(6) 61 & 62 Vict. c. xcxi.

(7) *Ex parte St. Marylebone B.C.* (1920), 36 T. L. R. 256. See also as to the effect of consecration, *Sutton v. Bowden*, L. R. 1913, 1 Ch. 518; 82 L. J. Ch. 322; 108 L. T. 637.

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Part III., n.
Use of burial
grounds for
highway
purposes—
continued.

general, and that an adequate consideration would be paid by the local authority in return for the right.⁸ And the Dean of Arches (Sir Arthur Charles), in a considered judgment on appeal from the Chancellor of the Diocese of Exeter, granted a faculty for throwing part of a disused consecrated burial ground into the adjoining highway to widen it, such part not to be conveyed but still to be part of the burial ground subject to ecclesiastical jurisdiction, and a record of the exact measurement of such part to be preserved.⁹

The last cited case was distinguished in the Consistory Court of London, where a local authority were applying for a faculty for the dedication of an old and disused churchyard as an open space and for throwing a strip into a highway. There had been no interments since 1855. It was used as a receptacle for rubbish. The highway was very narrow. There was a population of 10,000 near. It was proposed to prohibit games, meetings, and speeches in the open space when dedicated. The scheme had been duly advertised, the relations of those interred had been communicated with as far as they could be traced from the records and inscriptions on the tombstones, and no objections had been received. The application was, however, opposed on behalf of the relatives of some of those interred. It was held that the applicants had failed to discharge the onus of proving the urgency of the proposed widening, and that no faculty for this could be granted, but that a faculty for the dedication of the whole of the ground as an open space would be granted if that was desired without the other faculty. *Per* Sir A. B. Kempe, Ch.: "The power to sanction the use of part of a burial ground for widening a highway (which must, since [the *Bideford Case*, *supra*] be taken to exist) is one which must be exercised with great discretion. Where the public advantage is clear and considerable, or the necessity for what is proposed is urgent and the disturbance of buried remains is small, and there is no opposition, a faculty may properly be granted. The *Bideford Case* was of that character. But where the proposal involves an extensive disturbance of graves and is reasonably obnoxious to many of those whose dead lie in the ground, and there is substantial opposition, and there has been no approval of the scheme by the parishioners in vestry, and the vicar and churchwardens are against the proposal, then those who make it must, at the very least, satisfy the court that there is such an urgent and immediate necessity for that which they ask the court to sanction as clearly outweighs the objections which exist."¹⁰

Sir A. B. Kempe, Ch., declined to give a ruling as to whether the Metropolis Managements Acts, or Michael Angelo Taylor's Act, enabled the London County Council to purchase a strip of a disused burial ground for widening a highway, and adjourned the case for an application to be made for user of the strip only.¹¹

The Disused Burial Grounds Act, 1884,¹² after reciting that "numerous Orders in Council have been made for the discontinuance of burials in certain burial grounds within the Metropolis and elsewhere" under the Burial Acts, 1852 and 1853, and that "it is expedient that no buildings should be erected upon any burial ground affected by any such Orders in Council," enacted that, "after the passing of this Act, it shall not be lawful to erect any buildings upon any disused burial ground except for the purpose of enlarging a church, chapel, meeting house, or other places of worship."

Sect. 4 of the Open Spaces Act, 1887,¹³ which is left unrepealed by the Open Spaces Act, 1906,¹⁴ enacts that "in the Disused Burial Grounds Act, 1884, [and this Act,] the expression 'burial ground' shall have the same meaning as in the Metropolitan Open Spaces Act, 1881, as amended by this Act, and the expression 'disused burial ground' shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council, and the expression 'building' shall include any temporary or movable building."

By sect. 2 of the Act of 1884,¹⁵ "disused burial ground" had been defined as meaning "a burial ground in respect of which an Order in Council has been made

(8) *Leicester Vicar and Churchwardens and Leicester Cpn. v. Langton*, L. R. 1899 P. 19. See also *In re St. Anne, Soho* (1900, Dr. Tristram, Q.C., Ch.), *Times*, July 20, p. 14, col. iii.; and *In re St. Mary Abbots, Kensington* (1914, Sir A. B. Kempe, Ch.), *Times*, May 4, p. 3, col. i, where similar applications also succeeded.

(9) *In re Bideford Rector and Churchwardens*, L. R. 1900 P. 314; 64 J. P. 743.

(10) *Ex parte Uxbridge U.D.C.* (1914), 30 T. L. R. 448; 5 Glen's Loc. Gov. Case Law 5.

(11) *In re St. Anne, Limehouse* (1915), 31 T. L. R. 539.

(12) 47 & 48 Vict. c. 72, s. 3.

(13) 50 & 51 Vict. c. 32, s. 4.

(14) See s. 23 and Sched., *post*, Vol. II., p. 1486.

(15) 47 & 48 Vict. c. 72, s. 2.

Use for
building
purposes.

for the discontinuance of burials therein in pursuance of the provisions of the said recited Acts," namely, the Burial Acts, 1852 and 1853; and sect. 1 of the Act of 1881¹⁶ (wholly repealed by the Act of 1906) had defined "burial ground" as including "any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment, [*and in which interments have taken place since the year 1800*]." The words in italics were repealed by the Act of 1887.¹⁷

On these old definitions it was held that the term "burial ground" included land which had been set apart for, but had never been used for interments,¹⁸ even though the land might have been so set apart in breach of an Order in Council, and could never have been lawfully used for interments.¹⁹

As to the words, in sect. 1 of the Act of 1881, "at any time set apart for the purposes of interment," see the case cited below.²⁰

The saving, in the Act of 1906, of the unrepealed provision of the Act of 1887, no doubt has the effect of a saving of the definition in the Act of 1881, and of the amendment of that definition by the Act of 1884. Similar definitions, however, of "burial ground" and "disused burial ground" are given in the Act of 1906.²¹

An unopposed faculty was granted by the Consistory Court of London for rebuilding and enlarging schools, and a parish hall used for mission services for adults and children, on a disused burial ground.²²

In a later case, however, a suit was instituted by the London County Council in the same court for the revocation of a faculty authorising the erection on a disused burial ground of a hall for parochial purposes, communicating with the church, with vestries, lavatories, and kitchen, in substitution for smaller parish and vestry rooms on the same burial ground. The revocation having been refused on the ground that the buildings were for the purpose of enlarging the church, the Court of Arches, on appeal, disagreed with this ground, and considered the faculty a nullity as far as the hall, lavatories, and kitchen were concerned, though the refusal of revocation was confirmed on the ground that, as it had been obtained without fraud and had not been appealed against, the court had no jurisdiction to revoke it without consent.²³ Following this decision, the Consistory Court held that rebuilding existing schools on a disused burial ground for the purpose of enlarging them was prohibited by the above quoted enactment.²⁴

The following provisions are also contained in the Act of 1884²⁵ :—"Nothing in this Act shall prevent the erection of any building on a disused burial ground, for which a faculty has been obtained before the passing of this Act." And "nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament."

The House of Lords, in an action in which the Attorney General was made a plaintiff after the action had been commenced, reversed the grant of an injunction to restrain a metropolitan borough council from erecting a screen on a disused burial ground for the purpose of preventing an adjoining owner from acquiring a right of light over the ground, on the grounds that the Acts did not create any such right of light, and that the screen was not a "building."²⁶

In excavating a piece of ground adjoining a churchyard large masses of human bones in a layer four feet thick were found; but this was held not to be sufficient to show that the ground had been "at any time set apart for the purposes of interment," and that the Act of 1884, and the repealed Open Spaces Acts of 1881 and 1887,²⁷ did not prevent it from being built upon.²⁸

This case was distinguished in these circumstances. The trustees of a disused chapel and burial ground desired to sell both as a site for buildings. The Charity Commissioners expressed their willingness to sanction the sale on the condition (*inter alia*) that the court would grant a declaration that such a sale would be "a

(16) 44 & 45 Vict. c. 34, s. 1.

(17) 50 & 51 Vict. c. 32, s. 2, and Sched.

(18) *Re Ponsford and Newport Sch. Bd.*, L. R. 1894, 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502.

(19) *Re Bosworth and Gravesend Cpn.*, L. R. 1905, 2 K. B. 426; 69 J. P. 337; 3 L. G. R. 849.

(20) *A.G. v. London Parochial Charities Trustees*, *infra* (28).

(21) See s. 20, *post*, Vol. II., p. 1485.

(22) *St. James-the-Less, Bethnal Green, Vicar v. Parishioners of the Same*, L. R. 1899 P. 55.

(23) *London C.C. v. Dundas*, L. R. 1904

P. 1.

(24) *Re St. Sepulchre, Holborn Viaduct* (1903), 19 T. L. R. 723. See also *Corke v. Rainger*, L. R. 1912 P. 69; 76 J. P. 87; 28 T. L. R. 130; approved in *Sutton's Case*, *ante*, p. 839 (7).

(25) 47 & 48 Vict. c. 72, ss. 4, 5.

(26) *Paddington B.C. v. A.G.*, L. R. 1906 A. C. 1; 75 L. J. Ch. 4; 93 L. T. 673; 70 J. P. 41; 4 L. G. R. 19.

(27) 44 & 45 Vict. c. 34, s. 1; 50 & 51 Vict. c. 32, s. 4.

(28) *A.G. v. London Parochial Charities Trustees*, L. R. 1896, 1 Ch. 541; 66 L. J. Ch. 242; 74 L. T. 184.

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sale under the authority of any Act of Parliament" within the provision in the Act of 1884 that the prohibition in that Act against building on disused burial grounds shall not "apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament." It was contended by the trustees, on an application for such a declaration, that, as they had no power to sell except under the Charitable Trusts Acts, the proposed sale would be under the required "authority." It was contended by the Attorney General that the charity trustees had a power of sale apart from such Acts, though if such sales were not for the benefit of the charity they could be set aside, and that the proposed sale did not derive its validity from those Acts alone, and that therefore it was not "under their authority." The declaration was refused.²⁹

Under the above-mentioned enactment of 1884, certain persons who had purchased a disused Roman Catholic burial ground, and obtained the approval of the urban district council to the plans of the buildings which they proposed to erect on it, were, with the builder, indicted for unlawfully removing human remains from the ground and for unlawfully building on it. They pleaded guilty, and, except those who did not appear to have known to what extent the offensive nature of the work had gone, were sentenced by Phillimore, J., to terms of imprisonment in the first class, and, except the builder, were bound over in recognisances to pull down the buildings and restore the ground within six months.³⁰

Bye-laws.

With regard to the making and confirmation, etc., of bye-laws, see sects. 182-186

[Local Government Act, 1863], s. 6.³¹

[*Local government districts to be within highway districts for purpose of highway meetings.*³²]

[Sanitary Act, 1866], s. 44.³³

Power of burial
boards in
certain cases
to transfer their
powers to urban
authority.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities; and from and after such transfer, the urban authority shall have all such estate property rights powers duties and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

Note.

Transfer of
powers.

By the Local Government Act, 1894,³⁴ the Burial Acts are not to be adopted for any part of an urban district without the approval of the district council; and where there is an existing burial board in an urban district, or part of an urban district, the council may by resolution, without the consent of the vestry or of the burial board, take over the powers, duties, property, debts, and liabilities of that board. Where such a transfer has been carried out, the expenses of the council in respect of burials are to be defrayed out of the poor rates, and not the general district rates.³⁵

Where a burial board district was, on the "appointed day," under the Local Government Act, 1894, partly in an urban and partly in a rural district, the functions of the board are, until other provision is made, to be exercised by a joint committee of the district council and parish councils or meetings.³⁶

Wales.

The concluding part of the above section is amended in the re-enactment.

The Welsh Church Act, 1914,³⁷ contains provisions relating to the transfer of certain burial grounds in Wales and Monmouthshire to, among other persons and bodies, borough and urban and rural district councils, and parish councils and meetings.

Forgery of
seal.

The Forgery Act, 1913,³⁸ makes forgery of the "seal of any burial board or of any local authority performing the duties of a burial board" a felony punishable with penal servitude for any term not exceeding fourteen years "if committed

(29) *In re Howard Street Congregational Chapel, Sheffield* (Ch. D.), L. R. 1913, 2 Ch. 690; 83 L. J. Ch. 99; 109 L. T. 706.

(30) *Rex v. Kenyon and others* (1901, Chester Assizes), 65 J. P. 730.

(31) 26 & 27 Vict. c. 17, s. 6.

(32) Now obsolete.

(33) 29 & 30 Vict. c. 90, s. 44.

(34) See s. 62, *post*, Vol. II., p. 2096.

(35) *Rex v. Connah's Quay Overseers*, L. R. 1901, 2 K. B. 174; 84 L. T. 601; 65 J. P. 500.

(36) See L. G. Act, 1894, s. 53 (2), and *Note, post*, Vol. II. pp. 2087-2089.

(37) 4 & 5 Geo. V. c. 91, ss. 4, 8, 24, 25, 27, 34, 38.

(38) 3 & 4 Geo. V. c. 27, s. 5 (2) (b). As to Forgery of Departmental Orders, etc., see *Note to sect. 135, ante*, p. 262.

with intent to defraud or deceive ”; and defines “ seal ” as including “ any stamp or impression of a seal or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal, as well as the seal itself.”⁵ By sect. 19 of this Act,⁶ “ (1) Where an offence against this Act also by virtue of some other Act subjects the offender to any forfeiture or disqualification, or to any penalty other than penal servitude or imprisonment or fine, the liability of the offender to punishment under this Act shall be in addition to and not in substitution for his liability under such other Act. (2) Where an offence against this Act is by any other Act, whether passed before or after the commencement of this Act, made punishable on summary conviction, proceedings may be taken either under such other Act or under this Act: Provided that where such an offence was at the commencement of this Act punishable only on summary conviction, it shall remain only so punishable.”

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[Sanitary Act, 1866], s. 51.⁷
[Power to reduce penalties imposed by Quarantine Act, 1825.⁸
[Sanitary Act, 1866], s. 52.⁹
[Description of vessels within provisions of Quarantine Act, 1825.⁸

[Public Health Act, 1872], s. 34.¹⁰

Where in any local Acts the consent, sanction, or confirmation of one of [His] Majesty’s Principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any bye-laws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the [Minister of Health] shall be required instead of that of the Secretary of State.

As to consent
of [Minister
of Health]
required
in certain cases.

The consent of the [Minister of Health], and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Washhouses Acts.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the [Minister of Health] on such question shall be conclusive.

Note.

The Baths and Washhouses Acts, 1846 and 1847, are set out at length in Vol. II. As to the power to borrow money for the purposes of these Acts, see sect. 21 of the Act of 1846.¹¹

Baths and
washhouses.

“ Sanitary purposes ” are defined by sect. 4 to mean any object or purposes of the Sanitary Acts.

With regard to the meaning of the expression “ The Sanitary Acts,” see the Note at the commencement of the present Schedule.

As to the above transfer of functions, see the Note to sect. 3 of the Ministry of Health Act, 1919.¹²

Transfer of
functions.

[Public Health Act, 1872], s. 35.¹³

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same, and under the Metropolis Water Acts, 1852 and 1871, shall be exerciseable and performed by the [Minister of Health], and “ the [Minister of Health] ” shall be deemed to be substituted for “ the Board of Trade ” wherever the latter expression occurs in the said Acts.

Transfer of
powers and
duties of Board
of Trade under
Alkali Act, 1863,
and Metropolis
Water Acts,
1852 and 1871,
to [Minister of
Health.]

Note.

The Alkali Acts, 1863, 1868, and 1874, were repealed by the Alkali, etc., Works Regulation Act, 1881, which was amended by an Act of 1892.¹⁴ The two last-mentioned Acts are now consolidated and repealed by the Alkali, etc., Works Regulation Act, 1906.¹⁵

Alkali and
Metropolis
Water Acts.

As to the Metropolis Water Acts, see the Note to sect. 51.¹⁶

(5) 3 & 4 Geo. V. c. 27, s. 18 (1).
(6) *Ibid.*, s. 19.
(7) 29 & 30 Vict. c. 90, s. 51.
(8) The Act of 1825 is repealed, see *ante*, p. 260.
(9) 29 & 30 Vict. c. 90, s. 52.
(10) 35 & 36 Vict. c. 79, s. 34. Extended, together with ss. 35 and 36, *infra*, to London by P. H. (London) Act, 1891 (54 & 55 Vict. c. 76), s. 142 (5). See also *ante*, p. 836.
(11) *Post*, Vol. II., p. 1385.
(12) *Post*, Vol. II., p. 2306.
(13) 35 & 36 Vict. c. 79, s. 35. As to London, see footnote (10), *supra*.
(14) 26 & 27 Vict. c. 124; 31 & 32 Vict. c. 36; 37 & 38 Vict. c. 43; 44 & 45 Vict. c. 37; 55 & 56 Vict. c. 30.
(15) Set out *post*, Vol. II., p. 2190.
(16) *Ante*, p. 137.

**Sched. V.,
Part III.**

Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to [Minister of Transport.]

[Public Health Act, 1872], s. 36.¹⁷

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of [His] Majesty's Principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the [Minister of Transport], subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.¹⁸

[Public Health Act, 1872], s. 37.¹⁹

Transfer of officers to [Minister of Health.]

All inspectors, clerks, and other officers who are by virtue of section thirty-seven of the Public Health Act, 1872, attached to and under the control of the [Minister of Health], shall hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed.

The [Minister of Health] may by order distribute the business to be performed under the [Minister of Health] amongst such officers and persons in such manner as the [Minister of Health] may think expedient.

Note.

Officers of Local Government Board.

The section, which is here re-enacted with amendments, originally enacted that "all inspectors, clerks, and other officers employed in or about the execution of the powers and duties transferred by virtue of the provisions of this Act to the Local Government Board (*i.e.* by virtue of sects. 34, 35, and 36 of the Public Health Act, 1872, re-enacted above), shall, from and after such transfer, be attached to and under the control of the Local Government Board."¹⁹ These are not local officers, but officers connected with the public departments in London, which were transferred to the Local Government Board by the Local Government Board Act of 1871.²⁰ As to the staff of the Minister of Health, see sect. 6 of the Act of 1919.²¹

[Public Health Act, 1872], s. 38.²²

Salary of medical officer.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the [Minister of Health] such salary as the Treasury may from time to time determine.

Note.

Medical officer.

The section here partly re-enacted recited that the medical officer of the Privy Council had under and by virtue of the sixth section of the Local Government Board Act, 1871,²⁰ been attached to the Local Government Board.

[Public Health Act, 1872], s. 48.²³

Orders of the [Minister of Health] how to be published.

Every general order of the [Minister of Health], made in pursuance of the Poor Law Amendment Act, 1834, and the several Acts amending the same, shall be published in the *London Gazette*, and when so published shall take effect in like manner, and shall be of as much force and validity as any general order of the Poor Law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf; and as regards any single order of the said [Minister], made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

Note.

Orders of Minister of Health.

The orders of the Poor Law Commissioners were required to be sent to overseers, guardians, and clerks to justices.²⁴ They may be removed into the King's Bench Division by *certiorari*.²⁵ Disobedience to such orders is punishable summarily, or on a third offence, by indictment.²⁶ See also sect. 135 and Note.²⁷

(17) 35 & 36 Vict. c. 79, s. 36. As to London, see footnote (10), *supra*.

(18) As to the law relating to highways, see *ante*, p. 270, and the works there mentioned. As to the Ministry of Transport, see the Act of 1919, set out *post*, Vol. II., p. 2315. As to the expiration of the turnpike trusts, see *ante*, pp. 26, 27, 283, 284.

(19) 35 & 36 Vict. c. 79, s. 37.

(20) 34 & 35 Vict. c. 70, s. 6, repealed by

the Ministry of Health Act, 1919, s. 11, and Sched. II., *post*, Vol. II., p. 2314.

(21) *Post*, Vol. II., p. 2311.

(22) 35 & 36 Vict. c. 79, s. 38.

(23) 35 & 36 Vict. c. 79, s. 48.

(24) 4 & 5 Will. IV. c. 76, s. 18.

(25) *Ibid.*, s. 105.

(26) *Ibid.*, s. 98.

(27) *Ante*, p. 260.

PART I.—(Continued).

DIVISION II.

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

53 & 54 VICT. c. 59.

An Act to amend the Public Health Acts.

[18th August, 1890.]

PART I.

GENERAL.

Sect. 1. This Act is divided into parts as follows :—Part I.—General. Part II.—Telegraph, etc., wires. Part III.—Sanitary and other provisions. Part IV.—Music and dancing. Part V.—Stock. Division of Act into parts.

Sect. 2.—(1.) This Act shall be construed as one with the Public Health Acts. Short title, construction and extent of Act.
(2.) Part I. of this Act shall extend to England and Wales [*and Ireland*], exclusive of the administrative county of London. Parts II., III., IV., and V. shall extend to any district in which they are respectively adopted under the provisions of this Act.

(3.) This Act may be cited as the Public Health Acts Amendment Act, 1890, and this Act and the Public Health Acts may be cited together as the Public Health Acts.¹

Sect. 3. The following provisions shall have effect with regard to the adoption of the Parts of this Act, which are adoptive, by local authorities :— Adoption of Act by local authorities.

(1.) An urban authority may adopt all or any of such Parts.

(2.) A rural authority may adopt Part III. so far as it is declared by this Act to be applicable to such authority, without prejudice to the provisions of this Act relating to the investing of rural authorities with urban powers.

(3.) The adoption shall be by a resolution passed at a meeting of the local authority; and one calendar month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a.) Given in the mode in which notices to attend meetings of the authority are usually given; or

(b.) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England.

(4.) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and

(1) For a list of the Public Health Acts, see *ante*, p. 2. As to the adoption of the present Act, see s. 3 and Note, *infra*.

Sect. 3.

upon its coming into operation such parts of the Act as are adopted shall extend to that district.

(5.) A copy of the resolution shall be sent—

(a.) Where any Part of the Act is adopted, to the [Minister of Health];

(b.) Where Part II. is adopted, to the Board of Trade;

(c.) Where Part IV. is adopted, to a Secretary of State.

(6.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

Note.**Adoption of Act.**

Part I. of the present Act is in force without adoption. Parts II. to V. are adoptive. Those Parts cannot, like some other Acts,² be adopted by sections, but only, in the case of an urban district council, by "Parts," and in the case of a rural district council, to the extent mentioned below. No provision is made for the abandonment of any Part which may have been once adopted, though local Acts frequently declare particular sections no longer in force in particular districts.³ An urban district council may adopt Parts II., III., IV., and V., or any of those Parts, but a rural district council can only adopt the portions of Part III., which are specified in sect. 50. The Minister of Health may, however, put any of the provisions of the Act in force throughout a rural district or in any part of it, under section 5; or under the same section he may, upon application by certain authorities or a sufficient number of ratepayers, put any such provisions in force temporarily or permanently, and with or without attaching conditions as to the manner in which such provisions are to be carried out. The Minister may also, by general order under sect. 25 (5) of the Local Government Act, 1894,⁴ put urban provisions in force in rural districts.

The Local Government Board were advised that a rural district council cannot adopt particular sections of the present Act, but must adopt the whole Part so far as it is applicable, nor can they adopt the Act for part of their district, but only for the whole. If they desire separate sections to be put in force in the district or any part of it, they must apply to the Minister of Health for an order under the present section and sect. 276 of the Public Health Act, 1875, investing them with the powers of such sections. See also sect. 5 and Note.

The resolution of adoption should fix a date for the coming into operation of the adopted provisions, as the Local Government Board ruled that this could not be done at a subsequent meeting. Where the date fixed by a local authority did not allow a full calendar month to elapse after the advertisement, the Board required adoption *de novo*.

The present section is applied for the purposes of the adoption of the Health Resorts and Watering Places Act, 1921.⁵

Expenses of local authority.

Sect. 4. All expenses incurred or payable by a local authority in the execution of this Act, and not otherwise provided for, may be charged and defrayed in the case of an urban authority as part of the expenses incurred by them in the execution of the Public Health Acts, and in the case of a rural authority as part of their general expenses under the Public Health Acts.⁶

Power to [Minister of Health] to extend Act to rural districts.

Sect. 5. The [Minister of Health] may declare that any of the provisions contained in any part of this Act which are not in force in any rural sanitary district shall be in force in that district, or any part thereof, and may invest a rural sanitary authority with any of the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of any Part of this Act, in like manner, and subject to the same provisions as [he is] enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of sect. 276 of the Public Health Act, 1875, and in such case the date of the declaration of the [Minister of Health]

(2) See, *e.g.*, P. H. Am. Act, 1907, *post*, Part I., Div. III.; Infectious Diseases Prevention Act, 1890, *post*, Part II., Div. I.

(3) See, *e.g.*, 3 Edw VII. c. cexlvi., s. 49, the subject of the *Hull Case*, *post*, p. 855 (32).

(4) *Post*, Vol. II., p. 2039.

(5) See s. 3, *ante*, p. 571.

(6) As to mode of defraying expenses of urban district councils, see P. H. Act, 1875, s. 207, *ante*, p. 561; and as to general expenses of rural district councils, ss. 229 and 230 of that Act, *ante*, pp. 606, 608.

under this section shall be substituted for the date of the adoption of this Act or Sect. 5.
any Part thereof.

Note.

Without an order under this section a rural district council can only adopt the sections specified in sect. 50. Rural district councils.

Under the first part of the present section the Minister of Health may declare any of the sections or provisions of the Act in force throughout the whole or any part of a rural district, with or without the consent of the rural district council, and the effect of such declaration would appear to be permanent. Under sect. 276 of the Public Health Act, 1875,⁷ mentioned in the latter part of the section, before the Minister of Health makes the order, there must be an application by the rural district council or a sufficient number of the ratepayers of the district or the contributory place to which the order is to apply, or by the parish council of the parish within which the order is to apply, or by the county council—see sect. 25 (7) of the Local Government Act, 1894⁸; and conditions as to the time during which, the portion of the district in which, and the manner in which the provisions applied by the order are to be carried out may in this case be inserted in the order. Under sect. 25 (5) of the Local Government Act, 1894,⁸ the Minister may by general order confer any urban powers, etc., on rural district councils, and put any urban provisions in force in rural districts generally.

In 1922 the Minister of Health refused to invest a rural district council under the present section with powers which could be obtained by adoption under sect. 50.

Sect. 6. Offences under this Act may be prosecuted, and penalties, forfeitures, costs, and expenses recovered in like manner, and subject to the same provisions as offences which may be prosecuted and penalties, forfeitures, costs, and expenses which may be recovered in a summary manner under the Public Health Acts.⁹ Legal proceedings, etc.

Sect. 7.—(1.) Any person aggrieved—(a.) By any order, judgment, determination, or requirement of a local authority under this Act; (b.) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act; (c.) By any conviction or order of a court of summary jurisdiction under any provision of this Act; may appeal in manner provided by the Summary Jurisdiction Acts to a court of quarter sessions. Appeals to quarter sessions.
(2.) This section shall not apply in cases where there is an appeal to the [Minister of Health] under sect. 268 of the Public Health Act, 1875.

Note.

“ This Act ” includes the other Public Health Acts with which the present Act is to be “ construed as one.” ¹⁰ Appeal to quarter sessions.

An appeal lies under the present section against the dismissal of a complaint under sect. 19.¹¹

With regard to appeals to quarter sessions, see the Note to sect. 269 of the Public Health Act, 1875.¹²

Under sect. 268 of the Act of 1875,¹³ an appeal by memorial may be presented to the Minister of Health within twenty-one days from any decision of a district council in any case in which they are empowered to recover in summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses. Appeal to Minister of Health.

Sect. 8. Any information, complaint, warrant, or summons made or issued for the purposes of this Act, or of the Public Health Acts, may contain in the body thereof or in a schedule thereto several sums.⁹ More than one sum in one summons, etc.

Sect. 9. All the provisions with respect to bye-laws contained in sects. 182 to 186 of the Public Health Act, 1875,¹⁴ and any enactment amending or extending those sections; shall apply to all bye-laws from time to time made by a local authority under the powers of this Act,¹⁵ except bye-laws made under Part II. of this Act.¹⁶ Bye-laws.

(7) *Ante*, p. 723.
(8) *Post*, Vol. II., p. 2039.
(9) As to summary proceedings, see P. H. Act, 1875, ss. 251-265, and Notes, *ante*, pp. 649-708.
(10) See s. 2 (1), *ante*, p. 845, and the *Barking Case*, *ante*, p. 3 (3).
(11) *Hornsey Cpn. v. Kershaw*, *post*, p. 855 (38).
(12) *Ante*, p. 713.
(13) *Ante*, p. 712.
(14) *Ante*, p. 494.
(15) See ss. 20 (1) (i), 23 (1), 26, 40 (2), 44 (2), *post*. These bye-laws require confirmation by M. of H. under P. H. Act, 1875, s. 184, *ante*, p. 508.
(16) See s. 13, *post*. These bye-laws require confirmation by B. of T. under s. 13 (4).

Sect. 10.Powers of Act
cumulative.

Sect. 10.—(1.) All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.¹⁷

(2.) Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, provided that no person shall be liable to pay, except in the case of a daily penalty, more than one penalty in respect of the same offence.

Interpretation.

Sect. 11.—(1.) The expression “ashpit” in the Public Health Acts and in this Act shall for the purposes of the execution of those Acts and of this Act include any ash-tub or other receptacle for the deposit of ashes, fæcal matter, or refuse.

(2.) A street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts. Provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street.

(3.) In this Act, if not inconsistent with the context—

The expression “local authority” means an urban sanitary authority or a rural sanitary authority, as the case may be, under the Public Health Acts, and the expressions “urban authority” and “rural authority” mean respectively an urban sanitary authority and a rural sanitary authority under those Acts.

The expressions “urban sanitary district” and “rural sanitary district” mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts.

The expression “sanitary convenience” includes urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience.

The expression “daily penalty” means a penalty for each day on which any offence is continued after conviction therefor.¹⁸

The expressions “surveyor,” “lands,” “premises,” “owner,” “street,” “house,” “drain,” “sewer,” have respectively the same meaning as in the Public Health Acts.

Note.**Ashpits.**

With regard to the provision of ashpits, see sect. 35 and the following sections of the Public Health Act, 1875.¹⁹

Paving.

Wood-paving was considered not to be “paving” within the meaning of sect. 152 of that Act.²⁰

**Other
definitions.**

For definitions of other expressions, see the interpretation clause, sect. 4, of the same Act,²¹ and the Notes thereto; also the Interpretation Act, 1889.²²

Sect. 12. [*Application of Act to Ireland.*]**PART II.****TELEGRAPH, ETC., WIRES.**Bye-laws for
prevention of
danger from
telegraph wires,
etc.

Sect. 13.—(1.) An urban authority may from time to time make, alter, and repeal bye-laws for prevention of danger or obstruction to the public from posts, wires, tubes, or any other apparatus stretched or placed above, over, along, or across any street (whether before or after the adoption of this Part of this Act) for the purpose of any telegraph, telephone, lighting, railway signalling, or other purpose.

(2.) By such bye-laws provisions may be made for the inspection and examination by the urban authority of any such posts, wires, tubes, or other apparatus, and for the prohibition of any such posts, wires, tubes, or other apparatus being or continuing to be stretched or placed as aforesaid in such manner as to be dangerous or to cause obstruction to the public.

(17) See Note to P. H. Act, 1875, s. 341, ante, p. 804.

(18) See the Note to P. H. Act, 1875, s. 183, ante, pp. 507, 508; and the *Chepstow Case*, post, p. 858 (20).

(19) *Ante*, p. 107.

(20) *A.G. v. Bidder*, ante, p. 357.

(21) *Ante*, p. 7.

(22) *Post*, Vol. II., p. 1961.

(3.) Offenders against such bye-laws shall be liable to such penalties as may be thereby prescribed not exceeding five pounds for each offence, and a daily penalty not exceeding forty shillings, and the court in addition to awarding any penalty may order the removal of any post, wire, tube, or other apparatus stretched or placed in contravention of any such bye-law made under this section.

(4.) Bye-laws made under this section and any alteration or repeal of any such bye-law shall not take effect unless and until they have been submitted to and confirmed by the Board of Trade, which Board is hereby empowered to allow or disallow or to modify or amend the same as it may think proper.

(5.) Reasonable notice of the intended submission for confirmation of any such bye-law, alteration, or repeal shall be given by the urban authority by advertisement in one or more local newspapers circulating in the district to which such bye-laws relate, and by circular letter to any company or person owning or leasing any post, wire, tube, or other apparatus to which any bye-law is intended to apply, and such company or person shall be entitled to appear before the Board of Trade and object to the confirmation, alteration, or repeal of any bye-law, and all costs incurred by any parties in reference to the application for or objection to the confirmation, alteration, or repeal of any such bye-law shall be in the discretion of the Board of Trade.

(6.) The Board of Trade may exempt from the operation of any such bye-law, alteration, or repeal, for such period as they think proper, not exceeding five years from the confirmation thereof, any post, wire, tube, or other apparatus which shall have been stretched or placed, in the case of a new bye-law, before the confirmation thereof, and in the case of the alteration or repeal of a bye-law, in accordance with such bye-law.

(7.) Nothing in such bye-laws shall extend to or include any apparatus belonging to any railway or canal company, or used by them in connection with their business, and which now is or hereafter shall be fixed or placed by any such company across, over, or along any railway or the towing-path of any canal, provided such apparatus do not project or be not stretched or placed beyond such railway or towing-path over any street, or be not stretched or placed over any street crossing over such railway other than streets crossing any railway on the level.

Note.

Bye-laws made under the present section are not subject to confirmation by the Minister of Health or to the other requirements of sects. 182-186 of the Public Health Act, 1875 : see sect. 9 of the present Act.

The vesting of streets in a local authority was held not to give them control over wires which were hung thirty feet above the surface and did not interfere with the traffic.¹

Sect. 14.—(1.) If any post, wire, tube, or other apparatus so exempted as aforesaid is during the period of such exemption in the opinion of the surveyor of the urban authority in such a state or position that immediate danger to any person is to be apprehended, he may give information to any justice, who may thereupon summon the owner or lessee thereof or other person interested therein forthwith to appear before a court of summary jurisdiction.

(2.) The court may thereupon—(a.) Make an order requiring such owner, lessee, or other person, or all or any of them, to remove or remedy the source of danger; or (b.) Make an order authorising the surveyor to do so at the expense of such owner, lessee, or other person, or of all or any of them; or (c.) Make such other order as may appear to the court under all the circumstances of the case to be necessary and proper.

Sect. 15.—(1.) Nothing contained in this Part of this Act shall—(a.) Extend to any post, wire, tube, or other apparatus or property of the Postmaster-General : (b.) Extend to any works of any undertakers within the meaning of the Electric Lighting Acts, 1882 to 1888, to which the provisions of those Acts apply.

(2.) Nothing contained in this Part of this Act shall limit or interfere with the working of any mines or minerals lying under or adjacent to any street along or

Sect. 13.

Bye-laws for prevention of danger from telegraph wires, etc.—*cont.*

Bye-laws.

Wires, etc., over streets.

Danger from exempted telegraph wires.

Savings.

(1) See the *Wandsworth Case*, ante, p. 293 (21). As to erection of telegraph posts and wires by P.M.G., see ante, pp. 306-311. See also Electric Lighting Act, 1882, ss. 13, 14, and Notes, post, Vol. II., pp. 1284-

1287, as to other restrictions in this connection; and, as to overhead wires, s. 21 of the Act of 1919, post, Vol. II., p. 1341. As to minerals under streets, see H. & Loc. Am. Act, 1878, s. 27, post, Vol. II., p. 1791.

Sect. 15.

across which any posts, wires, tubes, or other apparatus shall be stretched or placed, nor shall the owner, lessee, or occupier of those mines or minerals be liable for any damage which may be occasioned by the working thereof in the ordinary course to such posts, wires, tubes, or apparatus.²

PART III.

SANITARY AND OTHER PROVISIONS.

Injurious
matters not
to pass into
sewers.

Sect. 16.—(1.) It shall not be lawful for any person to throw, or suffer to be thrown, or to pass into any sewer of a local authority or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured.

(2.) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.³

Chemical
refuse, steam,
etc., not to be
turned into
sewers.

Sect. 17.—(1.) Every person who turns or permits to enter into any sewer of a local authority or any drain communicating therewith—

(a.) Any chemical refuse, or

(b.) Any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit),

which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health, shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds.

(2.) The local authority, by any of their officers either generally or specially authorised in that behalf in writing, may enter any premises for the purpose of examining whether the provisions of this section are being contravened, and if such entry be refused, any justice, on complaint on oath by such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises, may by order under his hand require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed.

(3.) A person shall not be liable to a penalty for an offence against this section until the local authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the local authority shall not be required to give the same person notice more than once.³

Provision as to
local authority
making com-
munications
with or altering,
etc., drains and
sewers.

Sect. 18.—(1.) Where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the local authority, the local authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the local authority, themselves make the communication and execute all works necessary for that purpose.

(2.) The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the local authority, but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under fifty pounds, apply to a court of summary jurisdiction to fix the amount to be paid for such cost, and if the estimate is over fifty pounds have the same determined by arbitration in manner provided by the Public Health Acts.

(3.) A local authority may agree with the owner of any premises that any sewer or drain which such owner is required, or desires, to make, alter, or enlarge, or any part of such sewer or drain, shall be made, altered, or enlarged by the local authority.

(2) See footnote (1), *ante*, p. 849.

(3) As to provision of facilities for manufacturing effluents, and restrictions in connection therewith, see R. P. P. Act, 1876,

s. 7, *post*, Vol. II., p. 1748, and Note to P. H. Act, 1875, s. 21, *ante*, p. 86. As to prosecution of offenders under present Act, see s. 6, *ante*, p. 847.

Note.

The right to drain premises within the district into the sewers of the district council is conferred by sect. 21 of the Public Health Act, 1875; and the right so to drain premises without the district by sect. 22 of the same Act.⁴ See also sect. 38 of the Act of 1907.⁵

For the cases in which owners may be “ required ” to make drains, see sects. 23, 25, and 41 of the Act of 1875.⁶

With regard to arbitration, see sects. 179-181 of the Public Health Act, 1875.⁷

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Drainage into sewers.

Arbitration.

Sect. 19.—(1.) Where two or more houses belonging to different owners are connected with a public sewer by a single private drain, an application may be made under section forty-one of the Public Health Act, 1875 (relating to complaints as to nuisances from drains) and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction.

Extension of
38 & 39 Vict.
c. 55, s. 41.

(2.) Such expenses may be recovered summarily or may be declared by the urban authority to be private improvement expenses under the Public Health Acts, and may be recovered accordingly.

(3.) For the purposes of this section the expression “ drain ” includes a drain used for the drainage of more than one building.

Note.

Having regard to the definitions of “ drain ” and “ sewer ” in sect. 4 of the Public Health Act, 1875,⁸ and to sects. 13, 15, and 19 of that Act, it is difficult to assign a precise meaning to the expression “ a single private drain.” The expression is used to describe a drain which receives the drainage of two or more houses belonging to different owners, which is therefore a “ sewer ” for all the purposes of the Public Health Acts except those of the present section, and is (subject to that section) vested in and under the control of the local authority. It may be that the section is intended to apply to a drain, or “ sewer,” which has been constructed by private individuals for the drainage of a small and limited number of houses, which is laid in enclosed lands, so that no one but the owners or occupiers of such lands (or their licensees) could, for want of the right to carry their drains through the lands, exercise the right of draining into it under sect. 21 of the Act of 1875, and which has no element of publicity about it apart from the statutory “ vesting ” of it in the local authority; and if the section is applicable to such a drain or “ sewer,” it would not appear to be material whether such drain or sewer was made before or after it came into force.

Meaning of single private drain.

The foregoing note, which first appeared in the eleventh edition of this work, is consistent with the judgment of Lord Russell, C.J., and Wills, J., in the *Eastbourne* case in which two conflicting decisions under the section were considered. The former of those decisions, which was approved, was that the owner of a house could not recover from the local authority the cost of complying with a notice from them to abate a nuisance in the line of pipes which connected the drain from his house and the drain from an adjoining house belonging to another person with the sewer in the street, because the local authority were not themselves compellable to do the work, but had power to compel the owners to do it under the present section.⁹ The latter decision was that under a Carlisle local Act, which contained a clause similar to the present section, the owner of one of several houses belonging to six owners, could not be convicted of neglecting to comply with a notice from the local authority to abate a nuisance in a brick culvert which conveyed the sewage of the houses into the sewer in the street, because the culvert was a sewer vested in the local authority and not a “ single private drain.”¹⁰ In approving of the former and disapproving of the latter of these decisions, Lord Russell, C.J., said that “ the Act of 1890, for the purposes of sect. 19 and for those purposes only, widens the definition of ‘ drain ’ contained in sect. 4 of the Act of 1875. . . . I am unable to see any special use in the word ‘ private ’ in this section; but it is intelligible, and I think means a drain

(4) *Ante*, pp. 85, 88.
(5) *Post*, Part I., Div. III.
(6) *Ante*, pp. 89, 92, 115.
(7) *Ante*, p. 483.
(8) *Ante*, pp. 31, 33.

(9) *Self v. Hove Comrs.*, L. R. 1895, 1 Q. B. 685; 64 L. J. Q. B. 217; 72 L. T. 234; 59 J. P. 103.
(10) *Hill v. Hair*, L. R. 1895, 1 Q. B. 906; 64 L. J. M. C. 164; 72 L. T. 629; 59 J. P. 374.

Sect. 19, n.
Meaning of
single private
drain—*cont.*

originally constructed for the drainage of one or more houses, as distinguished from a drain or sewer which any member of the public may have a right to use by connecting with it the drain from his own house." And Wills, J., said: "the 'private drain' is contrasted with the 'public sewer.' The public sewer is obviously meant here to indicate a sewer which serves the public generally, and has or may have an indefinite number of houses connected with it, either directly or because branch sewers come into it; whereas the private drain serving two or more houses is that of which the natural use is confined to those houses, and with which other houses belonging to other owners could not be connected without the consent of the persons through whose land it runs. . . . A drain of this character is generally an economical substitute for separate drains from each of the houses served by it to the public sewer." The court also overruled the contention that the enactment only applied to drains constructed after the present Act came into force.¹¹ It was, however, pointed out that it was for the purposes of sect. 19, and for those purposes only, that the definition of "drain" in the Act of 1875 was widened; and it was therefore held in a subsequent case that the section did not repeal the general liability of the local authority under sect. 15 of the Public Health Act, 1875, to repair "sewers" as defined by that Act; and where no application had been made to a local authority under sect. 41 of the Act of 1875, which was applied to them by a provision in a local Act similar to the present section, a *mandamus* was granted directing them to repair the "sewer" in question.¹²

The Carlisle and Eastbourne decisions above cited were considered by the Court of Appeal in two cases which were dealt with at the same time by that court, with the result that the decision in the Eastbourne case was approved and followed. In one of the cases a six-inch pipe, draining twelve houses belonging to one person, discharged into a nine-inch pipe which also took the drainage of seven houses belonging to another person. The pipes passed under the houses, and were entirely in private land. The Divisional Court had allowed an appeal against an order requiring the owner of the seven houses to relay part of the nine-inch pipe, which was in bad condition, holding that the pipe was not a "single private drain" within the present section; and Channell, J., had approved of the suggestion of Cave, J., in the Carlisle case,¹³ that the expression "single private drain" was applicable (1) to a drain draining two houses within the same curtilage; (2) to a drain which was a "sewer" within the definition of sect. 4 of the Act of 1875, but, being "made for profit," was therefore not vested in the council, and remained private; (3) to that which was a "single private drain" by virtue of a local Act; and possibly (4) to a drain made under an agreement with the council¹⁴ which provided that it should remain a private drain.¹⁵ The Court of Appeal reversed the decision, considering that they were bound by the Eastbourne case.

In the other of these two cases a nine-inch pipe laid in private land carried the drainage of four houses belonging to one owner and of twelve houses belonging to other persons into the district council's sewer. The portion of the pipe in rear of the four houses being in bad condition, the council gave notice to the owner of those houses to relay that portion. The owner executed the work under protest, and brought an action against the council for the expenses incurred in executing it. The action was tried before Channell, J., without a jury; the learned judge considered that he was bound by the Eastbourne case to hold that the pipe in question was a "single private drain," but gave judgment for the plaintiff on the ground that the council had only given the notice requiring the work to be done to the plaintiff, and not to the owners of the other houses. The Court of Appeal, however, reversed the judgment on the ground that it was only necessary to give notice to the owner of the premises on which the defective portion of the drain was found.¹⁶

(11) *Bradford v. Eastbourne Cpn.*, L. R. 1896, 2 Q. B. 205; s.c. *nom. Eastbourne Cpn. v. Bradford*, 65 L. J. Q. B. 571; 74 L. T. 762; 60 J. P. 501; followed in *Seal v. Merthyr Tydfil U.D.C.*, L. R. 1897, 2 Q. B. 543; 67 L. J. Q. B. 37; 77 L. T. 303; 61 J. P. 551.

(12) *Reg. v. Hastings Cpn.*, L. R. 1897, 1 Q. B. 46; 66 L. J. Q. B. 80; 75 L. T. 377; 60 J. P. 759. See also *Corke's Case*, *post*, p. 855 (30), and *Pemsel's Case*, *post*, p. 856 (44).

(13) *Hill v. Hair*, *ante*, p. 851.

(14) As in *Butt v. Snow*, *ante*, p. 40 (4).

(15) *Thompson v. Eccles Cpn.*, L. R. 1904, 2 K. B. 1; 73 L. J. K. B. 497; 90 L. T. 507; 68 J. P. 315; 2 L. G. R. 556; reversed in C. A., L. R. 1905, 1 K. B. 110; 74 L. J. K. B. 130; 91 L. T. 750; 69 J. P. 45; 3 L. G. R. 20.

(16) *Hædicke v. Friern Barnet U.D.C.*, L. R. 1904, 2 K. B. 807; 68 J. P. 473; 2 L. G. R. 1098; reversed in C. A. See footnote (15), *supra*.

A line of pipes running through the back gardens of a row of twelve houses belonging to one owner, discharged the drainage of those houses into a line of pipes running under a private passage between the last of those houses and the first of a similar row of four houses. These four houses belonged to other persons, and were drained in a similar manner into the line of pipes in the passage. The whole system of pipes required relaying, and notices to relay them having been served on the owners of all the houses, the owners of the four houses relaid the pipes behind their houses and also the pipes in the passage. The district council relaid the pipes behind the twelve houses, on the owner's default, and obtained a justices' order, subject to a special case, against him for payment of the expenses. On the argument of the case both parties agreed, and it was assumed that the line of pipes in the passage was a "single private drain"; and on that assumption it was contended on the part of the council that, because the pipes which drained the twelve houses discharged into a single private drain, they must themselves be treated as a single private drain, although all the houses which they drained belonged to the same owner. The Divisional Court, however, held, and their decision was affirmed by the Court of Appeal, that those pipes constituted a sewer which could not be dealt with under the present section; and the appeal against the order of the justices was allowed.¹⁷ In the Court of Appeal Collins, M.R., suggested that if the twelve houses had at some former time belonged to different owners, so that the line of pipes draining those houses was originally a "single private drain," it might have retained that character, although all the houses had subsequently come into the ownership of the same person; but the case was decided on the assumption that the houses had always belonged to one owner, the presumption, from the fact that they now belonged to one owner, that they always belonged to one owner not having been rebutted.¹⁸

The converse of the question in the foregoing case was raised in one in which it was held by the justices, the Divisional Court, and the Court of Appeal, and by Lord Ashbourne in the House of Lords, that the lower part of a system of pipes was not a "single private drain," on the ground that it received the discharge from several lines of pipes, which were sewers. The lower part of this system consisted of a line of pipes running along the backs of a number of houses. It received the drainage of six houses, which were drained into it in pairs, by three pipes. The six houses belonged to the same owner, and the three pipes were therefore "sewers" and not "single private drains." Above the six houses there were other houses belonging to different owners, and draining into the same line of pipes above the points at which the three pipes were connected with it.¹⁹

The decision in the House of Lords was based on a ground which had not been mentioned by any of the courts below, or in the arguments of either of the parties at any stage of the case. Lord Atkinson, with whom Lords Loreburn, C., Macnaghten, and James of Hereford simply concurred, laid it down that the party alleging that a line of pipes is a "single private drain" within the present section must show that it was originally laid because it was "required" by sect. 23 or sect. 25 of the Public Health Act, 1875. Under sect. 23²⁰ local authorities may require "effectual drainage" for existing houses, and under sect. 25²¹ they may require such drainage for new or rebuilt houses. As there was no evidence that the line of pipes in question had been laid because of either of those requirements, his Lordship held that it was not a "single private drain." Lord Asbourne came to the same conclusion, but upon the grounds (1) that the line of pipes received drainage from "sewers" and therefore was not "private" (agreeing on this point with the Divisional Court), and (2) that the existence of sewers between the house drains and the alleged single private drain severed the connection between such drain and the house drains, and therefore the houses were not "connected with a public sewer by a single private drain" (agreeing on this point with the Court of Appeal). Lord Atkinson expressly disagreed with the second ground; and as the Lord Chancellor and Lords Macnaghten and James concurred with his judgment, it must apparently be taken that this second ground cannot now be relied upon.

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Meaning of
single private
drain—cont.

(17) *Jackson v. Wimbledon U.D.C.*, L. R. 1905, 2 K. B. 27; 74 L. J. K. B. 641; 92 L. T. 553; 69 J. P. 225; 3 L. G. R. 586.

(18) See 3 L. G. R. at p. 592.

(19) *Wood Green U.D.C. v. Joseph* (1905, K. B. D.), 74 L. J. K. B. 954; 93 L. T. 434; 69 J. P. 464; 3 L. G. R. 1147. *Ibid.* (1906,

C. A.), L. R. 1907, 1 K. B. 182; 76 L. J. K. B. 173; 96 L. T. 176; 71 J. P. 89; 5 L. G. R. 322. *Ibid.* (H. L.), L. R. 1908 A. C. 419; 77 L. J. K. B. 924; 99 L. T. 733; 72 J. P. 393; 6 L. G. R. 980.

(20) *Ante*, p. 89.

(21) *Ante*, p. 92.

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Meaning of
single private
drain—cont.

The first ground was subsequently raised in the Court of Appeal²²; but that court held that the line of pipes in question was a single private drain, notwithstanding the fact that it received drainage from sewers, though there a local Act had added the words "or premises" after the word "houses." In this case the local authority were able to prove that the line of pipes in question had been laid after service of a notice under sect. 23 of the Act of 1875, and contended that Lord Atkinson's judgment had been complied with. The defendants sought to dispose of this by contending that, as most of the houses were more than 100 feet away from the public sewer, and consequently the local authority were not authorised to "require" the connection of those houses with that sewer, the line of pipes had not been laid because it had been "required" by sect. 23. The Court of Appeal, however, held that, as the section had required the connection of the houses which were within 100 feet of the public sewer with that sewer, and the connection of the rest with cesspools, and the defendants had chosen to connect all their houses with the public sewer, the line of pipes had been laid because it had been "required" by sect. 23.

In this *Hull Case* the meaning to be given to the word "private" was further discussed. In none of the previous cases had the line of pipes in question been laid under a highway. Sargant, J., found that the *cul-de-sac* under which the alleged single private drain had been laid was a highway, though not repairable by the inhabitants at large, and held that this fact did not prevent its being a single private drain.²³ The Court of Appeal, while holding that the *cul-de-sac* had not been dedicated, considered that dedication of the land under which the pipe was laid was immaterial. Nor was there in the previous cases any road drainage in the alleged single private drain. But Bankes, L.J.,²⁴ said that the introduction of other matter, in addition to house drainage, would make no difference, "unless the matter introduced is of such a character as to destroy the private nature of the drain."

The *Wood Green Case* was distinguished, in Ireland,²⁵ in a case in which six houses belonging to five owners (including the defendant) were drained singly into a common pipe in private ground outside the defendant's curtilage, and thence into a sewer in the street. This pipe had been constructed at the joint expense of the owners fifteen years before the admitted nuisance arose therein. Before that time each house was supplied with a privy only. It was contended by the defendant that she was not liable (1) because the pipe was vested in the local authority, and (2) because the defective condition had been caused by negligent construction of a gully trap by an officer of the local authority. The justices found that the pipe was a "sewer" and not a "single private drain," but that the evidence was not sufficient to enable them to decide the second point. It was held (1) that the pipe was a "single private drain"; (2) that the case must be remitted for further evidence on the second point; and (3) that *primâ facie* the defendant was liable, though she could escape liability by proving that the nuisance had arisen as she alleged. *Per* Gibson, J.: In the *Wood Green Case* "there was no evidence when or by whom [the pipe] was constructed, or that it had been constructed after the houses were built, and it received the drainage of undoubted sewers. . . . None of the grounds upon which that decision is founded is present here. . . . Upon the second point . . . if the drain was a private drain, the persons owning it would be *primâ facie* liable; if it was a public sewer, the public sanitary authority would be *primâ facie* liable. But, even if it is a private drain, if the defendant can produce evidence that she is not responsible for the stoppage which, in fact, caused the obstruction, she would not be held responsible. It must, however, be recollected that the conduit was a joint construction, though only the defendant is sued."

It appears possible now to extract from all these varying decisions the following seven essentials to the treating of a line of pipes as a single private drain within the meaning of the present section:—(1) The line of pipes must be causing a nuisance, and there must be a written application to the local authority, either from an official of the authority or from some outside source, requesting the local authority to deal with the nuisance.²⁶ It must, *ex hypothesi*, be a "sewer"

(22) *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.*, L. R. 1916, 1 Ch. 31; 84 L. J. Ch. 905; 113 L. T. 1140; 80 J. P. 57; 14 L. G. R. 23. Further as to this case, see *ante*, pp. 55 (9), 56 (2), and *infra* (23).

(23) *Kingston-upon-Hull Cpn. v. North Eastern Ry. Co.* (Ch. D.), L. R. 1915, 1 Ch.

456; 13 L. G. R. 587.

(24) *Ibid.* (C. A.), 14 L. G. R. at p. 31.

(25) *Holywood U.D.C. v. Grainger*, 1913 Ir. K. B. 126; 3 Glen's Loc. Gov. Case Law 163.

(26) See *ante*, p. 116.

as defined in sect. 4 of the Public Health Act, 1875. That is to say, it must drain more than one building, and the buildings drained may not all be within the same curtilage or boundary fence.²⁷ (3) Unless a local Act provides otherwise, the buildings drained may not all belong to the same owner.²⁸ (4) The fact that it vests in and is therefore repairable by the local authority does not prevent the local authority enforcing its repair by private persons if the authority have adopted Part III. of the present Act, or have obtained a local Act containing a provision similar to the present section. (5) It must have had an origin for private purposes (*e.g.*, constructed by private persons in pursuance of a notice from the local authority under sect. 23 or sect. 25 of the Act of 1875), and this origin must be proved by the local authority. In the *Hull Case* service of a notice under sect. 23 was definitely proved, but it would not appear necessary actually to prove the service of such a notice, provided that one could have been served.²⁹ (6) It must be inaccessible to the public for purposes of connection.³⁰ (7) The local authority must have served a notice under section 41 of the Act of 1875 before the private persons interested have taken legal proceedings to compel the local authority to remedy the nuisance themselves. That is to say, if an action to compel the authority to remedy the nuisance is brought, it will be no answer to say that the six other essentials are present, though not this one.³¹

In 1896 Lord Russell of Killowen described the condition of the law upon this subject as "chaotic," and nearly every judge who has had to consider the matter since has made a similar observation. Many local authorities have endeavoured to improve upon the present section by local enactments, which take its place in their areas. Most of them remove the anomaly created by the confining of the present section to houses "belonging to different owners," and make it apply though all the houses belong to one owner, *e.g.*, in Hull.³² The Hull Act also adds the words "or premises" after the word "houses," and in consequence the Court of Appeal have, as already stated,³³ held that a line of pipes may be a "single private drain," though it receives road drainage.

Another way in which the difficulties of the present section may be overcome is to include provisions as to combined drainage in a town-planning scheme.³⁴

Having regard to the difficulties which have arisen in construing the present section, the Local Government Board declined to put it in force in rural districts.

The words "belonging to different owners" mean "not all belonging to the same owner," and do not imply that each of the houses in question must belong to a person who does not own any of the others.³⁵

A local authority were held to be entitled to a charge on the premises by virtue of the present section and sect. 257 of the Public Health Act, 1875, where the procedure under sect. 41 of the Act of 1875 had been substantially followed, although the notice to the owners or occupiers required them "to abate the nuisance" and to do the necessary works for that purpose within a specified time, as if such notice had been given under sect. 94 of that Act rather than under sect. 41.³⁶ A notice to two owners requiring them jointly to execute the necessary works was held good under the section, though neither could execute the whole of the works without trespassing on the land of the other.³⁷ A notice to do the work "within seven days" was held to be unreasonable, and to vitiate all subsequent proceedings.³⁸

A county court judge dismissed an action to recover expenses incurred under the present section on the ground that the defect remedied was "structural." The drain was under a private carriage-way; a horse and cart displaced some bricks supporting a manhole cover, and smells came through the hole thus made. It was held that the expenses, which were for "taking off the manhole cover, removing the brick corbelling and replacing with a slab of four-inch stone, and replacing the manhole cover," were recoverable.³⁹

Sect. 19, n.

Local Acts.

Town
planning
schemes.

Rural
districts.

Houses of
different
owners.

Notice to
owners.

Structural
work.

(27) See *ante*, pp. 31, 32.

(28) See footnote (35), *infra*.

(29) See the *Holywood Case*, *ante*, p. 854 (25).

(30) See the *Hull Case*, *ante*, p. 854 (22).

(31) *Corke v. Ticehurst R.D.C.*, 1914, Eve, J., M.S.

(32) 3 Edw. VII. c. cxxlvi., s. 49.

(33) *Hull Cpn. v. N. E. Ry. Co.*, *ante*, p. 854 (22).

(34) See, *e.g.*, Luton Scheme, clause 21, affirmed Nov. 29, 1922.

(35) *Thompson v. Eccles Cpn.*, in K. B. D., *ante*, p. 852 (15). This point not dealt with

in C. A.

(36) *Walthamstow U.D.C. v. Henwood* (1896), 75 L. T. 375; 61 J. P. 23.

(37) *Lancaster v. Barnes U.D.C.*, L. R. 1898, 1 Q. B. 855; 67 L. J. Q. B. 744; 78 L. T. 355; 62 J. P. 405. Further as to the effect of notices requiring "trespass," see *Meyrick's Case*, *ante*, p. 90 (5).

(38) *Hornsey Cpn. v. Kershaw* (1909, Mx. Q.S.), 73 J. P. 335; 127 L. T. Jo. 35; Loc. Gov. Chron. 382.

(39) *Southwold Cpn. v. Crowdy*, *ante*, p. 117 (26).

**Sect. 19, n.
Trespass.**

The Divisional Court had held that a joint notice addressed to two persons, one of whom owned two and the other three of five houses which were drained by a single private drain, requiring them to relay it, was valid, although it was contended that it in effect required each of them to do something which would involve a trespass on the land of the other : the ground of the decision being that the provision in sect. 41 of the Public Health Act, 1875, imposing a penalty on the person failing to comply with the notice, was not applied to proceedings under the present section in relation to single private drains, and that there was therefore no hardship in the notice being joint.⁴⁰ In a more recent case, however, in the Court of Appeal, Stirling, L.J., expressed the opinion that the procedure prescribed by sect. 41 was to be followed, and that the power given by the present section to recover expenses in apportioned shares was an additional provision which only operated when the nuisance existed on the premises of several persons so as to render an apportionment of the expenses necessary. In the case referred to, the nuisance was caused by the defective condition of that portion only of the single private drain which was laid in the premises of one of the owners, and it was held that in such a case that owner only ought to be served with the notice, and was liable for the whole of the expenses.⁴¹

**Apportion-
ment of
expenses.**

**Recovery of
expenses.**

With regard to summary proceedings, see sect. 6 of the present Act and sect. 257 of the Public Health Act, 1875; and with regard to the recovery of expenses declared to be private improvement expenses, see sect. 213 of the Act of 1875.⁴²

Appeal.

An appeal lies to quarter sessions against the dismissal of a complaint under the present section for recovery of the expenses.⁴³

**Defect in
title.**

The existence of a single private drain under land sold without disclosure of this fact was held to be a defect in title, for the drain was vested in the local authority as a sewer.⁴⁴

**Sanitary
conveniences
for public
accommodation.**

Sect. 20.—(1.) Where an urban authority provide and maintain for public accommodation any sanitary conveniences, such authority may—

- (i.) Make regulations with respect to the management thereof and make bye-laws as to the decent conduct of persons using the same;
- (ii.) Let the same from time to time for any term not exceeding three years at such rent and subject to such conditions as they may think fit;
- (iii.) Charge such fees for the use of any water-closets provided by them as they may think proper.

(2.) No public sanitary convenience shall, after the adoption of this part of this Act, be erected in or accessible from any street without the consent in writing of the urban authority, who may give such consent upon such terms as to the use thereof or the removal thereof at any time, if required by the urban authority, as they may think fit.

(3.) Any person who erects a sanitary convenience in contravention of this enactment, and after a notice in writing to that effect from the urban authority does not remove the same shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding twenty shillings.

(4.) Nothing in this section shall extend to any sanitary convenience now or hereafter to be erected by any railway company within their railway station yard or the approaches thereto.

Note.

**Public
sanitary
conveniences.**

The expression “sanitary convenience” is defined by sect. 11 of the present Act. Such conveniences may be provided by urban district councils under sect. 39 of the Public Health Act, 1875.¹ See also sect. 47 of the Act of 1907.²

**Bye-laws and
regulations.**

With regard to the making, confirmation, etc., of bye-laws, see sect. 9 of the present Act, and the Note to that section. “Regulations” under the present section do not need “confirmation.”³

**Sanitary
conveniences
used in
common.**

Sect. 21. With respect to any sanitary convenience used in common by the occupiers of two or more separate dwelling-houses, or by other persons the following provisions shall have effect :—

- (1.) If any person injures or improperly fouls any such sanitary convenience, or

(40) See the *Barnes Case*, ante, p. 855 (37).
 (41) *Hædicke v. Friern Barnet U.D.C.*, ante, p. 852 (16).
 (42) *Ante*, p. 594.
 (43) *Hornsey Cpn. v. Kershaw*, ante, p. 855 (38).

(44) *Pemsel v. Tucker*, ante, p. 93 (9).
 (1) *Ante*, p. 112.
 (2) *Post*, Part I., Div. III.
 (3) See *P. H. Act, 1875*, s. 188, and *Note*, ante, p. 512.

anything used in connection therewith, he shall for every such offence be liable to a penalty not exceeding ten shillings : **Sect. 21.**

(2.) If any sanitary convenience or the approaches thereto, or the walls, floors, seats, or fittings thereof is or are in the opinion of the urban authority or of the [sanitary inspector] or medical officer of health of such authority in such a state or condition as to be a nuisance or annoyance to any inhabitant of the district for want of the proper cleansing thereof, such of the persons having the use thereof in common as aforesaid as may be in default, or in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons, shall be liable to a penalty not exceeding ten shillings, and to a daily penalty not exceeding five shillings.

Note.

As to public sanitary conveniences, see sect. 20 and Note. Water-closets, earth-closets, and privies, for the use in common of inmates of two or more houses, are allowed under the Public Health Act, 1875.⁴ Further as to privately-owned sanitary conveniences, see sects. 43 and 44 of the Act of 1907.⁵

Sanitary conveniences.

As to bye-laws for requiring sanitary conveniences in working class dwellings, see sect. 26 (1) (d) of the Housing, Town Planning, etc., Act, 1919.^{5a}

Under the present section it will not be necessary to give the formal preliminary notice to abate the nuisance, which is prescribed by sect. 94 of the Public Health Act, 1875; but it would no doubt be proper to give the persons who are to be prosecuted under sub-sect. (2) some warning before treating them as "in default."

Nuisance.

Sect. 22.—(1.) Every building, used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or business, whether erected before or after the adoption of this part of this Act in any district, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at such building, and also where persons of both sexes are employed, or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex.

Sanitary conveniences for manufactories, etc.

(2.) Where it appears to an urban authority on the report of their surveyor that the provisions of this section are not complied with in the case of any building, the urban authority may, if they think fit, by written notice, require the owner or occupier of any such building to make such alterations and additions therein as may be required to give such sufficient, suitable, and proper accommodation as aforesaid.

(3.) Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding forty shillings.

(4.) Where this section is in force, sect. 38 of the Public Health Act, 1875, shall be repealed.

Note.

The Local Government Board at first declined to put the present section in force in rural districts, but afterwards did so.⁶

Rural districts.

Sect. 38 of the Public Health Act, 1875,⁷ which is repealed by sub-sect. (4) where the present section is in force, only applies where the factory is one in which persons of both sexes are employed or intended to be employed; but where the present section is not in force further provisions on the subject are made by sect. 9 of the Factory and Workshop Act, 1901.⁸ See also sect. 5 of that Act,⁹ which, unlike sect. 9, is in force whether the present section has been adopted or not. As to sanitary conveniences for cabmen, see the case cited below.¹⁰

Factories.

The notice under the present section must specify the particular alterations and additions required,¹¹ though under sect. 36 of the Act of 1875, the language of which is little different from that of the present section, the notices may not specify in too much detail the particular works required.¹² The question of the necessity for, or the reasonableness of, the requirements may be raised on appeal under sect. 7, but not in proceedings for penalties under the present section.¹³

(4) See ss. 35 and 36; and *Clutton's Case*, ante, p. 107 (8).

(10) *Bennett v. Harding*, L. R. 1900, 2 Q. B. 397, also cited post, Vol. II., p. 2141.

(5) *Post*, Part I., Div. III.

(5a) *Post*, Part II., Div. III.

(6) See the *Hinckley Case*, post, p. 858 (18).

(7) *Ante*, p. 112.

(8) *Post*, Vol. II., p. 2144.

(9) *Post*, Vol. II., p. 2142.

(11) *Tracey v. Pretty & Sons*, L. R. 1901, 1 K. B. 144; 70 L. J. K. B. 234; 83 L. T. 767; 65 J. P. 196.

(12) See the Note to that section, ante, p. 109.

(13) See *Tracey's Case*, supra (11).

Sect. 22, n.

Other provisions with regard to sanitary conveniences are contained in sects. 35-41 of the Public Health Act, 1875,¹⁴ and sects. 39-44 of the Public Health Acts Amendment Act, 1907.¹⁵

Mines.

See also sect. 26 of the Housing, Town Planning, etc., Act, 1919.^{15a}

The Secretary of State is required by sect. 76 of the Coal Mines Act, 1911,¹⁶ to make regulations as to "the provision and use of sanitary conveniences in mines, both above and below ground."

Surveyor's report.

The report of the surveyor under sub-sect. (2) is a condition precedent. As to such reports generally, see the Note to sect. 16 of the Public Health Act, 1875.¹⁷ As to the validity of a report under the present section made by an inspector of nuisances, see the case cited below.¹⁸

Daily penalty.

Justices imposed a fine and also a daily penalty for failure to comply with a notice which had been served, under sect. 18 of the Schedule to the Electric Lighting Clauses Act, 1899,¹⁹ more than six months before the issue of the summons. It was held (1) that this limitation either did not apply at all to such an offence, or, if it did, that the time did not commence to run from the date of the notice, but from the time when it could be said that the offence was complete, and that in the circumstances this was not until within six months; and (2) that the part of the conviction relating to the daily penalty was bad, but did not vitiate the whole.²⁰ This decision was applied at petty sessions to the present section.²¹

Extension of 38 & 39 Vict. c. 55, s. 157.

Sect. 23.—(1.) Sect. 157 of the Public Health Act, 1875, shall be extended so as to empower every urban authority to make bye-laws with respect to the following matters; that is to say:—

The keeping water-closets supplied with sufficient water for flushing;

The structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation;

The paving of yards and open spaces in connection with dwelling-houses; and

The provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters.

(2.) Any bye-laws under that section as above extended with regard to the drainage of buildings, and to water-closets, earth-closets, privies, ashpits, and cesspools, in connection with buildings, and the keeping water-closets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the times mentioned in the said section.

(3.) The provisions of the said section (as amended by this Act), so far as they relate to bye-laws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to matters mentioned in sub-sects. (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of water-closets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make bye-laws in respect to the said matters, and to provide for the observance of such bye-laws, and to enforce the same as if such powers were conferred on the rural authorities by virtue of an order of the [Minister of Health] made on the day when this part of this Act is adopted; and sect. 158 of the Public Health Act, 1875, shall also apply to any such authority, and shall be in force in every rural district where this part of this Act is adopted.

(4.) Every local authority may make bye-laws to prevent buildings which have been erected in accordance with bye-laws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the bye-laws.

Note.**Bye-laws.**

With regard to the meaning of "new street" and "new building," and the bye-laws which may be made with respect to them, see the Note to sect. 157 of the Public Health Act, 1875.¹

Bye-laws under that section were in no case to affect buildings erected before

(14) *Ante*, p. 107.

(15) *Post*, Part I., Div. III.

(15a) *Post*, Part II., Div. III.

(16) 1 & 2 Geo. V. c. 50, s. 76.

(17) *Ante*, p. 62.

(18) *Hinckley R.D.C. v. Bannister*, *ante*, p. 537 (11).

(19) 62 & 63 Vict. c. 19, Sched. (18).

(20) *Chepstow Electric Light Co. v. Chepstow Gas Co.* (1904, C. A.), L. R. 1905, 1 K. B. 198; 74 L. J. K. B. 28; 92 L. T. 27; 69 J. P. 72; 3 L. G. R. 49. See also other cases noted *ante*, p. 507.

(21) In *Hinckley R.D.C. v. Bannister*, *ante*, p. 537 (11).

(1) *Ante*, pp. 376, 387.

the constitution of the urban district or in case of an old district before the Local Government Acts came into force in it. This limitation will still affect bye-laws made under the present section with respect to floors, etc., yards, and open spaces; while bye-laws as to secondary access in connection with "new" streets must apparently be confined to access in connection with streets laid out after such bye-laws came into force.		Sect. 23, n.
Rural district councils could only make bye-laws with respect to new streets and buildings under the Act of 1875, where the requisite urban powers had been conferred upon them by order of the Local Government Board (now Minister of Health) under sect. 276 of that Act.		Rural districts.
Where bye-laws laid down rules as to the strength of timbers for floors of certain kinds, and did not provide in detail for all possible modes of construction, but contained a general clause requiring suitable materials and adequate strength, a floor constructed partly of timber and partly of steel was held to be subject to the general clause, and not to the rules applicable to floors constructed wholly of timber. ²		Structure of floors.
Where sect. 25 of the Public Health Acts Amendment Act, 1907, ³ is in force, the urban or rural district council may, without making any bye-law on the subject, cause the yards of dwelling-houses to be properly formed, flagged, asphalted or paved, and drained, by or at the expense of the owners.		Paving of yards.
Where a district council had made a bye-law requiring a person who laid out a new street to provide "a secondary means of access of the width of 12 feet at least where necessary," the Local Government Board expressed the opinion that the words "where necessary" must be read as qualifying the provision of the secondary means of access, and not the width of such means of access.		Secondary means of access.
A bye-law under sub-sect. (4) of the present section provides the best, if not the only, means of preventing the alteration of buildings, originally erected in accordance with the bye-laws, in such a manner as to make them contravene the bye-laws. As to the effect of other alterations, see sect. 159 of the Act of 1875, ⁴ and sect. 23 of the Act of 1907. ⁵ As to alterations in user only, see sect. 33 of the present Act. ⁶		Alteration of buildings.
For further bye-law making powers, see sect. 26 of the Housing, Town Planning, etc., Act, 1919. ^{6a}		Working class dwellings.
Sect. 24. —(1.) Where any portion of a room extends immediately over any privy (not being a water-closet or earth-closet), or immediately over any cesspool, midden, or ashpit, that room, whether built before or after the adoption of this part of this Act, shall not be occupied as a dwelling-house, sleeping-place, or workroom, or place of habitual employment of any person in any manufacture, trade, or business during any portion of the day or night.		Rooms over privies, etc., not to be used as dwelling or sleeping rooms.
(2.) Any person who after the expiration of one month after the adoption of this part of this Act, and after notice from the local authority of not less than seven days, so occupies, and any person who suffers to be so occupied, any such room, shall be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding ten shillings.		
Sect. 25. —(1.) It shall not be lawful to erect a new building on any ground which had been filled up with any matter impregnated with fæcal, animal, or vegetable matter, or upon which any such matter has been deposited, unless and until such matter shall have been properly removed by excavation or otherwise, or shall have been rendered or have become innocuous.		Penalty for erecting buildings on ground filled up with offensive matter.
(2.) Every person who does or causes, or wilfully permits to be done any act in contravention of this section shall for every such offence be liable to a penalty not exceeding five pounds, and a daily penalty not exceeding forty shillings.		
Note.		
The power of making bye-laws under sect. 157 of the Public Health Act, 1875, with respect to the foundations of buildings did not apply to the ground or materials forming the site upon which the building was to be erected. ⁷		Site of new buildings.
In a successful action to restrain a lessee from committing "waste" by the tipping of refuse on the land by a sub-lessee, Buckley, J., said: "The local authority has a right under" the present section "to forbid dwellings to be put on land if the land be impregnated. . . . Why am I to expose the reversioner to the possibility of finding himself unable to build . . .?" ⁸		Waste by tipping refuse.
<div>(2) <i>Towers v. Brown</i> (1903), 2 L. G. R. 942.</div> <div>(3) <i>Post</i>, Part I., Div. III.</div> <div>(4) <i>Ante</i>, p. 403.</div> <div>(5) <i>Post</i>, Part I., Div. III.</div> <div>(6) <i>Post</i>, p. 862.</div> <div>(6a) <i>Post</i>, Part II., Div. III.</div> <div>(7) See <i>Blashill v. Chambers</i>, <i>ante</i>, p. 389 (27).</div> <div>(8) <i>West Ham Central Charity Bd. v. East London Water Co.</i>, L. R. 1900, 1 Ch., at p. 639; 69 L. J. Ch. 257; 82 L. T. 85.</div>		

Sect. 26.

Power to make
bye-laws for
certain sanitary
purposes.

Sect. 26.—(1.) An urban authority may make bye-laws in respect of the following matters, namely :—

- (a.) For prescribing the times for the removal or carriage through the streets of any fæcal or offensive or noxious matter or liquid, whether such matter or liquid shall be in course of removal or carriage from within or without or through their district.
- (b.) For providing that the vessel, receptacle, cart, or carriage used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid.
- (c.) For compelling the cleansing of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage.

(2.) Where a local authority themselves undertake or contract for the removal of house refuse they may make bye-laws imposing on the occupier of any premises duties in connection with such removal so as to facilitate the work which the local authority undertake or contract for.

Note.

**Removal of
offensive
matter.**

This is an extension of the power given by sect. 44 of the Public Health Act, 1875,⁹ to make bye-laws for the prevention of nuisances arising from filth, etc., and, where the district council do not themselves undertake or contract for the removal of house refuse, bye-laws imposing the duty of removing it upon the occupiers.

The Local Government Board declined to sanction bye-laws requiring night removal on the ground that proper supervision by the officers of the local authority was not feasible during such a time.

As to London, see the Note to sect. 49 of the Act of 1875.¹⁰

**Separation
of refuse.**

The Local Government Board and Minister of Health have both refused to sanction a bye-law under sub-sect. (2) of the present section for the separation of tins, bottles, etc., from the other refuse.

**Accessibility
of receptacles.**

As to the validity of a bye-law dealing with accessibility of receptacles, see the case cited below.¹¹

**Provision for
keeping common
courts and
passages clean.**

Sect. 27.—(1.) Where any court, or where any passage leading to the back of several buildings in separate occupations, and not being a highway repairable by the inhabitants at large, is not regularly and effectually swept and kept clean and free from rubbish or other accumulation to the satisfaction of the urban authority, the urban authority may, if they think fit, cause to be swept and cleaned such court or passage.

(2.) The expenses thereby incurred shall be apportioned between the occupiers of the buildings situated in the court or to the back of which the passage leads in such shares as may be determined by the surveyor of the urban authority, or (in case of dispute) by a court of summary jurisdiction, and in default of payment any share so apportioned may be recovered summarily from the occupier on whom it is apportioned.

Note.

**Cleansing
passages.**

Under sect. 44 of the Public Health Act, 1875, the council may by bye-laws impose the duty of cleansing footways and pavements adjoining any premises upon the occupiers. With regard to the meaning of "highway repairable by the inhabitants at large," see the Note to sect. 149 of that Act.¹²

**Extension of
38 & 39 Vict.
c. 55, ss. 116-119.**

Sect. 28.—(1.) Sects. 116 to 119 of the Public Health Act, 1875 (relating to unsound meat), shall extend and apply to all articles intended for the food of man, sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale within the district of any local authority.

(2.) A justice may condemn any such article, and order it to be destroyed or disposed of, as mentioned in sect. 117 of the Public Health Act, 1875, if satisfied on complaint being made to him that such article is diseased, unsound, unwholesome, or unfit for the food of man, although the same has not been seized as mentioned in sect. 116 of the said Act.

(9) *Ante*, p. 124.
(10) *Ante*, p. 131.

(11) *Baines' Case*, *ante*, p. 122 (31).
(12) *Ante*, p. 285.

Note.**Sect. 28, n.****Unsound food.**

The present section not only extends sects. 116-119 of the Public Health Act, 1875,¹³ to other articles of food than meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, and milk, but applies them to articles which are "sold," as well as to those which are only exposed for sale or deposited for sale or preparation for sale. Under those sections the food could only be condemned if it had been seized by the medical officer of health or inspector of nuisances: under the present enactment any person may apply for condemnation of the food in question upon sufficient evidence without any seizure of it having been made.

A conviction of a butcher as the person to whom some unsound meat belonged when it was deposited for sale, and another conviction of the butcher as the person to whom the same meat belonged when it was sold, were upheld in the following circumstances:—A customer purchased the meat at the butcher's shop, and when it was cooked on the following day it was found to be unsound, and was then taken to the medical officer of health, who declared it unfit for food; and it was shown to the inspector of nuisances, who "seized" it and had it condemned by a justice. It was held that, under the present section, it was not necessary that the meat should have been seized while in the vendor's possession.¹⁴

As to unsound imported food, see the Public Health (Regulations as to Food) Act, 1907,¹⁵ and Art. 8 (2) of the Public Health (Foreign Meat) Regulations, 1908, which puts sub-sect. (2) of the present section in force for the purposes of that Article.^{15a}

Sect. 29. Licences granted after the adoption of this part of this Act for the use and occupation of places as slaughter-houses shall be in force for such time or times only, not being less than twelve months, as the urban authority shall think fit to specify in such licences.

Duration of licences.**Note.**

The provisions of the Towns Improvement Clauses Act, 1847,¹⁶ with respect to slaughter-houses, are incorporated with the Public Health Act, 1875.¹⁷ Licences granted under those provisions are not limited in duration; but they may be suspended or revoked by the justices on conviction of the holders for offences against the Acts or bye-laws.

Slaughter-houses.

The present section prevents the licence from being granted for a less period than twelve months; and, therefore, where a licence issued in August purported to expire on the 31st December following, it was held that it operated as a licence for twelve months, so that the holder could not be convicted of using as a slaughter-house premises not duly licensed because he had so used them between the 31st December and the expiration of the twelve months.¹⁸

It was suggested, though not decided, that under the present section the premises as distinguished from the person might be licensed, although a licence granted under sect. 127 of the Towns Improvement Clauses Act, 1847, was held to be personal and to expire on the death of the licensee.¹⁹

Where a knacker's licence has been granted under the Public Health Acts, a further licence under the Knackers Acts is unnecessary.²⁰

Knacker's licence.

An appeal lies to quarter sessions against the refusal of a knacker's licence.²⁰

Appeal.

Sect. 30.—(1.) Upon any change of occupation of any building within an urban sanitary district registered or licensed for use and used as a slaughter-house, the person thereupon becoming the occupier or joint occupier shall give notice in writing of the change of occupation to the [sanitary inspector.]

Notice of change of occupation of slaughter-house.

(2.) A person who fails or neglects to give such notice within one month after the change of occupation occurs shall be liable to a penalty not exceeding five pounds.

(3.) Notice of this enactment shall be endorsed on all licences granted after the adoption of this part of this Act.

(13) *Ante*, p. 223. The cases on the present section, other than *Salt's Case*, *infra* (14) are noted there.

(14) *Salt v. Tomlinson* (K. B. D.), L. R. 1911, 2 K. B. 391; 80 L. J. K. B. 897; 105 L. T. 31; 75 J. P. 398; 9 L. G. R. 822; 27 T. L. R. 427.

(15) *Post*, Part II., Div. II.

(15a) Set out, *post*, Vol. II., Part V., under heading "FOOD, Foreign Meat."

(16) See ss. 125-131, *post*, Vol. II., p. 1630.

(17) See s. 169, *ante*, p. 436.

(18) *Taylor v. Winsford U.D.C.*, L. R. 1907, 2 K. B. 396; 76 L. J. K. B. 897; 97 L. T. 401; 71 J. P. 375; 5 L. G. R. 786.

(19) See *Goodwin v. Sale*, *post*, Vol. II., p. 1630 (5).

(20) *Rex v. Essex JJ.*, *post*, Vol. II., p. 1680.

Sect. 30, n.**Change of occupation.**

Revocation of licence on conviction for sale of meat unfit for food.

Extension of 38 & 39 Vict. c. 55, s. 84.

Buildings described in deposited plans otherwise than as dwelling-houses not to be used as such.

Alteration of buildings.**Using building for habitation.****Note.**

The present section applies to registered as well as to licensed slaughter-houses. The registered premises are those which were used as slaughter-houses before the Towns Improvement Clauses Act, 1847, was applied to the district.²¹ See also the Note to sect. 29 of the present Act.

Sect. 31. If the occupier of any building licensed as aforesaid to be used as a slaughter-house for the killing of animals intended as human food is convicted by a court of summary jurisdiction of selling or exposing for sale, or for having in his possession, or on his premises, the carcass of any animal, or any piece of meat or flesh diseased or unsound, or unwholesome, or unfit for the use of man as food, the court may revoke the licence.²²

Sect. 32. Any keeper of a common lodging-house who fails to give the notice required by sect. 84 of the Public Health Act, 1875,²³ shall be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding five shillings.

Sect. 33.—(1.) Where the plan of a building has been, either before or after the adoption of this part of this Act in any district, deposited with a local authority in pursuance of any Act of Parliament or bye-law, and that building is described therein otherwise than as a dwelling-house, any person who wilfully uses or knowingly permits to be used such building or any part thereof for the purposes of habitation by any person other than the person placed therein to take care thereof, and the family of such person, shall be guilty of an offence under this section, and shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

(2.) Provided that if such building has in the rear thereof and adjoining and exclusively belonging thereto such an open space as is required by any Act of Parliament or bye-law for the time being in force with respect to buildings intended to be used as dwelling-houses, and if such part of the building as is intended to be used as a dwelling-house has undergone such structural alterations, if any, as are necessary in the opinion of the local authority to render it fit for that purpose, the owner may use the same as a dwelling-house.

Note.

The present section relates to user of buildings. As to physical alterations, see the Note to sect. 23 and the enactments therein mentioned.¹

The person using the building for habitation is only liable to the penalty if he so uses it "wilfully;" and a reasonable excuse for sleeping on the premises on a particular occasion only, and not habitually, would afford a defence to proceedings for recovery of the penalty.

Plans for a new non-domestic building had been duly approved in May, 1894, and the building had been erected accordingly. In March, 1898, the original plans were revised so as to show a proposed conversion of the building into a domestic building, and were re-deposited, but did not show the proper air-space for a domestic building, and were neither approved nor disapproved. In October, 1898, the alterations were carried out according to the revised plans, and the building was then used for habitation. The magistrates dismissed a summons under the present section on the ground that the council ought to have approved or disapproved of the revised plans within one month. But it was held on appeal that notwithstanding sects. 158 and 159 of the Public Health Act, 1875, there had been a contravention of the present section.²

A harness room was used for dwelling purposes without any structural alteration and without submission of a plan. The local authority considered the room unsuitable as a dwelling because it had no chimney, its roof was of corrugated iron, pig houses were close by, and it had not the air space required by the bye-laws. They accordingly took proceedings and secured a conviction in October for failure to submit a plan, and a second conviction in the following February

(21) See s. 127, *post*, Vol. II., p. 1632.

(22) As to suspension and revocation of licences under the Act of 1847, see s. 129, *post*, Vol. II., p. 1633. As to unsound meat and other food, see P. H. Act, 1875, ss. 116-119, *ante*, p. 223, as extended by s. 28 of the present Act.

(23) Namely, notice of fever or any infectious disease, which is to be given to the medical officer of health and relieving officer. See *ante*, p. 166.

(1) *Ante*, p. 858.

(2) *Fulford v. Blatchford* (1899), 80 L. T. 627; 19 Cox C. C. 308.

for continuing the offence, as the room was still used for habitation. Contentions (1) that the absence of alterations prevented there being a conversion into a "new building," (2) that there could not have been any plan of alterations never contemplated, and (3) that, as nothing had been done, there could not be a "continuing offence," were overruled.³

Sect. 33, n.

Sect. 34.—(1.) Every person intending to build or take down any building, or to alter or repair the outward part of any building in any street or court, shall—

Hoards to be set up during progress of buildings, etc.

- (a.) before beginning the same, unless the urban authority otherwise consent in writing, cause close-boarded hoards or fences to the satisfaction of the urban authority to be put up in order to separate the building from the street or court;
- (b.) if the urban authority so require, make a convenient covered platform and handrail to serve as a footway for passengers outside of such hoard or fence;
- (c.) continue such hoard or fence with such platform and handrail as aforesaid standing and in good condition to the satisfaction of the urban authority during such time as they may require;
- (d.) if required by the urban authority, cause the same to be sufficiently lighted during the night;
- (e.) remove the same when required by the urban authority.

(2.) Every person who fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(3.) Where this part of this Act is adopted sect. 80 of the Towns Improvement Clauses Act, 1847, shall be repealed, and this section shall be deemed to be substituted therefor.

Note.

Sect. 80 of the Act of 1847 requires the hoard to be erected where any street or footway will be obstructed or rendered inconvenient by means of the works;⁴ but where the present section is in force there is a discretionary power on the part of the urban district council to dispense with the hoard. The present section requires the platform to be "covered," which the previous provision did not require: it also omits the words "if there be room enough," with reference to the platform and handrail. It gives the council a discretion as to causing the work to be lighted at night, while the Act of 1847 requires this to be done in all cases in which it is necessary in order to prevent accidents. See also sect. 32 of the Public Health Acts Amendment Act, 1907.⁵

Builders' hoards.

As to advertisement hoardings, and the regulation of advertisements generally, see the provisions set out elsewhere.⁶

Advertisements.

Sect 35.—(1.) All vaults, arches, and cellars under any street, and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights and coal holes in the surface of any street, and all landings, flags or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong.

As to repair of cellars under streets.

(2.) Where any default is made in complying with the provisions of this section, the urban authority may, after twenty-four hours' notice in that behalf, cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the urban authority by such owner or occupier respectively, or in default may be recovered in a summary manner.

Note.

Sect. 26 of the Public Health Act, 1875,⁷ makes it an offence to cause any vault, arch, or cellar to be newly built or constructed under the *carriage-way* of any street in an urban district.

Cellars.

Sect. 73 of the Towns Improvement Clauses Act, 1847,⁸ requires openings made in the pavements or footpaths as entrances to vaults or cellars, to be provided with doors or coverings according to the directions of the urban district council, and requires the occupiers to keep such doors or coverings in good repair. And

(3) *Harding v. Larne U.D.C.* (1911, K. B. D., I.), 45 Ir. L. T. 182; 2 Glen's Loc. Gov. Case Law 205.

(4) *Post*, Vol. II., p. 1628.

(5) *Post*, Part I., Div. III.

(6) *Post*, Vol. II., p. 2203.

(7) *Ante*, p. 92.

(8) *Post*, Vol. II., p. 1625.

Sect. 35, n.
Cellars—cont.

sect. 28 [28] of the Town Police Clauses Act, 1847,⁹ imposes a penalty on any person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar.

The present section appears to throw upon the owners or occupiers of the premises the obligation to repair any flagstones forming the roof of a cellar under the street, even though the street may be repairable by the inhabitants at large. It had been held in an action for injury resulting from the coal-plate to a cellar being out of repair that the person who was in possession of the premises, and who allowed the coal-plate to be in a dangerous condition, was the person responsible to the public for any injury resulting from its being out of repair.¹⁰ But a distinction was made between an accident caused by the occupier's neglect to repair that which formed part of the house adjoining the highway, or which was movable, and worked used and worn out under the control and for the benefit of the occupier,¹¹ and that which was fixed and was used and worn out by public traffic, and was to be repaired at the public expense; and in the case of a house having an area, the grating of which formed part of a public footway repairable by the inhabitants at large, and was in existence before and at the time of the dedication of the way to the use of the public, it was held that the owner of the houses was not liable to action for an injury to an individual from the giving way of the covering of the area in consequence of the wear and tear occasioned by public wear.¹² And with reference to a case in which the roof of a cellar was formed by the flagstones, Quain, J., said: "If in using the roadway the road gets out of order, and gets so thin that the flagstone cracks, and the public authorities cannot repair the way without at the same time repairing the roof of the cellar, it seems to me that they are bound to do it, on the simple principle that the wear is theirs, and that they ought to remedy it."¹³

A brewery company employed an independent contractor to deliver beer to a tied public house belonging to them. The contractor left the cellar flap unguarded and the plaintiff fell in. The county court judge gave judgment against both the company and the contractor. The appeal of the company was allowed on the ground that, as the contractor was not ordered to deliver the beer through the cellar flap, he was not "employed to do work dangerous to the public or which would interfere with the surface of the highway."¹⁴

**Means of ingress
 to and egress
 from places of
 public resort.**

Sect. 36.—(1.) Every building which, after the adoption of this part of this Act in any urban district, is used as a place of public resort, shall, to the satisfaction of the urban authority, be substantially constructed and supplied with ample, safe, and convenient means of ingress and egress for the use of the public, regard being had to the purposes for which such building is intended to be used, and to the number of persons likely to be assembled at any one time therein.

(2.) The means of ingress and egress shall during the whole time that such building is used as a place of public resort be kept free and unobstructed to such extent as the urban authority shall require.

(3.) An officer authorised in writing by the urban authority, and producing his authority if so required, may at all reasonable times enter any such building to see that the provisions of this section are carried into effect.

(4.) Any person who being the occupier or manager, or in the case of a building let for any period less than one year the owner of any building used as aforesaid, uses the same or suffers the same to be used in contravention of this section, or fails to comply with the provisions of this section in respect thereof, shall for every such offence be liable to a penalty not exceeding twenty pounds.

(5.) Where any alteration in the building is required in order to give proper means of ingress and egress, the court may refuse to inflict a penalty for an offence under this section until a reasonable time has been allowed for making such alteration, but the court may make such order as they think fit for the closing, or otherwise, of the building during such time.

(9) *Post*, Vol. II., p. 1649.

(10) *Pretty v. Bickmore* (1873), L. R. 8 C. P. 401; 28 L. T. 704; 21 W. R. 733. See also *Bywater v. M'Donough* (Leeds Assizes, 1896), 60 J. P. 201.

(11) See *White v. Philips* (1863), 15 C. B. (N.S.) 245; 33 L. J. C. P. 33; 10 Jur. (N.S.) 425; 9 L. T. 388.

(12) *Robbins v. Jones* (1863), 15 C. B. (N.S.) 221; 33 L. J. C. P. 1; 10 Jur. (N.S.) 239;

9 L. T. 523.

(13) *Hamilton v. Hanover Square Vestry* (1873), L. R. 9 Q. B. 42; 43 L. J. M. C. 41; 29 L. T. 428.

(14) *Wilson v. Hodgson's Brewery Co.* (1915, K. B. D.), 85 L. J. K. B. 270; 113 L. T. 1112; 80 J. P. 39; 32 T. L. R. 60. *Penny v. Wimbledon U. D. C.*, ante, p. 771 (84), and *Holliday v. National Telephone Co.*, ante, p. 771 (86), distinguished.

(6.) For the purposes of this section the expression “ place of public resort ” **Sect. 36.** means a building used or constructed or adapted to be used either ordinarily or occasionally as a church, chapel, or other place of public worship (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ballroom, public lecture-room, or public exhibition-room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used, or constructed, or adapted to be used, either ordinarily or occasionally for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes.

Provided that this section shall not extend to any building used as a church or chapel or other place of public worship before or at the time of the adoption of this part of this Act.

Note.

The present section applies to buildings erected and used as places of public resort before the passing or adoption of this Act (except in the case of churches, chapels, and other places of worship) as well as those erected subsequently. **Places of public resort.**

As to the meaning of “ place of public resort,” see the Note to sect. 81 of the Public Health Acts Amendment Act, 1907.¹⁴

Under sect. 14 of the Factory and Workshop Act, 1901,¹⁵ district councils are required to examine all factories commenced after the 1st January, 1892, and all workshops commenced after the 31st December, 1895, within their district in which more than forty persons are employed, in order to ascertain whether they are provided with such means of escape in the case of fire as can reasonably be required in each case. In the case of these factories and workshops they are to give certificates when such means of escape are provided; and in the case of old factories they are, if necessary, to take steps to have proper means of escape provided. They may also make bye-laws providing for means of escape in case of fire from factories and workshops—see sect. 15 of that Act.¹⁶ The doors of the rooms are required in certain cases to be made to open outwards and to be kept unfastened—see sect. 16 of the same Act.¹⁶ **Factories and workshops.**

A local authority were held not to be entitled to disapprove plans of a cinematograph theatre because of the narrowness of the adjoining streets and the traffic congestion therein.¹⁷ **Egress from cinema.**

Sect. 37.—(1.) Whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting, or other like occasion, every roof of a building, and every platform, balcony, or other structure or part thereof let or used or intended to be let or used for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed or secured to the satisfaction of the surveyor of the urban authority. **Safety of platforms, etc., erected or used on public occasions.**

(2.) Any person who uses or allows to be used in contravention of this section, any roof of a building, platform, balcony, or structure not so safely constructed or secured, or who neglects to comply with the provisions of this section in respect thereof, shall be liable to a penalty not exceeding fifty pounds.

Note.

Persons who erect stands and charge for admission are liable for injury sustained through negligent construction.¹⁸ **Safety of stands.**

Sect. 38. An urban authority may make bye-laws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power, and from the use of firearms in shooting ranges and galleries. **Bye-laws for prevention of danger from whirligigs, shooting galleries, etc.**

Note.

Such structures were held not to be “ buildings ” so as to require licences for their erection from the London County Council under a provision of the Metropolis Management and Building Act, 1882.¹⁹

A bye-law requiring whirligigs to be separated from the street by a wall fourteen inches thick was held unreasonable.²⁰ **Whirligigs.**

(14) *Post*, p. 919.
(15) *Post*, Vol. II., p. 2145.
(16) *Post*, Vol. II., p. 2147.
(17) *Rex (Cambridge Picture Playhouses, Ltd.) v. Cambridge Cpn.*, L. R. 1922, 1 K. B. 250; 91 L. J. K. B. 118; 126 L. T. 365; 86 J. P. 13; 20 L. G. R. 67.
(18) *Francis v. Cockrell* (1870), L. R. 5

Q. B. 501; 39 L. J. Q. B. 291; 23 L. T. 466; 10 B. & S. 850. Considered in *Maclean v. Segar*, L. R. 1917, 2 K. B. 325; 86 L. J. K. B. 1113; 117 L. T. 376; and *Brannigen v. Harrington* (1921, Greer, J.), 37 T. L. R. 349.
(19) *Hall v. Smallpiece*, ante, p. 384 (19).
(20) *Enniscorthy v. Field*, ante, p. 499 (31).

Sect. 39.Refuges, etc.
in streets.

Sect. 39. An urban authority may from time to time place, maintain, alter, and remove in any street, being a highway repairable by the inhabitants at large, such raised paving or places of refuge, with such pillars, rails, or other fences, either permanent or temporary, as they may think fit, for the purpose of protecting passengers and traffic, either along the street or on the footways, from injury, danger, or annoyance, or for the purpose of making the crossing of any street less dangerous to passengers.¹

Cabmen's
shelters.

Sect. 40.—(1.) An urban authority may from time to time provide, maintain, and remove in or near any street in their district suitable erections for the use, convenience, and shelter of drivers of hackney carriages, and such other persons as the urban authority may permit to use the same.

(2.) The urban authority may from time to time make regulations for prescribing the terms and conditions and the fees (if any) to be charged for the use of such places of shelter, and may make bye-laws for regulating the conduct of persons using the same.

Sect. 41. Where this part of this Act is adopted, sect. 152 of the Public Health Act, 1875, shall be repealed, and the following provisions shall be substituted in lieu thereof :—

Adoption of
private streets.

(1.) Whenever all or any of the works mentioned in sect. 150 of the Public Health Act, 1875, have been executed in a street or part of a street under that section by an urban authority, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.

(2.) Provided that no such street shall become a highway so repairable if within one month after such notice has been put up the owner or the majority in number or value of owners of such street by notice in writing to the urban authority object thereto, and in ascertaining such majority joint owners shall be reckoned as one owner.

Note.Adoption of
maintenance
of street.

It was held under sect. 152 of the Public Health Act, 1875, that the urban authority could only adopt the maintenance of a street in pursuance of that section when all the several kinds of work mentioned in the section had been executed in it.²

The present section only applies where the works have been executed "by an urban authority," and unless this can be considered to include cases in which the owners have complied with the notices served on them under sect. 150 and executed the works themselves, it would seem that the district council cannot adopt the maintenance of any part of a street under the present section unless there was a default on the part of the owners, and an execution of some of the required works by the council in such part of the street.

The present section does not apply where the Private Street Works Act, 1892, has been adopted.³ See also the last clause of sect. 19 (4) of the Public Health Acts Amendment Act, 1907.⁴

Statues and
monuments.

Sect. 42. Any urban authority may from time to time authorise the erection in any street or public place within their district of any statue or monument, and may maintain the same, and any statue or monument erected within their district before the adoption of this part of this Act, and may remove any statue or monument the erection of which has been authorised by them.

Note.**Monuments.**

A local authority agreed to erect and maintain in a public pleasure ground a monument to a dog subscribed for by anti-vivisectionists, but removed it in consequence of heavy expenses incurred in protecting it from medical students, who were incensed by the inscription upon it, and refused to re-erect it. An action to enforce the agreement was dismissed.⁵

In the case cited below,⁶ a statue was maliciously tarred. As to the protection of ancient monuments, see the Act of 1913.⁷

(1) As to the lighting of street refuges, see *Baldock's Case* and others, *ante*, p. 408.

(2) *A.G. v. Bidder*, *ante*, p. 357.

(3) See s. 25, *ante*, p. 354. In such cases ss. 19 and 20 of that Act, *ante*, pp. 352, 353, are in force instead.

(4) *Post*, Part I., Div. III.

(5) *Woodward v. Battersea B.C.*, *ante*, p. 424 (13).

(6) *Farnham v. Cavan C.C.*, *post*, Vol. II., p. 1530.

(7) *Post*, Vol. II., p. 1528.

As to fountains on highways, see the cases cited below.⁷
District and other councils may, under the War Memorials (Local Authorities' Powers) Act, 1923,⁸ "incur reasonable expenditure in the maintenance, repair, and protection of any war memorial within their district which may be vested in them . . . limited to an amount from time to time approved by the Minister of Health," but this Act is not to apply to war memorials "provided or maintained by a local authority in the exercise of any other statutory power."

Sect. 42, n.
Fountains.
War
Memorials.

Sect. 43. Any urban authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier.

Trees in roads.

Note.

With regard to trees growing in streets, see sect. 149 of the Public Health Act, 1875, and Note.⁹ That section renders persons injuring such trees (when the street is repairable by the inhabitants at large) liable to penalties and damages.

Trees.

Under the present section a local authority planted trees along a highway, and for the purpose of stopping boys from climbing up into the trees fenced them with iron guards, the tops of which projected outwards in spikes. The guards were about 5 feet 3 inches high. The chief constable of Sheffield, on 3rd April, 1916, acting under an order made pursuant to the Defence of the Realm Regulations, ordered all lights to be put out at a certain hour. On 20th April, seventeen days after the order came into effect, the plaintiff at night was coming down the street after the lights had been extinguished, and seriously injured his eye by coming into contact with one of the spikes. The Court of Appeal held that, although the local authority might have exercised their statutory power reasonably in view of the normal conditions existing at the time when the guards were put up, nevertheless there was a continuing duty on them to take reasonable care for the protection of the public, notwithstanding that the circumstances were extraordinary and the difficulties great. The jury had found negligence on the part of the defendants; and, there being evidence on which they could so find, the plaintiff succeeded.¹⁰

Dangerous
tree guard.

Sect. 44.—(1.) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public, may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

Parks and
pleasure
grounds.

(2.) An urban authority may either themselves provide and let for hire, or may licence any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make bye-laws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat.

Note.

With regard to the establishment and maintenance of public walks, pleasure grounds and parks, see sect. 164 of the Public Health Act, 1875,¹¹ and the Note to that section. That Act does not enable the urban district council to impose charges for the right of entering the public pleasure ground. See also sect. 45 of

Parks and
pleasure
grounds.

(7) *Hildreth's Case*, ante, p. 153 (21);
O'Keefe's Case and *M'Loughlin's Case*, ante,
p. 152 (13) (14).
(8) 13 & 14 Geo. V. c. 18.
(9) Ante, p. 292. See also *Lemmon's Case*,
ante, p. 212 (59); *Tregella's Case*, ante,
p. 774 (26); and *Middleton's Case*, ante,
p. 389 (21).
(10) *Morrison v. Sheffield Cpn.*, L. R. 1917,
2 K. B. 866; 86 L. J. K. B. 1456; 117 L. T.
520; 81 J. P. 277; 15 L. G. R. 667; *Great
Central Ry. Co. v. Hewlett*, ante, p. 408 (14),
distinguished. Further as to *Morrison's
Case*, see ante, p. 763 (9).
(11) Ante, p. 422; and see "Glen's District
Councillor's Guide," Chap. V., § 16 (b).

Sect. 44, n.**Pleasure boats.**

the present Act, and sects. 76 and 77 of the Act of 1907,¹² and, as to parish councils, sect. 8 of the Local Government Act, 1894.¹³

The provision in the present section as to pleasure boats is an extension of the second clause of sect. 172 of the Public Health Act, 1875,¹⁴ which did not authorise the urban district council to provide or let the boats themselves. As to bye-laws with respect to such boats, see the Note to that section.

A conviction of a local authority¹⁵ for not holding a Board of Trade certificate in respect of an electric launch, which carried passengers for hire round an artificial lake, was quashed.¹⁶

Extension of
38 & 39 Vict.
c. 55, s. 164.

Sect. 45. The powers of an urban authority under sect. 164 of the Public Health Act, 1875, to contribute to the support of public walks or pleasure grounds, shall include a power to contribute towards the cost of the laying out, planting, or improvement of any lands provided by any person which have been permanently set apart as public walks or pleasure grounds, and which, whether in the district of the urban authority or not, are so situated as to be conveniently used by the inhabitants of the district, and shall also include a power to contribute towards the purchase by any person of lands so situate and to be so set apart as aforesaid.

Extension of
38 & 39 Vict.
c. 55, s. 165.

Sect. 46. Sect. 165 of the Public Health Act, 1875,¹⁷ shall be extended so as to enable any urban authority to pay the reasonable cost of the repairing, maintaining, winding up, and lighting any public clock within their district although the same be not vested in them.

Restriction
on throwing
cinders, etc.,
into streams.

Sect. 47.—(1.) It shall not be lawful for any person to throw or place or suffer to be thrown or placed into or in any river, stream, or watercourse within any district in which this part of this Act is adopted, any cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter which is likely to cause annoyance.

(2.) Every person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every such offence.

Note.

Throwing
rubbish into
stream.

It is an offence against the Rivers Pollution Prevention Act, 1876,¹⁸ to throw solid refuse, rubbish, or waste or putrid solid matter into a stream so as to interfere with its due flow, or pollute its waters, and the person committing the offence is liable to proceedings in the county court under that Act.¹⁹

The present section applies whenever the matter thrown into the stream is such as to be "likely to cause annoyance," and renders the offender liable to a penalty recoverable before justices, and two months' notice of intention to proceed is not necessary, as under sect. 13 of the Act of 1876.²⁰

Waste matter from alkali works, consisting of finely divided powder held in suspension in water, was held to come within a prohibition against casting, throwing, or emptying any rubbish or filth into a navigable river.²¹ See also sect. 3 (3) of the Alkali, etc., Works Regulation Act, 1906.²²

Extension of
38 & 39 Vict.
c. 55, s. 306.

Sect. 48. So much of sect. 306 of the Public Health Act, 1875, as imposes penalties on persons who destroy, pull down, injure, or deface any board on which any bye-law, notice, or other matter is inscribed, shall apply to persons who destroy, pull down, injure, or deface any advertisement, placard, bill, or notice put up by or under the direction of a local authority.

Note.

Destruction
of notices.

Sect. 306 of the Public Health Act, 1875,²³ was only applicable where notices, etc., were placed on a board, and the board was injured or defaced.

Power to deter-
mine expenses
of rural
authorities to
be special
expenses.

Sect. 49. The [Minister of Health] may by order on the application of any rural authority declare any expenses incurred by such authority to be special expenses within the meaning of sects. 229 and 230 of the Public Health Act, 1875.

(12) *Post*, Part I., Div. III.

(13) *Post*, Vol. II., p. 2004.

(14) *Ante*, p. 439.

(15) Under Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 318.

(16) *Southport Cpn. v. Morriss*, L. R. 1893, 1 Q. B. 359; 62 L. J. M. C. 47; 68 L. T. 221; 57 J. P. 231.

(17) *Ante*, p. 431.

(18) See s. 2, *post*, Vol. II., p. 1743.

(19) See s. 10, *ibid.*, p. 1750.

(20) *Post*, Vol. II., p. 1753.

(21) *United Alkali Co. v. Simpson*, L. R. 1894, 2 Q. B. 116; 63 L. J. M. C. 141; 71 L. T. 258; 58 J. P. 607. Applied to china clay works in *Wheal Remfrey China Clay Co. v. Truro Cpn.*, L. R. 1923, 2 K. B. 594.

(22) *Post*, Vol. II., p. 2191.

(23) *Ante*, p. 750.

Note.

Sect. 49, n.

Under sect. 229 of the Public Health Act, 1875,²⁴ the expenses could only be declared special expenses where they were incurred or payable "in or in respect of any contributory place" within the district of the rural authority. See also the Note to sect. 3 of the present Act with regard to the adoption of the Act in rural districts.

Special expenses.

Sect. 50. The following provisions of this part of this Act shall be applicable in rural sanitary districts, namely,—

Application of part of Act in rural districts.

Sect. 16, relating to injurious matter being passed into sewers.

Sect. 17, relating to the turning of chemical refuse, steam, etc., into sewers.

Sect. 18, relating to local authorities making communication with drains, etc.

Sect. 19, relating to the extension of sect. 41 of the Public Health Act, 1875.

Sect. 21, relating to sanitary conveniences used in common.

So much of sect. 23, relating to the extension of sect. 157 of the Public Health Act, 1875, as applies to rural authorities.

Sect. 25, relating to the penalty for erecting buildings on ground filled up with offensive matter.

Sect. 26 (2), relating to the power to make bye-laws for certain sanitary purposes.

Sect. 28, relating to the extension of sects. 116 to 119 inclusive of the Public Health Act, 1875.

Sect. 32, relating to the extension of sect. 84 of the Public Health Act, 1875.

Sect. 33, relating to the use of buildings described in deposited plans otherwise than dwelling-houses.

Sect. 47, relating to the restriction on throwing cinders, etc., into streams.

Sect. 48, relating to the extension of sect. 306 of the Public Health Act, 1875.

Sect. 49, relating to the powers of the [Minister of Health] to determine expenses of rural authorities to be special expenses.

Note.

Other provisions of the Act than those mentioned in the present section may be applied to rural district councils by the Minister of Health under sect. 5 of the present Act, or under sect. 25 (5) of the Local Government Act, 1894: see the Note to sect. 3 of the present Act.

Rural districts.

PART IV.**MUSIC AND DANCING.**

Sect. 51. For the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind, the following provisions shall have effect (namely):—

Music and dancing licences.

(1.) After the expiration of six months from the adoption of this part of this Act, a house, room, garden, or other place, whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind without a licence for the purpose or purposes for which the same respectively is to be used first obtained from the licensing justices of the licensing district in which the house, room, garden, or place is situate, and for the registration thereof a fee of five shillings shall be paid by the person applying therefor:

(2.) Such justices may, under the hands of a majority of them assembled at their general annual licensing meeting or at any adjournment thereof or at any special session convened with fourteen days' previous notice, grant licences to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and subject to such restrictions as they by the respective licences determine, and every licence shall be in force for one year or for such shorter period as the justices on the grant of the licence shall determine, unless the same shall have been previously revoked as hereinafter provided:

(3.) Such justices may from time to time at any such special session aforesaid transfer any such licence to such person as they think fit:

(4.) Each person shall in each case give fourteen days' notice to the clerk of the licensing justices and to the chief officer of police of the police district in which the

Sect. 51.

house, room, garden, or place is situated, of his intention to apply for any such licence or for the transfer of any such licence :

(5.) Any house, room, garden, or place kept or used for any of the purposes aforesaid without such licence first obtained shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable to a penalty not exceeding five pounds for every day on which the same is kept or used for any of the purposes last aforesaid :

(6.) There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid, an inscription in large capital letters in the words following :
“ Licensed in pursuance of Act of Parliament for ” with the addition of words showing the purpose or purposes for which the same is licensed :

(7.) Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes except on the days and between the hours stated in the licence :

(8.) The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such licence :

(9.) In case of any breach or disregard of any of the terms or conditions upon or subject to which the licence was granted, the holder thereof shall be liable to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding five pounds, and such licence shall be liable to be revoked by the order of a court of summary jurisdiction :

(10.) No notice need be given under sub-sect. (4) of this section when the application is for a renewal of any existing licence held by the applicant for the same premises :

(11.) The justices in any petty sessions may, if and as they think fit, grant to any person applying for the same a licence to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days which they shall specify in such licence, notwithstanding that no notices shall have been given under sub-sect. (4) of this section :

(12.) This section shall not apply within twenty miles of the cities of London or Westminster :

(13.) In this section the expressions “ licensing justice,” “ licensing district,” and “ clerk of the licensing justices ” have respectively the same meanings as in the Licensing Acts, 1872-1874; the expression “ police district ” means any area for which a separate police force is maintained; and the expression “ chief officer of police ” means the chief constable, head constable, or other officer, by whatever name called, having the chief command of such separate police force.

Note.

This is not an amendment of any provision of the Public Health Acts, but an extension of the Disorderly Houses Act, 1751,¹ which rendered licences necessary for music or dancing in places of public entertainment within the area excepted from the present section by sub-sect. (12). The granting of music and dancing licences within the area so excepted was transferred from the quarter sessions to the county councils by sect. 3 (v.) of the Local Government Act, 1888.²

The six months mentioned in sub-sect. (1) of the present section, the Local Government Board were advised, should be calculated from the actual date of adoption, that is, from whatever date is fixed by the district council, being not less than one month after the first publication of the advertisement of the resolution of adoption as required by sect. 3 (4).

A piece of open ground near the sea beach in a borough in which the present section had been adopted was let to a troupe of musicians, who gave entertainments there throughout the summer months. During such entertainments part of the ground was enclosed by ropes fixed to stakes and occupied by rows of chairs. It was held to be a place ordinarily used for public music, so that a licence was necessary.³

The licence is only required for places used for *public* music, dancing, or entertainments, that is, places to which access with or without payment is afforded to the public generally, as distinguished from subscribers or any other limited body of

Music and dancing licences.

Public music, etc.

(1) 25 Geo. II. c. 36, s. 2. Army and Navy recreation rooms were excepted from these provisions by Army Act, 1889 (52 Vict. c. 3), s. 7.

(2) *Post*, Vol. II., p. 1889.

(3) *Farndale v. Bainbridge* (1898, Q. B. D.), *Loc. Gov. Chron.* 120; *Times*, Jan. 14.

persons, and it was held that such a licence was not required by a licensed victualler who kept a piano in the smoke-room of his hotel for the use of the guests.⁴ **Sect. 51, n.**

A licence for music does not include one for dancing.⁵ There is no exemption for "comparatively private dancing,"⁶ but a licence is not required for a dancing master's salon,⁷ or temporary use for dancing of a room in a public-house.⁸ Sole user for musical performances is not essential, if such use is "regular."⁹ A licence is required though no charge is made for admission.¹⁰ A licence is required though the admission money is not taken for the benefit of the owner of the building.¹¹ The music and dancing must be an "essential" part of the entertainment, and not a mere "accessory."¹² A licence is required for a skating rink where the skaters skate to music.¹³ Some justices are requiring licences in respect of wireless installations in public-houses.¹⁴

Justices were held not entitled to make a general rule that applications should only be made at their general annual licensing meeting.¹⁵ **Applications.**

The fact that nothing was painted on a house denoting that it was licensed was held to be *prima facie* evidence that it was not licensed.¹⁶ **Evidence of no licence.**

A person who managed a cinematograph theatre for a company was held not to be the occupier of the premises. His conviction for allowing them to be used without a licence was accordingly quashed. The person licensed had been transferred for duties elsewhere, and his successor was not licensed, and Lush, J., doubted whether any offence had been committed at all.¹⁷ **Occupier.**

A rule *nisi* for a writ of *certiorari* quashing a conviction under the present section was granted on the ground that it was not alleged in the summons either (a) that the defendant was the person occupying or rated as occupier of the premises where the unlicensed dancing took place, or (b) that the premises were "ordinarily" used for public dancing. It was held that, as both these points had been contested before the justices, and the justices had decided them against the defendant, and the defendant had not been prejudiced by these omissions from the summons, the rule must be discharged.¹⁸ **Form of summons.**

The Divisional Court refused to grant a rule for a *mandamus* to justices requiring them to hear and determine an application for a music and dancing licence under the present section for a hall connected with a public-house, where the justices had refused to issue such a licence except on condition that the applicant should charge at least 3d. a head for admission, and should not return the amount in the form of refreshment.¹⁹ **Conditional licences.**

As to the right to attach conditions to the grant of licences, the following cases on other matters may be referred to in support of the general proposition that an authority invested with discretionary power to grant licences must exercise its discretion in accordance with the rules of reason and justice.²⁰

Where justices made the grant of a liquor licence conditional on the payment of a sum of money, the court granted a *mandamus* directing them to hear and determine the application according to law.²¹

(4) *Brearley v. Morley* (1899), 68 L. J. Q. B. 417; 46 L. J. M. C. 197; 36 L. T. 478; 722; 80 L. T. 801; 63 J. P. 582.

(5) *Brown v. Nugent* (1872), L. R. 7 Q. B. 588; 41 L. J. M. C. 166; 26 L. T. 880; 36 J. P. 22.

(6) *Clarke v. Searle* (1793), 1 Esp. 25; but see *Maloney v. Lingard*, *Times*, Jan. 14, 1898.

(7) *Bellis v. Burghall* (1799), 2 Esp. 722.

(8) *Shutt v. Lewis* (1804), 5 Esp. 128; *Gregory v. Tuffs* (1833), 6 C. & P. 271; 1 M. & Rob. 318; *Syers v. Conquest* (1873), 28 L. T. 402; 21 W. R. 524; 37 J. P. 342.

(9) *Bellis v. Beale* (1799), 2 Esp. 592.

(10) *Archer v. Willingrice* (1802), 4 Esp. 186; *Marks v. Benjamin* (1839), 5 M. & W. 565; 2 M. & R. 225; 9 L. J. M. C. 20; 3 Jur. 1194; *Frailing v. Messenger* (1867), 16 L. T. 494; 31 J. P. 423.

(11) *Green v. Botheroyd* (1828), 3 C. & P. 471; *Shelley v. Bethell* (1883), L. R. 12 Q. B. D. 11; 53 L. J. M. C. 16; 49 L. T. 779; 48 J. P. 244.

(12) *Guaglieni or Quaglieni v. Matthews* (1865), 6 B. & S. 474; 34 L. J. M. C. 116; 29 J. P. 439; 11 Jur. (N.S.) 636; 13 W. R. 679; *Fay v. Bignell* (1883), Cab. & E. 112; *Hall v. Green* (1853), 2 C. L. R. 427; 9 Ex. 247; 23 L. J. M. C. 15.

(13) *Reg. v. Tucker* (1877), L. R. 2 Q. B. D. 417; 46 L. J. M. C. 197; 36 L. T. 478; 41 J. P. 294.

(14) *E.g.*, at Birmingham; see 58 L. J. Jo. 106.

(15) *Rex (Mellor) v. Oldham JJ.* (1909), 101 L. T. 430; 73 J. P. 390.

(16) *Gregory v. Tuffs*, *supra* (8).

(17) *Bruce v. McManus*, L. R. 1915, 3 K. B. 1; 84 L. J. K. B. 1860; 113 L. T. 332; 79 J. P. 294; 13 L. G. R. 727.

(18) *Rex (Johnston) v. Belfast JJ.*, 1914 Ir. K. B. 181n.; 5 Glen's Loc. Gov. Case Law 57. As to similar points, see *ante*, p. 654.

(19) *Ex parte Richards* (1904), 68 J. P. 536.

(20) As to whether a condition is "separable," see *Darney's Case*, *ante*, p. 908 (38). For other cases, see *ante*, pp. 370, 371; and, for cab and omnibus conditional licence cases, see *post*, Vol. II., p. 1662.

(21) *Reg. (Patton) v. Bowman* (Q. B. D.), L. R. 1898, 1 Q. B. 663; 67 L. J. Q. B. 463; 78 L. T. 230; 62 J. P. 374. This condition was also held illegal in the *Newcastle and London C.C. Cases*, *ante*, pp. 370 (13). But see *Ex parte Richards*, *supra* (19). A condition that a public-house should not be "tied" was held illegal in *Rex (Bricker) v. Crewe JJ.* (1914, K. B. D.), 111 L. T. 1074; 79 J. P. 26; 30 T. L. R. 626.

Sect. 51, n.
Conditional
licences—
continued.

A condition that the applicant shall not apply for an excise licence may be attached to the grant of a licence for stage plays, but in the case in which it was so held Cave, J., said: "It is possible that an objection might have been raised if they had passed a general rule that under no circumstances should a theatre be licensed unless the licensee undertook not to apply for an excise licence."²² But the Court of Appeal have held that a public body may base its refusal of a licence on a previously adopted policy.²³

The House of Lords held that magistrates were not entitled to attach to a licence issued under a local Act to a vendor of ice cream conditions regulating the mode of carrying on the trade.²⁴ This was distinguished by the Divisional Court in a case where a county council, being authorised by sect. 2 of the Cinematograph Act, 1909,²⁵ to grant licences for cinematograph exhibitions "on such terms and conditions and under such restrictions as, subject to regulations of the Secretary of State, the council may by the respective licences determine," were held entitled to impose a condition that the licensed premises should not be opened under the licence on Sundays, Good Friday, or Christmas Day; and a contention that such conditions were limited in their scope by the title to the Act, namely, "An Act to make better provision for securing safety at cinematograph and other exhibitions," was overruled.²⁶ But this contention succeeded where the condition related to unaccompanied children.²⁷

A condition that "no film shall be exhibited if notice that the justices object to such film has been given to the licensee" was held *intra vires* by Horridge, J., at Liverpool Assizes,²⁸ and *ultra vires* by the Divisional Court.²⁹ These two cases were subsequently considered by the Divisional Court, and it was held that a condition that no film should be shown which had not been "certified by the British Board of Film Censors" was *ultra vires*.³⁰

The refusal of a licence under sect. 2 of the Act of 1909, on the ground that the majority of the shareholders in the company applying therefor were alien enemies, was upheld by the Court of Appeal.³¹

As to the power to revoke licences, see the case cited below.³²

Revocation
of licence.

Cinematograph
licence.

The Cinematograph Act, 1909,³³ is administered by county and county borough councils, and in some cases by the Lord Chamberlain; but county councils may delegate their powers to district councils.³⁴ The Regulations are dated July 30th, 1923.³⁵ The provisions of the Act relating to England are as follows:—

"1. An exhibition of pictures or other optical effects by means of a cinematograph, or other similar apparatus, for the purposes of which inflammable films are used, shall not be given unless the regulations made by the Secretary of State for securing safety are complied with, or, save as otherwise expressly provided by this Act, elsewhere than in premises licensed for the purpose in accordance with the provisions of this Act.

"2.—(1) A county council may grant licences to such persons as they think fit to use the premises specified in the licence for the purposes aforesaid on such terms and conditions and under such restrictions as, subject to regulations of the Secretary of State, the council may by the respective licences determine. (2) A licence shall be in force for one year or for such shorter period as the council on

(22) *Reg. v. Yorkshire (W. R.) C.C.*, L. R. 1896, 2 Q. B. 386; 65 L. J. M. C. 136; 75 L. T. 252; 60 J. P. 550. *Reg. v. Sheerness U.D.C.* (1898, C. A.), 14 T. L. R. 533.

(23) *Rex (Kynoch's, Ltd.) v. Port of London Authority*, L. R. 1919, 1 K. B. 176; 88 L. J. K. B. 553; 120 L. T. 177; 83 J. P. 41; 16 L. G. R. 937, *re* building of quay, etc. Further as to making "general" rules, see *ante*, p. 110.

(24) *Rossi v. Edinburgh Cpn.*, L. R. 1905 A. C. 21; 91 L. T. 668.

(25) Quoted *infra*.

(26) *London C.C. v. Bermondsey Bioscope Co.*, L. R. 1911, 1 K. B. 445; 80 L. J. K. B. 141; 103 L. T. 760; 75 J. P. 53; 9 L. G. R. 79. Followed in *Ellis v. North Metrop. Theatres, Ltd.*, L. R. 1915, 2 K. B. 61; 84 L. J. K. B. 1077; 112 L. T. 1018; 79 J. P. 297; 13 L. G. R. 735. See also *Reg. (Ritchie) v. Yorkshire (W. R.) C.C.*, L. R. 1896, 2 Q. B. 386, as to theatre liquor licences.

(27) *Theatre de Luxe (Halifax), Ltd. v. Gledhill*, L. R. 1915, 2 K. B. 49; 84 L. J.

K. B. 649; 112 L. T. 519; 79 J. P. 238; 13 L. G. R. 541.

(28) *Stott v. Gamble*, L. R. 1916, 2 K. B. 504; 85 L. J. K. B. 1750; 115 L. T. 309; 80 J. P. 443; 14 L. G. R. 769. For previous *certiorari* proceedings in this case, see *ante*, p. 701 (13a).

(29) *Rex (Longford) v. Burnley JJ.* (1916), 85 L. J. K. B. 1565; 115 L. T. 525; 80 J. P. 382; 14 L. G. R. 960.

(30) *Ellis v. Dubowski*, L. R. 1921, 3 K. B. 621; 91 L. J. K. B. 89; 126 L. T. 91; 85 J. P. 230; 19 L. G. R. 641.

(31) *Rex (London and Provincial Electric Theatres, Ltd.) v. London C.C.*, L. R. 1915, 2 K. B. 466; 84 L. J. K. B. 1787; 113 L. T. 118; 79 J. P. 417; 13 L. G. R. 847.

(32) *Hoffman v. Bond* (1875), 32 L. T. 775; 40 J. P. 5.

(33) 9 Edw. VII. c. 30, ss. 1-7.

(34) 56 & 57 Vict. c. 73, s. 64; 9 Edw. VII. c. 30, s. 5.

(35) 21 L. G. R. (Orders) 256-272. Orders of 1910 and 1913 revoked.

the grant of the licence may determine, unless the licence has been previously revoked as herein-after provided. (3) A county council may transfer any licence granted by them to such other person as they think fit. (4) An applicant for a licence or transfer of a licence shall give not less than seven days' notice in writing to the county council and to the chief officer of police of the police area in which the premises are situated of his intention to apply for a licence or transfer: Provided that it shall not be necessary to give any notice where the application is for the renewal of an existing licence held by the applicant for the same premises. (5) There shall be paid in respect of the grant, renewal, or transfer of a licence such fees as the county council may fix, not exceeding in the case of a grant or renewal for one year one pound, or in the case of a grant or renewal for any less period five shillings for every month for which it is granted or renewed, so however that the aggregate of the fees payable in any year shall not exceed one pound, or, in the case of transfer, five shillings. (6) For the purposes of this Act, the expressions "police area" and "chief officer of police," as respects the city of London, mean the city and the Commissioner of City Police, and elsewhere have the same meanings as in the Police Act, 1890.³⁵

"3. If the owner of a cinematograph or other apparatus uses the apparatus, or allows it to be used, or if the occupier of any premises allows those premises to be used, in contravention of the provisions of this Act or the regulations made thereunder, or of the conditions or restrictions upon or subject to which any licence relating to the premises has been granted under this Act, he shall be liable, on summary conviction, to a fine not exceeding £20, and in the case of a continuing offence to a further penalty of £5 for each day during which the offence continues, and the licence (if any) shall be liable to be revoked by the county council.

"4. A constable or any officer appointed for the purpose by a county council may at all reasonable times enter any premises, whether licensed or not, in which he has reason to believe that such an exhibition as aforesaid is being or is about to be given, with a view to seeing whether the provisions of this Act, or any regulations made thereunder, and the conditions of any licence granted under this Act, have been complied with, and, if any person prevents or obstructs the entry of a constable or any officer appointed as aforesaid, he shall be liable, on summary conviction, to a penalty not exceeding £20.

"5. Without prejudice to any other powers of delegation, whether to committees of the council or to district councils, a county council may, with or without any restrictions or conditions as they may think fit, delegate to justices sitting in petty sessions any of the powers conferred on the council by this Act.

"6. The provisions of this Act shall apply in the case of a county borough as if the borough council were a county council, and the expenses of the borough council shall be defrayed out of the borough fund or borough rate.

"7.—(1) Where the premises are premises licensed by the Lord Chamberlain the powers of the county council under this Act shall, as respects those premises, be exercisable by the Lord Chamberlain instead of by the county council. (2) Where the premises in which it is proposed to give such an exhibition as aforesaid are premises used occasionally and exceptionally only, and not on more than six days in any one calendar year, for the purposes of such an exhibition, it shall not be necessary to obtain a licence for those premises under this Act if the occupier thereof has given to the county council and to the chief officer of police of the police area, not less than seven days before the exhibition, notice in writing of his intention so to use the premises, and complies with the regulations made by the Secretary of State under this Act, and, subject to such regulations, with any conditions imposed by the county council, and notified to the occupier in writing. (3) Where it is proposed to give any such exhibition as aforesaid in any building or structure of a moveable character, it shall not be necessary to obtain a licence under this Act from the council of the county in which the exhibition is to be given if the owner of the building or structure—(a) has been granted a licence in respect of that building or structure by the council of the county in which he ordinarily resides, or by any authority to whom that council may have delegated the powers conferred on them by this Act; and (b) has given to the council of the county and to the chief officer of police of the police area in which it is proposed to give the exhibition, not less than two days before the exhibition,

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notice in writing of his intention to give the exhibition; and (c) complies with the regulations made by the Secretary of State under this Act, and, subject to such regulations, with any conditions imposed by the county council, and notified in writing to the owner. (4) This Act shall not apply to an exhibition given in a private dwelling-house to which the public are not admitted, whether on payment or otherwise."

Trade film exhibition.

In an action to restrain an exhibition of cinematograph films without a licence from the relators, it was proved (1) that the defendants, who were film agents, had fitted up a room in the basement of their business premises with means for throwing films on a screen, and had provided about forty seats; (2) that they had announced, in trade papers only, that intending purchasers or hirers could see their films on Tuesdays or Thursdays, or, by arrangement, on other days; and (3) that they admitted only persons whom they *bonâ fide* believed to be prospective customers, and took reasonable precautions to prevent other persons being present. On these facts it was held that the display was not an "exhibition" within the statute, and the action was dismissed.³⁶

Keeping gangways clear.

A conviction, for breach of a regulation under sect. 1 of this Act requiring gangways to be kept clear, was upheld, though the full number of seats for which the cinema had been licensed had not yet been installed.³⁷

Delegation to justices.

Justices to whom powers have been delegated under sects. 5 or 6 of this Act have no power to state a case, in relation to their refusal to grant a licence except on conditions not acceptable to the applicant.³⁸

Public baths as cinemas.

As to the right to let public baths for cinematograph exhibitions, see the case cited below.³⁹

Entertainments for children.

The Children Act, 1908,⁴⁰ provides as follows:—“(1) Where an entertainment for children or any entertainment at which the majority of the persons attending are children is provided, and the number of children who attend the entertainment exceeds one hundred, and access to any part of the building in which children are accommodated is by stairs, it shall be the duty of the person who provides the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to any such part of the building than that part can properly accommodate, and to control the movement of the children and other persons admitted to any such part whilst entering and leaving, and to take all other reasonable precautions for the safety of the children. (2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this section. (3) If any person, on whom any obligation is imposed by this section, fails to fulfil that obligation, he shall be liable, on summary conviction, to a fine not exceeding in the case of a first offence, £50, and in the case of a second or subsequent offence, £100, and also, if the building in which the entertainment is given is licensed under any of the enactments relating to the licensing of theatres and of houses and other places for music or dancing, the licence shall be liable to be revoked by the authority by which the licence was granted. (4) A constable may enter any building in which he has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided with a view to seeing whether the provisions of this section are carried into effect. (5) It shall be the duty of the council of the county or county borough in which a building in which any contravention of the provisions of this section is alleged to have taken place to institute proceedings under this section if the building is a building licensed by the Lord Chamberlain, or is licensed by the council of the county or county borough under the enactments relating to the licensing of theatres or of houses and other places for music or dancing, and in any other case it shall be the duty of the police authority to institute such proceedings. (6) This section shall not apply to any entertainment given in a private dwelling-house.”

(36) *A.G. (London C.C.) v. Vitagraph Co.* (Ch. D.), L. R. 1915, 1 Ch. 206; 84 L. J. Ch. 142; 112 L. T. 245; 79 J. P. 150; 13 L. G. R. 148.

(37) *Potter v. Watt* (1914, K. B. D.), 84 L. J. K. B. 394; 112 L. T. 508; 79 J. P. 212; 13 L. G. R. 488.

(38) *Huish v. Liverpool JJ.*, L. R. 1914, 1 K. B. 109; 83 L. J. K. B. 133; 110 L. T. 38; 78 J. P. 45; 12 L. G. R. 15. As to conditions

re Sunday performances, see the *Bermondsey* and other cases, cited, *ante*, p. 872 (26).

(39) *A.G. v. Shoreditch B.C.*, *post*, Vol. II., p. 1394.

(40) 8 Edw. VII. c. 67, s. 121. The Home Office Regulations under this Act are dated 20th December, 1909 (set out in 8 L. G. R. (Orders) 92-96), and 18th February, 1910 (set out *ibid.*, 132-138).

The Celluloid and Cinematograph Film Act, 1922,⁽⁴¹⁾ of which the title is "An Act to make better provision for the prevention of fire in premises where raw celluloid or cinematograph film is stored or used," enacted as follows :—

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Celluloid and
film storage.

" 1.—(1) No premises shall be used for any purpose to which this Act applies—
(a) unless the occupier has furnished to the local authority in writing a statement of his name, the address of the premises, and the nature of the business there carried on; (b) unless the premises are provided with such means of escape in case of fire as the local authority may reasonably require, and such means of escape are maintained in good condition and free from obstruction; (c) if the premises are situated underneath premises used for residential purposes; (d) if the premises are so situated that a fire occurring therein might interfere with the means of escape from the building of which they form part or from any adjoining building; (e) where the premises form part of a building, unless such part either—(i) is separated from any other part of the building by fire-resisting partitions (including fire-resisting ceilings and floors) and fire-resisting self-closing doors; or (ii) is so situated and constructed that a fire occurring therein is not likely to spread to other parts of the building, and its use for the purposes to which this Act applies is sanctioned in writing by the local authority and any conditions attached to such sanction are complied with; (f) unless the regulations set out in the First Schedule to this Act are duly observed; (g) unless any regulations are duly observed which may be made by the Secretary of State with respect to the use upon the premises of any cinematograph or other similar apparatus. (2) In the case of premises used for any purpose to which this Act applies at the date of the commencement of this Act, the provisions of this section requiring the occupier to furnish a statement to the local authority shall take effect at the expiration of two months after the commencement of this Act, and the provisions of this section requiring means of escape in case of fire to be provided shall not take effect until the expiration of such period as may be reasonably necessary for enabling the occupier to comply with any requirements of the local authority in that respect. (3) Any person aggrieved by any requirement of a local authority, or the refusal of the local authority to grant any sanction, or by the conditions attached to any such sanction, may, within seven days after being notified of such requirement, refusal or conditions, appeal to a court of summary jurisdiction, provided that he has given not less than twenty-four hours notice in writing of such appeal and of the grounds thereof to the local authority, and the court on any such appeal may make such order as appears to the court to be just, including any order for the payment of costs. (4) The Secretary of State may by order, made in accordance with the provisions contained in the Second Schedule to this Act—(a) make regulations with respect to the use of any cinematograph or similar apparatus upon any premises used for any purpose to which this Act applies; and (b) modify or add to the regulations set out in the First Schedule to this Act, and those regulations shall thereupon have effect as so modified or added to. An order made under this section may apply either generally, or to such classes or descriptions of premises as may be mentioned in the order.

" 2. The purposes to which this Act applies are—(1) the keeping or storing of raw celluloid—(a) in quantities exceeding at any one time one hundredweight; or (b) in smaller quantities unless kept (except when required to be exposed for the purpose of the work carried on in the premises) in a properly closed metal box or case; and (2) the keeping or storing of cinematograph film—(a) in quantities exceeding at any one time twenty reels, or eighty pounds in weight; or (b) in smaller quantities unless each reel is kept (except when required to be exposed for the purpose of the work carried on in the premises) in a separate and properly closed metal box or case : Provided that—(i) for the purposes of this Act, cinematograph film shall be deemed to be kept in any premises where it is temporarily deposited for the purpose of examination, cleaning, packing, re-winding or repair, but celluloid or cinematograph film shall not be deemed to be kept or stored in any premises where it is temporarily deposited whilst in the course of delivery, conveyance or transport; and (ii) the provisions of this Act shall not, except in the cases referred to in sect. 1 (1) (c) (d) and (e) thereof, apply to premises to which the Factory and Workshop Acts, 1901 to 1920, apply; and (iii) the provisions of this Act shall not apply to premises licensed in accordance with the provisions of the Cinematograph Act, 1909.

(41) 12 & 13 Geo. V. c. 35 ss. 1-11. Royal Assent, Aug. 4, 1922. See H. O. Circular to local authorities, 20 L. G. R. (Orders) 283.

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film storage—
continued.

“ 3.—(1) In the event of any contravention in or in connection with any premises of the foregoing provisions of this Act, the occupier shall be liable on summary conviction to a fine not exceeding £50 and, in the case of a continuing offence, to a further fine not exceeding £10 for each day on which the offence is continued after conviction thereof. (2) In the event of the contravention by any person employed on any premises of any regulation contained in the First Schedule to this Act or of any regulation made under this Act, he shall be liable on summary conviction to a fine not exceeding £5. (3) The provisions of sect. 141 of the Factory and Workshop Act, 1901 (which relates to the power of an occupier to exempt himself from fine on the conviction of the actual offender),⁴² shall apply to offences under this Act as it applies to offences under that Act.

“ 4.—(1) It shall be the duty of local authorities to see that the provisions of this Act are duly complied with. (2) The expenses incurred by a local authority in the execution of their powers under this Act shall be defrayed in the same manner as expenses incurred in the administration of the Public Health Acts, 1875 to 1908. (3) The occupier of premises in respect of which a statement is required to be furnished to the local authority shall pay to the local authority when furnishing such statement and on the first day of January of every year thereafter, so long as the premises are used for any purpose to which this Act applies, such fees as the Secretary of State may prescribe.⁴³

“ 5.—(1) An officer duly authorised by a local authority may, at all reasonable times, enter and inspect any premises which are used, or which such officer has reasonable cause to believe are used, wholly or in part for any purpose to which this Act applies. (2) Every such officer as aforesaid shall be furnished with a certificate of his authorisation by the local authority and when visiting any such premises as aforesaid shall, if so required, produce the said certificate to the occupier of the premises.

“ 6. An officer duly authorised by a local authority may, at any time, take for analysis sufficient samples of any material which he suspects to be or to contain celluloid.

“ 7. If any person refuses to permit any officer authorised under this Act to enter or inspect any premises, or hinders or obstructs any such officer in the execution of his duty under this Act, or refuses to allow any officer to take samples in pursuance of the last preceding section or to give him facilities for the purpose, that person shall be liable on summary conviction to a fine not exceeding £20.

“ 8.—(1) If any occupier of premises is prevented by any agreement from carrying out any structural alterations which are necessary to enable him to comply with the provisions of this Act, and is unable to obtain the consent to those alterations of the person whose consent is necessary under the agreement, he may apply, in accordance with rules of court, to the county court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such an order setting aside or modifying the terms of the agreement as the court considers just and equitable in the circumstances of the case. (2) Where in any premises any structural or other alterations are required in order to comply with the provisions of this Act and the occupier alleges that the whole or part of the expense of the alterations ought to be borne by the owner, the occupier may apply, in accordance with rules of court, to the county court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such order concerning the expenses or their apportionment as the court considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court may, at the request of the occupier, determine the lease.⁴⁴

“ 9. For the purposes of this Act—

“ The expression ‘celluloid’ means and includes the substances known as celluloid and xylonite and other similar substances, containing nitrated cellulose or other nitrated products, but does not include any substances which are explosives within the meaning of the Explosives Act, 1875⁴⁵ :

“ The expression ‘raw celluloid’ means—(a) celluloid which has not been subjected to any process of manufacture; and (b) celluloid scrap or waste :

“ The expression ‘cinematograph film’ means any film containing celluloid which is intended for use in a cinematograph or any similar apparatus :

(42) *Post*, Vol. II., p. 2161.

(43) Fixed at £2 in each case by H. O. Order, Sept. 15, 1922, 20 L. G. R. (Orders)

284.

(44) See *Stuckey's Case*, ante, p. 692 (62).

(45) 38 & 39 Vict. c. 17.

“ The expression ‘ local authority ’ means county borough councils, borough councils, urban district councils and rural district councils. **Sect. 51, n.**

“ 10. . . . [*Scotland and Ireland.*]

“ 11.—(1) This Act may be cited as the Celluloid and Cinematograph Film Act, 1922, and shall come into operation on the first day of October, 1922. (2) This Act shall not apply to the administrative county of London or to the city and royal burgh of Glasgow. (3) The Secretary of State may by order direct that any provisions of the Liverpool Corporation Act, 1921,⁴⁶ relating to the keeping, storing or manipulation of celluloid and cinematograph films shall cease to have effect as from such date as may be fixed by the order, but so long as those provisions continue to have effect this Act shall not apply to the city of Liverpool.”

Part I. of the First Schedule,⁴⁷ headed “ Raw celluloid stores,” provides that “ the following regulation shall be observed in or in connection with premises where raw celluloid is kept or stored :—All such celluloid shall be kept or stored in a fire-resisting store-room, and subject to the regulations applying to such store-rooms.”

Celluloid stores.

Part II. of the First Schedule,⁴⁷ headed “ Premises where cinematograph film is kept or stored,” provides that “ the following regulations shall be observed in or in connection with premises where cinematograph film is kept stored or manipulated :—1. All stock except when actually being used or manipulated shall be kept either in a fire-resisting store-room and subject to the regulations applying to such store-rooms, or in fire-resisting receptacles which shall not be used for any other purpose and shall be plainly marked ‘ Film.’ 2. Every reel of film shall, except when required to be exposed for the purposes of the work carried on in the premises, be kept in a separate and properly closed metal box. 3. Not more than 10 reels or 40 pounds of film shall be exposed at any one time. 4. The following provisions shall apply to every room used—(a) for the storing, or (b) for the examination, cleaning, packing, re-winding or repair of film :—(i) the room shall be used for no other purpose; (ii) the room shall be kept properly ventilated; (iii) adequate means of extinguishing fire, having regard to the amount of film on the premises, shall be kept constantly provided and readily available; (iv) the furniture and apparatus shall be so arranged as to afford free egress to persons in the room in the event of fire; (v) no open light or fire shall be allowed; (vi) the fittings shall, so far as is practicable, be of non-inflammable or fire-resisting material; (vii) the doors shall be self-closing, and shall, except in the case of sliding doors, be so constructed as to open outwards; (viii) no person shall smoke in or take matches into the room; (ix) there shall be kept posted up in large characters in the room—(a) a printed copy of Parts II. and III. of this Schedule; (b) full instructions as to the action to be taken in case of fire; and (c) full directions as to the means of escape from the room in case of fire. 5. All celluloid waste and scrap on the premises shall be collected at frequent intervals and placed either in a fire-resisting store-room, or in a strong metal receptacle fitted with a hinged lid and marked ‘ Celluloid Waste.’ ”

Part III. of the First Schedule,⁴⁷ headed “ Fire-resisting store-rooms,” provides that “ the following regulations shall apply to fire-resisting store-rooms :—1. The store-room shall be constructed of fire-resisting material in such manner as to prevent as far as is reasonably practicable any fire occurring in the store-room from spreading to other parts of the premises or to other premises, and any fire occurring outside the store-room from reaching the contents thereof. 2. The store-room shall be properly ventilated. 3. The fittings of the store-room shall, so far as is practicable, be of non-inflammable or fire-resisting material. 4. Adequate means of extinguishing fire shall be kept constantly provided and readily available. 5. No open light and no means of heating shall be allowed in the store-room. 6. If electric light is used, all conductors and apparatus shall be so constructed, installed, protected, worked and maintained as to prevent danger. Vacuum-type lamps only shall be used, and shall be in fixed positions and fitted with substantial outer protecting globes. 7. No person shall smoke in or take matches into the store-room. 8. The doors of the store-room shall be self-closing and shall be kept securely locked, except when articles are being placed therein or removed therefrom. 9. The store-room shall not be used for any purpose other than the keeping of celluloid or cinematograph film, and shall be clearly marked ‘ Celluloid ’ or ‘ Film.’ 10. Not more than one ton of celluloid and not more than five hundred and sixty

(46) 11 & 12 Geo. V. c. lxxiv. enacted by ss. 1 and 3, ante, pp. 875, 876.
(47) 12 & 13 Geo. V. c. 35., Sched. I.,

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reels or one ton of cinematograph film shall be kept in one store-room : Provided that, where a store-room is divided into separate compartments by separate fire-resisting partitions without any openings therein, each such compartment may, for the purposes of this provision, be regarded as a separate store-room. 11. When both celluloid and cinematograph film are stored in one store-room, the aggregate quantity therein shall, at no time, exceed one ton."

Home Office Orders.

The Second Schedule,¹ headed "Procedure for making Orders, &c.," provides as follows "1. Before the Secretary of State makes any order, he shall publish, in such manner as he may think best adapted for informing persons affected, notice of the proposal to make the order, and of the place where copies of the draft order may be obtained, and of the time (which shall be not less than 21 days) within which any objection made with respect to the draft order by or on behalf of persons affected must be sent to the Secretary of State. 2. Every objection must be in writing and state—(a) the draft order or portions of the draft order objected to; (b) the specific grounds of objection; and (c) the omissions, additions, or modifications asked for. 3. The Secretary of State shall consider any objection, made by or on behalf of any persons appearing to him to be affected, which is sent to him within the required time, and he may, if he thinks fit, amend the draft order, and shall then cause the amended draft to be dealt with in like manner as an original draft. 4. Where the majority of the occupiers of the premises affected by the proposed order dispute the reasonableness of the requirements in the proposed order, and the Secretary of State does not amend or withdraw the draft order, he shall, before making the order, direct an inquiry to be held in the manner hereinafter provided. The Secretary of State may also direct an inquiry to be held in regard to any objection, though not made by the majority of the occupiers, if he thinks fit. 5. The Secretary of State may appoint a competent person to hold an inquiry with regard to any draft order, and to report to him thereon. 6. The inquiry shall be held in public, and any person who in the opinion of the person holding the inquiry, is affected by the draft order, may appear at the inquiry either in person or by counsel, solicitor, or agent. 7. The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath. 8. Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Secretary of State. 9. The fee to be paid to the person holding the inquiry shall be such as the Secretary of State may direct. 10. The order shall be laid as soon as possible before both Houses of Parliament, and, if either House within the next forty days after the order has been laid before that House resolve that all or any of the provisions of the order ought to be annulled, the order shall, after the date of the resolution, be of no effect, without prejudice to the validity of anything done in the meantime thereunder or to the making of any new order. If any of the provisions of an order are annulled, the Secretary of State may, if he thinks fit, withdraw the whole order. 11. Notice of any order having been made and of the place where copies of them can be purchased shall be published in the London and Edinburgh Gazettes."

PART V.**Stock.****Issue of stock.**

Sect. 52.—(1.) Where any authority, whether a municipal corporation, local board, or improvement commissioners, which is an urban authority, have, for the time being, either in their capacity as urban authority or in any other capacity, any power to borrow money, they may, with the consent of the [Minister of Health], exercise such power by the creation of stock to be created, issued, transferred, dealt with, and redeemed in such manner and in accordance with such regulations as the [Minister of Health] may from time to time prescribe.

(2.) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and

(1) 12 & 13 Geo. V. c. 35, Sched. II., enacted by s. 1, ante, p. 875.

the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or the County Council of London, or by the corporation of any municipal borough. Sect. 52.

(3.) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with, the same shall be of no effect, without prejudice nevertheless to the making of further regulations.

(4.) If no such resolution is passed, it shall be lawful for [His] Majesty by Order in Council to confirm such regulations, and the same when so confirmed shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act.

Note.

As to borrowing by local authorities, see sects. 233-244 of the Public Health Act, 1875,¹ and the Notes to those sections. **Borrowing powers.**

Debenture stock can be created under sect. 6 of the Local Loans Act, 1875,² but only where the local authority has *aliunde* power to raise loans by the issue of such stock.

As to stock for electricity purposes, see sects. 3 and 4 of the Electricity (Supply) Act, 1922.³

The present section was applied to water stock issued under the Metropolis Water Act, 1902.⁴

By one provisional order a corporation were authorised to purchase an undertaking on issuing to the vendors stock sufficient to produce an annuity of 5 per cent. on the capital properly expended by the undertakers. And by a second provisional order their power to issue irredeemable stock was taken away. The Acts confirming the two orders received the Royal assent on the same day. It was held that the stock mentioned in the first order would have been irredeemable, and that consequently the second order took away the power to purchase the undertaking.⁵ **Irredeemable stock.**

Debenture stock of a municipal corporation charged by virtue of a local Act upon "the borough fund, borough rate, the waterworks and gasworks undertakings, and the improvement rates, and the revenues of all landed and other property," was held by the Court of Appeal not to give the holder an "interest in land" within the meaning of the Mortmain Act, or the Mortmain and Charitable Uses Act, 1888.⁶ But metropolitan consolidated stock, which was charged, with the dividends thereon and all sums required for the redemption thereof, on the whole of the lands, rents, and property belonging to the Metropolitan Board of Works, was held by Kekewich, J., to be impure personalty, and incapable, before the Mortmain and Charitable Uses Act, 1891, of being bequeathed for charitable purposes.⁷ **Bequest of stock.**

Regulations have been made under sub-sect. (1) of the present section, and will be found elsewhere.⁸ **Regulations.**

As to income tax, see the Notes to sects. 209 and 243 of the Public Health Act, 1875.⁹ **Income tax.**

As to stamp duty on loan capital, see the Note to sect. 234 of the Public Health Act, 1875.¹⁰ **Stamp duty.**

With regard to the power of a county, borough, or district council issuing stock to impose restrictions on the transfer of such stock in order to guard against loss from forgery, and to compensate persons for loss arising from transfers of stock in pursuance of forged transfers, see the Note to sect. 238 of the Act of 1875.¹¹ **Forged transfers of stock.**

The House of Lords held that a corporation, required by their special Act to register transfers of their stock and to issue stock certificates to the transferees, and

(1) *Ante*, p. 613.

(2) *Post*, Vol. II., p. 1713.

(3) *Post*, Vol. II., p. 2364.

(4) 2 Edw. VII. c. 41, s. 17 (3).

(5) *Sheffield Cpn. v. Sheffield Electric Light Co.*, L. R. 1898, 1 Ch. 203; 67 L. J. Ch. 113; 77 L. T. 616; 62 J. P. 87. But see the *Edinburgh Case*, *post*, Vol. II., p. 1715.

(6) *In re Pickard; Emsley v. Mitchell*, L. R. 1894, 3 Ch. 704; 64 L. J. Ch. 92; 71 L. T. 558.

(7) *In re Crossley; Birrell v. Greenhough*, L. R. 1897, 1 Ch. 928; 66 L. J. Ch. 558; 76 L. T. 419; 61 J. P. 390.

(8) *Post*, Vol. II., Part V., under heading "FINANCE, Stock."

(9) *Ante*, pp. 566, 629. See also *Lord Advocate v. Edinburgh Magistrates* (1905), 7 F. 972.

(10) *Ante*, p. 620.

(11) *Ante*, p. 626.

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having power to call for evidence of the title of the person claiming to make the transfer, could recover the amount of principal and interest of certain stock which had been transferred to the defendants' nominee under a transfer which was in fact forged, but had been *bonâ fide* presented to them by the defendants, the transfer having been registered by the corporation in pursuance of a request which implied a contract to indemnify them.¹²

Bearer bonds.

As to the issue of "bearer bonds," see sect. 1 (2) of the Act of 1916, already quoted.¹³

Housing bonds.

As to the issue of "local bonds" for housing purposes, see sect. 7 of the Housing (Additional Powers) Act, 1919,¹⁴ and the Regulations issued thereunder.¹⁵

Trustee securities.

By sect. 9 of the last mentioned Act, these local housing bonds are made trustee securities for the purpose of sect. 1 of the Trustee Act, 1893, and also "mortgages of any fund or rate granted after the passing of this Act [Dec. 3rd, 1919] under the authority of any Act or provisional order by a local authority (including a county council) which is authorised to issue local bonds under this Act."

By sect. 1 of the Act of 1893,¹⁶ "A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say": Here follow a number of specified investments, including "(m) In nominal or inscribed stock, issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding 50,000, or by any county council, under the authority of any Act of Parliament or provisional order," and "(o) in any of the stocks funds or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court." The section ends thus: "and may also from time to time vary any such investment."

(12) *Sheffield Cpn. v. Barclay*, L. R. 1905 A. C. 392; 74 L. J. K. B. 747; 93 L. T. 83; 69 J. P. 385; 3 L. G. R. 992.

(13) *Ante*, p. 616.

(14) *Post*, Part II., Div. III.

(15) *Post*, Vol. II., Part V., under heading "FINANCE, Local Bonds."

(16) 56 & 57 Vict. c. 53, s. 1.

PART I.—(Continued).

DIVISION III.

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1907.

7 EDW. VII. c. 53.

An Act to amend the Public Health Acts.

[28th August, 1907.]

PART I.

GENERAL.

Sect. 1. This Act is divided into Parts as follows : I.—General. II.—Streets and buildings. III.—Sanitary provisions. IV.—Infectious diseases. V.—Common lodging-houses. VI.—Recreation grounds. VII.—Police. VIII.—Fire brigade. IX.—Sky signs. X.—Miscellaneous.

Division of Act into parts.

Note.

The first Part of the present Act, which applies to the whole of England and Wales except London, though containing a few provisions of some independent importance, is in the main ancillary to the later Parts of the Act.

The enactments contained in the later Parts of the Act are not directly operative, but apply only in localities where they are put in force in accordance with the provisions for that purpose contained in Part I. Most of them are reproductions of enactments which had been inserted in local Acts passed at the instance of local authorities. Indeed, the object of the Act was said by the Local Government Board, in their circular on its provisions,¹ to be to enable sanitary authorities to obtain, where requisite, and without incurring the trouble and expense involved in promoting Bills for local Acts, additional powers which are based upon provisions in local Acts passed in recent sessions in Parliament.

Powers obtainable by adoption of the present Act will not be inserted in local Acts.²

Application of Act.

Sect. 2.—(1) This Act shall be construed as one with the Public Health Acts.³
(2) Part I. of this Act shall extend to England and Wales [*and Ireland*] exclusive of the administrative county of London, and all or any of the remaining Parts or all or any of the sections thereof shall extend to any district to which all or any of those Parts or sections are applied by an order of the [Minister of Health] or of the Secretary of State as the case may be.

Short title, construction and extent of Act.

(3) This Act may be cited as the Public Health Acts Amendment Act, 1907, and this Act and the Public Health Acts may together be cited as the Public Health Acts, 1875 to 1907.³

(4) Any byelaws made under any enactment for which any provisions of this Act are substituted shall remain in force as if the byelaws had been made under the corresponding provisions of this Act.

(5) This Act shall come into operation on the 1st day of January, 1908.

Sect. 3.—(1) The [Minister of Health] may, on the application of a local authority, by order to be published in such manner as the [Minister of Health directs], declare any Part or any section of this Act to be in force in the district of the local authority, or, where the local authority are a rural district council, in any contributory place within the district of the local authority, and may declare any enactments in any local Act which appear to the [Minister of Health] to contain provisions similar to or inconsistent with any such Part or section to be no longer in force in that district or contributory place.

Applications of Parts or section of Act.

(1) See Note to s. 3, *post*.
(2) See Report of Police and Sanitary Committee of the House of Commons for 1908.
(3) See Note to P. H. Act, 1875, s. 1, *ante*, pp. 1-4.

Sect. 3.

(2) The local authority shall, two weeks at least before applying for an order, give notice of their intention to make such application by advertising the same once at least in one or more of the newspapers circulating in their district in each of two successive weeks, and no order shall be made under this section until proof of such advertisement has been given to the satisfaction of the [Minister of Health], and until at least one month has elapsed after the date of such advertisement.

(3) Any such order may specify conditions subject to which any Part or any section of this Act shall be in force in the district or contributory place, and where, in the opinion of the [Minister of Health], the circumstances so require, any such order may, in relation to that district or contributory place, declare any Part or any section of this Act to be in force subject to such necessary adaptations as are specified in the order.

A statement of the effect of each order specifying conditions or adaptations as aforesaid shall be published in the *London Gazette* as well as in any other manner directed by the [Minister of Health].

(4) In regard to Part VII. (Police), Part VIII. (Fire Brigade), and Part IX. (Sky Signs) of this Act, the Secretary of State shall be deemed to be substituted in this section for the [Minister of Health].

Note.

Local Government Board circular.

The following observations of the Local Government Board, in their circular on the Act ⁴ to local authorities, ⁵ may be quoted ("Minister" being substituted for "Board" ⁶):—

"In considering whether application should be made to have any Part or section of the Act put in force, the local authority should have regard to the circumstances and needs of the locality. They should cause any local Act in force in their district to be carefully examined in order to ascertain whether it contains any provision bearing on the subject-matter of any Part or section of the present Act which they desire to have put in force.

"The [Minister] will be ready to give attention to applications under the Act, but such applications should not be made unless the local authority are satisfied that the powers sought are really needed. . . .

"The application, which should not be made until after the expiration of two weeks from the date of the second week's advertisement, should be by resolution of the local authority asking the [Minister] to put in force any specified Part or section of the Act which the local authority desire to have applied to their district, and in the case of a rural district council should state whether the application relates to the whole district, or to specified contributory places in it. A copy of the resolution, certified by the clerk, should be forwarded to the [Minister], and at the same time [he] should be furnished with a statutory declaration to be made by the clerk, verifying the fact of the issue of the necessary advertisements, and having copies of the newspapers in which the advertisements were published annexed to it as exhibits.

"It will be found convenient if before a local authority publish any advertisement or make any formal application for an order under sect. 3 they forward to the [Minister] drafts of the proposed advertisement and resolution. These should be accompanied by a statement setting out as regards each Part or each section of the Act to which the proposal relates the grounds upon which it is made. A list of any local Acts in force in the district and of any provisional orders altering such Acts should also be supplied, and if any of them contain provisions bearing on the subject-matter of any Part or section included in the proposed application, a copy of the local Act or order should be forwarded, and a reference should be given to the provisions in it which are in question. If there is no local Act in force, this should be stated. This procedure will enable the [Minister] to consider the proposal before any advertisement is issued, and, if necessary, to make suggestions for its amendment.

"The [Minister's] order may specify conditions subject to which any Part or any section of the Act is to be in force in the district, and where, in the opinion of the [Minister], the circumstances so require, the order may, in relation to that district, declare any Part or any section of the Act to be in force subject to such necessary adaptations as are specified in it. A statement of the effect of each order specifying

(4) Dated Dec. 23, 1907, and set out in 6 L. G. R. (Orders) 10.

(5) Defined in s. 13.

(6) See Act of 1919, *post*, Vol. II., p. 2305.

conditions or adaptations that may thus be made is to be published in the *London Gazette* as well as in any other manner directed by the [Minister] (sect. 3 (3)).

Sect. 3, n.

“ The [Minister] will, when making any order under the provisions of the Act, give all necessary directions as to the manner of its publication. . . .”

It will probably be sufficient, in order to prove that any provision of the Act is in force in any locality, to prove the order of the Local Government Board, Minister of Health, or Secretary of State, without proving the advertisement of the intention to apply for the order.

Proof of adoption.

A summons for breach of a provision of the present Act must contain a reference to the fact that it has been duly applied to the complainant's district.⁷

Several of the “ adaptations ” commonly made under sub-sect. (3) of the present section have been inserted in square brackets at the end of the sections adapted,⁸ and others had been referred to in footnotes.⁹

Adaptations.

Sect. 4. All expenses incurred or payable by a local authority in the execution of this Act and not otherwise provided for may be charged and defrayed in the case of an urban sanitary authority or urban district council, as the case may be, as part of the expenses incurred by them in the execution of the Public Health Acts, and in the case of a rural district council shall, subject to any power of the [Minister of Health] under any Act to order the contrary, be charged and defrayed as a part of their general expenses under the Public Health Acts.

Expenses of local authority.

Note.

As to the method of defraying expenses incurred under the present Act, see (as to urban districts) sect. 207 and (as to rural districts) sect. 229 of the Act of 1875,¹⁰ and sects. 4 and 49 of the Act of 1890.¹¹

Expenses.

Sect. 5.—(1) The [Minister of Health] may direct any enquiries to be held by their inspectors which they may deem necessary in regard to the exercise of any powers conferred upon them under this Act, and the inspectors of the [Minister of Health] shall for the purposes of any such enquiry have all such powers as they have for the purposes of enquiries directed by that [Minister] under the Public Health Act, 1875.¹²

Enquiries by [Minister of Health].

(2) The local authority shall pay to the [Minister of Health] any expenses incurred by that [Minister] in relation to any enquiries referred to in this section including the expenses of any witnesses summoned by the inspector holding the enquiry, and a sum to be fixed by that [Minister] not exceeding three guineas a day for the services of such inspector.

(3) The Secretary of State may order that a local inquiry be held in regard to the exercise of any powers conferred on him under this Act. The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local inquiry shall be paid by the local authority.

Sect. 6. Offences under this Act or under any byelaw made under the powers of this Act or under any powers of the Public Health Act, 1875, or any enactment amending or extending that Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health Acts.

Legal proceedings, &c.

Note.

All the provisions of the Act of 1875 above referred to, namely, sects. 251, 253-255, and 257-262,¹³ appear to apply, *mutatis mutandis*, with reference to proceedings under the present Act by virtue of its incorporation with the Act of 1875 by sect. 2 (1), and to apply in like manner to proceedings under other Acts similarly incorporated with the Act of 1875. The present section thus appears to be to a considerable extent superfluous. It is, however, of some importance with regard to proceedings under bye-laws, and probably also with regard to proceedings under enactments amending or extending the Public Health Act, 1875, but not incor-

Legal proceedings.

(7) See *Fearon's Case*, ante, p. 655 (30). Also cited in Note to s. 94, post, p. 928 (5).

(8) See ss. 15, 23, 27, 30, 59, 75, 76, 92, and 94.

(9) See post, pp. 887 (5), 888 (7a), 890 (21a), 894 (46), and 900 (2), (4).

(10) Ante, pp. 561, 606.

(11) Ante, pp. 846, 868.

(12) See s. 296, ante, p. 735. Inquiries are not usually held before provisions of the present Act are put in force.

(13) Ante, pp. 649 et seq.

Sect. 6, n.

porated therewith, particularly if the reference to such enactments in the section is taken, as apparently it should be taken, as including enactments in local Acts.

Private prosecutions.

The present section also makes it clear that sect. 253 of the Act of 1875 applies to prosecutions under bye-laws made under that Act, and probably under the other Public Health Acts, as well as to prosecutions under the provisions contained in the Acts themselves. The section, however, leaves it doubtful how far sect. 253 applies to penalties under the earlier enactments which the Act of 1875 itself incorporates.

Appeals to quarter sessions, &c.

Sect. 7.—(1) Except where this Act otherwise expressly provides any person aggrieved—(a) By any order, judgment, determination, or requirement of a local authority under this Act; (b) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act; (c) By any conviction or order of a court of summary jurisdiction under any provision of this Act; may appeal, in manner provided by the Summary Jurisdiction Acts, to a court of quarter sessions.

(2) Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority, under this Act, are empowered to recover in a summary manner any expenses incurred by them, or to declare the expenses to be private improvement expenses, sect. 268 of the Public Health Act, 1875, shall apply as it applies to cases under that Act, and sub-sect. (1) of this section shall not apply in any such case, whether arising under the Public Health Act, 1875, or under this Act; but nothing in this subsection shall extend to any case in which an appeal to a court of summary jurisdiction in relation to any requirement of a local authority, or to any such expenses, is expressly authorised by this Act.

Note.**Appeals.**

The Local Government Board, in their circular on the present Act,¹² said that the power of appeal given by sub-sect. (1) of the present section will not apply in any case coming within sub-sect. (2), whether arising under the present Act or under the Act of 1875, cases in which an appeal, to a court of summary jurisdiction in relation to any requirement of the local authority, or to any expenses as above mentioned, is expressly authorised by the present Act, being excepted from the operation of sub-sect. (2). Appeals under sects. 42 and 48 of the present Act appear to be the only cases within the exception.

As to appeals to quarter sessions, see the Note to sect. 269 of the Public Health Act, 1875.¹³ As to sect. 268 of the Act of 1875, see the Note to that section.¹⁴

More than one sum in one summons.

Sect. 8. Any information, complaint, warrant or summons made or issued for the purpose of this Act or of the Public Health Acts may contain in the body thereof or in a schedule thereto several sums.¹⁵

Bye-laws.

Sect. 9. All the provisions with respect to byelaws contained in sects. 182 to 186 of the Public Health Act, 1875,¹⁶ and any enactment amended or extended by those sections shall apply to all byelaws from time to time made by a local authority under the provisions of this Act, provided that the Secretary of State shall be the confirming authority for byelaws made under Part VII. (Police) of this Act.

Compensation, how determined.

Sect. 10. Where any compensation, costs, damages or expenses is or are by this Act directed to be paid, and the method for determining the amount thereof is not otherwise provided for, such amount shall in case of dispute be ascertained in the manner provided by the Public Health Acts.

Note.**Compensation.**

The Public Health Acts do not contain any general provisions for ascertaining the amount of "costs, damages or expenses"; but see sects. 179-181 and 308 of the Public Health Act, 1875, and the Notes thereto.¹⁷

Powers of Act cumulative.

Sect. 11. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

(12) See footnote (4), *ante*, p. 882.

(13) *Ante*, p. 714.

(14) *Ante*, p. 712.

(15) The present section is identical with

P. H. Am. Act, 1890, s. 8, *ante*, p. 847.

(16) *Ante*, pp. 494 *et seq.*

(17) *Ante*, pp. 483, 751.

Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, but no person shall be liable, except in the case of a daily penalty, to more than one penalty in respect of the same offence.¹⁸ **Sect. 11.**

Sect. 12. Nothing in this Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown, and in particular nothing herein contained authorises any local authority to take, use, or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay, or estuary, or any land, hereditaments, subjects, or right of whatsoever description belonging to His Majesty in right of His Crown, and under the management of the Commissioners of Woods or of the Board of Trade respectively, without the consent in writing of the Commissioners of Woods or the Board of Trade, as the case may be, on behalf of His Majesty first had and obtained for that purpose (which consent the said Commissioners and Board are hereby respectively authorised to give). **Crown rights.**

Note.

As to proceedings against the Crown, see the Note to sect. 327 of the Public Health Act, 1875.¹⁹ **Crown.**

It was held that the absence of evidence that the Crown had given a local authority any rights over the foreshore did not afford a defence to proceedings for plying for hire with a pleasure boat without a licence under sect. 94 of the present Act.²⁰

Sect. 13. In this Act, if not inconsistent with the context,—

The expression “local authority” means an urban sanitary authority, an urban district council, or a rural district council²¹ : **Interpretation.**

The expression “district of the local authority” means an urban sanitary district, an urban district, or a rural district²¹ :

The expression “daily penalty” means a penalty for each day on which an offence is continued after conviction therefor²² :

The expressions “lands,” “premises,” “owner,” “street,” “house,” “drain,” and “sewer” have respectively the same meaning as in the Public Health Acts :

The expressions “clerk,” “medical officer,” “surveyor,” and “inspector of nuisances” mean the clerk, medical officer of health, surveyor, and [sanitary inspector] respectively of the district of the local authority²³ :

The expression “dairy” includes any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied or in which milk is kept for the purposes of sale within (unless otherwise expressed) the district of the local authority :

The expression “dairyman” includes any cowkeeper, purveyor of milk, or occupier of a dairy within (unless otherwise expressed) the district of the local authority :

The expression “infectious disease” means any infectious disease to which the Infectious Disease (Notification) Act, 1889, for the time being applies within the district of the local authority :

The expressions “the commencement of this Part” and “the commencement of this section” used in relation to any Part or section of this Act mean respectively the date at which, by an Order made by the Local Government Board [or Minister of Health], or by the Secretary of State as the case may be, in pursuance of this Act, and subject to any conditions or adaptations specified in that Order, the Part or section is declared to be in force²⁴ :

Other expressions to which a special meaning is assigned by the Public Health Act, 1875, have respectively the same meaning in this Act as they have in that Act.

(18) See Note to corresponding section in P. H. Act, 1875, namely, s. 341, *ante*, p. 803; and *per* Phillimore, J., in *Fulham Vestry v. Minter* (1901), 1 K. B. 501, at p. 513, overruled on another point, see *ante*, p. 17. The effect of the present section was discussed in *Carlton Main Colliery Co. v. Hemsworth R.D.C.*, *ante*, p. 110 (15) (20), and *post*, p. 903 (14). See *per* Lord Sterndale, M.R., 20 L. G. R. at p. 643, and *per* Warrington, L.J., *ibid.*, at p. 649.

(19) *Ante*, p. 784.

(20) *Fearon v. Warrenpoint U.D.C.*, *post*, p. 928 (5).

(21) See Note to P. H. Act, 1875, s. 6, *ante*, p. 44.

(22) See the *Hinckley Case*, *ante*, p. 858 (21).

(23) See Note to P. H. Act, 1875, s. 189, *ante*, p. 513.

(24) See “adaptation” to s. 75, *post*, p. 915.

Sect. 13, n.
Definitions.

Note.

“Ashpit.”

“Paved.”

“Dairyman.”

“Infectious disease.”

The definitions in the Public Health Act, 1875, of the following expressions, and the Notes thereon, will be found on the pages indicated in the footnotes :—Lands and premises,²⁴ owner,²⁵ rackrent,²⁶ street,²⁷ house,²⁸ drain,²⁹ and sewer.³⁰

“Ashpit” is defined by sect. 11 (1) of the Public Health Acts Amendment Act, 1890,³¹ as including, for the purposes of the execution of the Public Health Acts, “any ashtub or other receptacle for the deposit of ashes, fæcal matter, or refuse.”

As to the meaning of “paved” in connection with streets, see sect. 11 (2) of the last-mentioned Act.³¹

A definition of “dairyman” in the Public Health (London) Act, 1891,³² identical, except as regards the reference to the district of the local authority, with that in the present section, was held not to include the occupier of a farm who kept cows, the milk of which was used, not for sale, but for fattening calves.³³ And the occasional supply of milk to dairymen when they were short did not render a farmer who kept cows for his family liable to proceedings for non-registration as a cowkeeper or dairyman.³⁴ See also sect. 19 of the Milk and Dairies Act of 1915.³⁵

As to the “infectious diseases” to which the Infectious Disease (Notification) Act, 1889, applies, see sects. 6 and 7 of that Act.³⁶

Sect. 14. [Ireland].

PART II.

STREETS AND BUILDINGS.

Deposit of plan to be of no effect after certain intervals.

Sect. 15. The deposit of any plans or sections of any street or building, in pursuance of any byelaw in force in the district, may by notice in writing to the person by whom the plans or sections have been deposited be declared by the local authority to be of no effect if the work to which the plans or sections relate is not commenced—

As to plans and sections deposited before the commencement of this section, within three years from that date;

As to plans and sections deposited on or after the commencement of this section, within three years of the deposit of the plans and sections.

When the deposit of any plans and sections has been declared to be of no effect, a fresh deposit shall be necessary before the work to which they relate is commenced.

The local authority shall give notice of the provisions of this section to every person intending to lay out a new street or erect a new building in relation to which plans and sections have been deposited before the commencement of this section, but the laying out of which street or erection of which building shall not have been commenced, and shall attach a similar notice to the approval of every such intended work in relation to which plans and sections have been deposited subsequent to the commencement of this section.

[Provided that the provisions of this section shall not be in force in the district unless and until a new series of bye-laws with respect to new streets and buildings has been made and confirmed in substitution for the series now in force ³⁷.]

Note.

Commence-
ment of
section.

Practice of
Minister.

Appeal.

Work already
commenced.

As to the meaning of “the commencement of this section,” see sect. 13.

The Minister of Health puts the present section in force wherever building bye-laws are in operation.

The notice in writing as to the declaration authorised by the present section must be preceded by a “determination” by the local authority to serve such notice,¹ and therefore an appeal lies against such determination as provided by sect. 7.

Bye-laws with regard to new streets and buildings made merely by way of addition to existing bye-laws usually contain no express provision with regard to buildings or streets of which the construction or laying out has been already

(24) *Ante*, p. 14.
(25) *Ante*, p. 15.
(26) *Ante*, p. 22.
(27) *Ante*, p. 23.
(28) *Ante*, p. 29.
(29) *Ante*, p. 31.
(30) *Ante*, p. 33.
(31) *Ante*, p. 848.
(32) 54 & 55 Vict. c. 76, s. 141.
(33) *Umfreville v. London C.C.* (1896), 66

L. J. Q. B. 177; 75 L. T. 550; 61 J. P. 84.
(34) *Southwell v. Lewis* (1880), 45 J. P. 206.
(35) *Post*, Part II., Div. II.
(36) *Post*, Part II., Div. I.
(37) Commonly added as an “adaptation” to the present section. and also to ss. 16, 17, and 27, under s. 3 (3), *ante*, p. 882. See, e.g., Kingston-upon-Thames Order of Oct. 6, 1922.
(1) See *Thorpe’s Case*, *ante*, p. 111 (5).

begun at the date when the new bye-laws come into force; and the question how far, if at all, the new bye-laws apply to such buildings or streets depends entirely upon the proper application of the principle that legislation, whether statutory or of any other kind, is not in general construed so as to have a retrospective effect.

Sect. 15, n.

Where, however, a new series of bye-laws is made in substitution for an existing series, the repealing clause in the new bye-laws is generally in the following form, which is that of the model series issued by the Local Government Board :—

“ From and after the date of the confirmation of these byelaws, the byelaws relating to new streets and buildings which were made on the day of in the year by the and were confirmed on the day of in the year by the Local Government Board [or one of Her late Majesty’s Principal Secretaries of State] shall be repealed except as regards any work commenced before the date of the confirmation of this byelaw, or any work not so commenced, but of which plans shall either have been approved by the Council before such date, or have been sent to the Surveyor or Clerk to the Council one month at least before such date, and shall not have been disapproved by the Council.”

Sometimes, however, the exception is confined to cases where the work has been commenced, and does not extend to work of which plans have been deposited only.

It will be observed that a bye-law in the form above quoted does not in terms exempt the buildings, as regards which the repealed bye-laws are kept in operation, from the new bye-laws; but it seems to be considered either that it has this effect by implication, or that the new bye-laws are prevented from applying to the buildings in question by virtue of the doctrine as to retrospective legislation above referred to.

The question of the application of bye-laws to building schemes already in progress, or of which plans have been already approved, at the time of the coming into operation of such bye-laws, has been dealt with in the Note to sect. 157 of the Public Health Act, 1875.²

In some cases the approval of plans by the local authority operates as an exercise by them of a discretion as to new buildings, &c., vested in them. For instance, if, in an urban district, the plans of a proposed building show that it is intended to erect the building in front of the front main wall of the building on either side thereof in the same street, so that under sect. 3 of the Public Health (Buildings in Streets) Act, 1888, the written consent of the urban authority is required, the approval of the plans marked on the plans in the usual way operates as such consent.³

Approval of plans as exercise of discretion.

It may be that one effect of the present section is that if the plans are not acted upon, and their deposit has been duly declared to be of no effect, the approval of the plans ceases to operate as a consent to the erection of the building for the purposes of the Act of 1888, or as a final exercise of any discretion vested in the local authority.

Sect. 16. The local authority may retain any drawings, plans, elevations, sections, specifications, and written particulars, descriptions or details, deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any byelaw thereunder.

As to plans deposited with local authority.

Note.

The present section authorises the retention of “ approved ” plans. It had already been decided that “ disapproved ” plans might, in certain circumstances, be retained.⁴

Retention of plans.

An important “ proviso ” is usually added to the present section as an “ adaptation.”⁵

Adaptation.

Sect. 17.—(1) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a byelaw in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street or for the purpose of securing an adequate opening at either end of the new street, or of securing

Power to vary position or direction and to fix beginning and end of new streets.

(2) *Ante*, pp. 374, 395, 396.
(3) See cases cited *ante*, p. 370 (8) (9).
(4) *Gooding v. Ealing Loc. Bd.*, *ante*,

p. 395 (41).
(5) See footnote (37), *ante*, p. 886.

Sect. 17.

compliance with any enactment or byelaw in force in the district for the regulation of streets and buildings.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health Acts, 1875 to 1907, and of any byelaws made under those Acts and in force within the district.

(2) The powers of the local authority under this section shall not be exerciseable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

(3) Where the local authority make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

(4) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

Note.**Meaning of street.**

"Street" in the present Act has the same meaning as in the Public Health Act, 1875: see sect. 13. The meaning of "street" is discussed in the Note to sect. 4 of that Act,⁵ and that of "new street" in the Note to sect. 157 of the same Act.⁶

Local Acts.

The present section applies only on the deposit of a plan of a new street pursuant to bye-laws in force in the district. There may be cases where the local authority have power to make such bye-laws under a local Act, but in general their power in that behalf is derived from sect. 157 of the Public Health Act, 1875.

Prevention of cul-de-sac.

If a local authority wish to prevent the formation of a *cul-de-sac* when a new street is being laid out, they must make an order under the present section on the deposit of the plans, otherwise they may be too late.⁷

Adaptation.

An important "proviso" is usually added to the present section as an "adaptation." ^{7a}

Crossing for cattle, &c., over footways.

Sect. 18. The provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled carriage exceeding four feet in width or two hundredweight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large, may, where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway,⁸ be allowed by the local authority subject to the following conditions (that is to say):—

(a) Every person who intends to provide the new means of access shall give notice in writing of his intention to the local authority, and shall at the same time submit, for the approval of the local authority, a plan showing the position, gradient, and mode of construction of the intended means of access;

(b) When the plan, with or without amendment, has been approved by the local authority, the person may, upon receiving notice of their approval, proceed to execute the necessary works, but those works shall be executed under the supervision and to the reasonable satisfaction of the local authority, and in accordance with the plan as approved by the local authority;

(c) After the completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the law relating to highways, attach to the use for the like purpose of any carriage way forming part of a highway repairable by the inhabitants at large.

Note.**Access to highways.**

The present section appears to be framed on the assumption, which is probably sound, that the owner of premises adjoining a highway, although having a common

(5) *Ante*, p. 23.

(6) *Ante*, p. 376.

(7) See *Kirby v. Paignton U.D.C.* (Ch. D.), L. R. 1913, 1 Ch. 337; 82 L. J. Ch. 198; 108 L. T. 205; 77 J. P. 169; 11 L. G. R. 305; 57

Sol. J. & W. R. 266.

(7a) See footnote (37), *ante*, p. 886.

(8) In some town planning schemes, the present section is inserted with the words "or grass margin" added here.

law right to "cross," and in doing so to damage, a footway, has no right, where a highway is repairable by the inhabitants at large, to "form a crossing over" the footway for the purpose of obtaining more convenient access to the highway by disturbing materials which are vested in the highway authority under sect. 149 of the Public Health Act, 1875.⁹

Cozens-Hardy, M.R.,¹⁰ said that a provision in a local Act,¹¹ similar to the present section, "seems to recognise and at the same time to regulate the right to cross a kerbed footpath."

The expression "paved," as applied to a street or part of a street for the purposes of the Public Health Acts, is defined in sect. 11 (2) of the Public Health Acts Amendment Act, 1890.¹²

Sect. 18, n.

Meaning of
"paved."

Sect. 19.—(1) Where repairs are required in the case of any street, not being a highway repairable by the inhabitants at large, to obviate or remove danger to any passenger or vehicle in the street, the local authority may give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street, and may require the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice.

As to urgent
repairs to
private streets.

(2) If, within the time specified in the notice, the repairs described in the notice are not executed, the local authority may execute the repairs, and may recover summarily, as a civil debt, the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining, or abutting on the street, bears to the total extent of all lands and premises so fronting, adjoining, or abutting.

(3) Where the name or place of abode of an owner cannot be found by the local authority, a copy of the notice shall be sent by post to or left with the occupier of the lands and premises to which the notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of the lands and premises.

(4) In every case in which, within the time specified in the notice, the majority in number or rateable value of owners of lands and premises in the street, by a notice in writing, require the local authority to proceed, in relation to the street, under sect. 150 of the Public Health Act, 1875, or, if the Private Street Works Act, 1892, is in force in the district, under that Act, the local authority shall so proceed; and where the local authority so proceed they shall, on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on and after the date of the declaration the street shall become a highway so repairable.

Note.

The power of the local authority to cause repairs to be executed by or at the cost of the frontagers under sub-sects. (1)-(3) of the present section is exercisable only where such repairs are "required . . . to obviate or remove danger to any passenger or vehicle in the street." As to whether repairs are required for this purpose, and as to the nature of the repairs so required, the decision of the local authority will, it seems clear, be conclusive, subject to the frontagers' right of appeal under sect. 7.¹³ It would accordingly, it appears, be no defence, in proceedings under sub-sect. (2) for the recovery of the cost of the repairs, to show that the repairs were not in fact necessary for the purpose of obviating or removing danger, or to show that the repairs required and executed were unnecessarily extensive.

Settlement of
disputes.

If the local authority execute the repairs on default of the frontagers, the frontagers will have an appeal to the Minister of Health under sect. 7 (2) from the demand of apportioned amounts, on which, apparently, all questions (including the question whether the road is a "street not being a highway repairable by the inhabitants at large") will be open.¹⁴

(9) See cases cited *ante*, pp. 301, 302; and *Lyon v. Fishmongers Co.*, and other cases cited, *ante*, p. 786 (23).

(10) In *Tottenham U.D.C. v. Rowley*, L. R. 1912, 2 Ch., at p. 644. This case was afterwards affirmed in H. L., *sub nom. Rowley v. Tottenham U.D.C.*, *ante*, p. 301 (23).

(11) 53 & 54 Vict. c. cxxliv., s. 62.

(12) *Ante*, p. 848.

(13) See *Stroud v. Wandsworth Dist. Bd.*,

ante, p. 331 (17), decided under the Metropolitan Management Amendment Act, 1890 (53 & 54 Vict. c. 66), s. 3, the provisions of which have some resemblance to those of sub-sects. (1)-(3) of the present section; and *cf.* the cases cited in the Note to s. 39 of the present Act.

(14) See *Wake's Case*, and others cited *ante*, p. 713.

Sect. 19, n.

In an Irish case ¹⁵ it was held that an appeal against a notice under sub-sect. (1) of the present section lay to quarter sessions, and not to the Local Government Board.

Counter notices.

If the present section is put in force in a rural district, the effect of service of a counter-notice under sub-sect. (4) might be to require the district council to apply for urban powers under sect. 150 of the Act of 1875 or the Act of 1892. If such powers were refused, the counter-notice would be inoperative. As to the practice in rural districts, see *infra*.

An urban district council served a notice on certain frontagers, under the present section, requiring them to execute urgent repairs to two highways. The frontagers served a counter-notice, under sub-sect. (4), requiring the council to deal with the highways under the Private Street Works Act, 1892. The council prepared provisional apportionments with respect to both highways, but only proceeded further with respect to one of them. The frontagers obtained a rule *nisi* for a writ of *mandamus*, directing the council to proceed with the other highway also. The council showed cause on the grounds (1) that they ought not to be ordered to proceed, because (a) they had a discretion as to proceeding after the service of such a counter-notice, (b) they had made various mistakes in the notices, and (c) the frontagers had raised questions as to part of that highway being "repairable by the inhabitants at large," and as to the reasonableness of the proposed works; and (2) that the *mandamus* proceedings were barred by the Public Authorities Protection Act, 1893, as having been commenced more than six months after the alleged default. It was held that the rule must be discharged.¹⁶ *Per* Lord Alverstone, C.J.¹⁷ :— "I am not at present prepared to say that the giving of a notice to repair under sect. 19 (1) will force the local authority to go on under the Private Street Works Act when a counter-notice is given. It seems to me that there are grounds for arguing that, if the counter-notice is given, they may abandon the whole proceedings, and it is sufficient to say that, if they do go on, they must go on under the Private Street Works Act."¹⁸

It is to be observed that, if the street is made up in pursuance of a counter-notice, the street must be taken over on completion of the "necessary" works, a different provision from that contained in the other enactments on this point.¹⁹

It will be observed that the present Act provides no machinery for the apportionment of the total amount among the several owners, as in the case of works executed under sect. 150 of the Public Health Act, 1875, but that each owner is liable for the amount in fact proportionate to his frontage. Possibly, therefore, questions as to whether any owner has been charged with the right proportion of the expenses may be raised by way of defence to proceedings for the recovery of the amount from him; but, as the present Act is to be "construed as one with" the Act of 1875,²⁰ it may be that sect. 257 of that Act is to be taken as incorporated with the present Act, in which case any such dispute must be settled by arbitration within the time limited by that section.²¹

Rural districts.

As to the application of the present section in rural districts, the Local Government Board only put sect. 150 of the Act of 1875, or the Act of 1892, in force in such districts in respect of certain specified streets. This practice was justified by sect. 276 of the Act of 1875, which enabled the Board to confer urban powers, "subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers," etc., are to be exercised. Sect. 3 of the present Act enables the Minister of Health to put sections of the Act in force in rural districts as a whole or in contributory places, though possibly his power to impose "conditions," subject to which the sections are to be in force, enables him to impose a condition as to the "portion of the district" to which the section is to be applied.^{21a} As to the possible effect of service of a counter-notice under sub-sect. (4) of the present section, see *supra*.

Ratione tenuræ highways.

As to the enforcement of the repair of highways repairable by private persons *ratione tenuræ*, see sect. 25 (2) of the Local Government Act, 1894.²²

(15) *Rex (Belfast Cpn.) v. Belfast Recorder*, 1919 Ir. K. B. 171.

(16) *Rex (Course) v. Epsom U.D.C.* (1912, K. B. D.), 76 J. P. 389; 10 L. G. R. 609.

(17) 10 L. G. R., at p. 616.

(18) Further as to this case, see *ante*, p. 340 (22).

(19) See P. H. Act, 1875, s. 152, *ante*, p. 355; P. H. Am. Act, 1890, s. 41, *ante*, p. 866; and P. S. W. Act, 1892, s. 19, *ante*,

p. 352.

(20) See s. 2 (1), *ante*, p. 881.

(21) See *ante*, p. 682.

(21a) In an order (dated April 27, 1921) putting the Private Street Works Act, 1892, in force with regard to a particular street in the Catherington rural district, the present section was also put in force with regard to the same street.

(22) *Post*, Vol. II., p. 2039.

Sect. 20. If the footway of any street repairable by the inhabitants at large be injured by or in consequence of any excavations or other works on lands adjoining thereto the local authority may repair or replace the footway so injured, and all damages and expenses of or arising from such injury and repair or replacement shall be paid to the local authority by the owner of the lands on which such excavations or other works have been made, or by the person causing or responsible for the injury.

Sect. 20.

Recovery of damages caused to footways by excavations.

Note.

Further as to injuries to streets, see sect. 149 of the Public Health Act, 1875, and the Note thereto.²³

There is no provision in the present section as to the way in which expenses payable under the present section are to be recovered; but in view of the provisions of sect. 2 (1), as to the construction of the present Act "as one" with the Public Health Act, 1875, and of sect. 6, as to the recovery of expenses, it would appear that they are recoverable summarily under sect. 251 of the Act of 1875.²⁴

Injuries to streets.

Recovery of expenses.

Sect. 21. The local authority may, with the consent of two-thirds in number and value of the ratepayers in any street, alter the name of such street or any part of such street. The local authority may cause the name of any street or of any part of any street to be painted or otherwise marked on a conspicuous part of any building or other erection.

Any person who shall wilfully and without the consent of the local authority, obliterate, deface, obscure, remove, or alter any such name, shall be liable to a penalty not exceeding forty shillings.

Note.

Sect. 64 of the Towns Improvement Clauses Act, 1847, is incorporated with the Public Health Act, 1875, and contains further provisions on this subject: see the Note to that section.²⁵

Power to alter names of streets.

Naming streets.

Sect. 22. The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine and for any loss which may be sustained through the exercise of the powers by this section conferred upon the local authority they shall pay compensation.²⁶

Buildings at corner of streets.

Sect. 23. For the purposes of this Act and the Public Health Acts, and any byelaws made thereunder, each of the following operations, namely:—

What to be deemed new buildings.

(a) The re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey;

(b) The conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only;

(c) The re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house;

(d) The making of any addition to an existing building by raising any part of the roof, by altering a wall, or making any projection from the building, but so far as regards the addition only; and

(e) The roofing or covering over of an open space between walls or buildings; shall be deemed to be the erection of a new building.

[Provided that for the purposes of bye-laws this section shall have effect only in relation to bye-laws duly confirmed on or after the day on which it comes into operation in the district ^{26a}.]

Note.

The present section is a re-enactment of sect. 159 of the Public Health Act, 1875,²⁷ with substantial additions. Sect. 157 of that Act ²⁸ is the section which authorises the making of bye-laws. See also sect. 23 of the Public Health Acts Amendment Act, 1890,²⁹ and sect. 24 of the present Act.

Bye-laws as to new buildings.

The question whether an alteration of an existing building otherwise than in one

(23) *Ante*, pp. 285, 304-306.

(24) *Ante*, p. 649.

(25) *Post*, Vol. II., p. 1621.

(26) As to the assessment and payment of compensation under the present Act, see s. 10 and Note.

(26a) Usually added as an "adaptation" under s. 3 (3), *ante*, p. 882. See, e.g., Lowestoft Order, April 18, 1922.

(27) *Ante*, p. 403.

(28) *Ante*, p. 373.

(29) *Ante*, p. 858.

Sect. 23, n.

of the specified ways amounts to the erection of a new building for the purposes of bye-laws is a question of fact and degree.³⁰

"Addition"
to building.

In the case of operations falling within clauses (a) (b) and (c) of the present section the whole building need not, it seems, be regarded as the new building, so as to make bye-laws and enactments apply with reference to the whole building.³¹

In the case of operations falling within clause (d) these bye-laws and enactments are declared to apply as regards the addition only. The clause, it may be observed, is of a most unsatisfactory character owing to the difficulty of applying to an addition to a building by itself bye-laws and enactments framed essentially to deal with buildings as a whole.

In the case cited below,³² that difficulty led to a finding by the Court of Appeal that a bye-law was unreasonable and bad. A local authority refused to pass the plans of an addition to the front of some school buildings on the ground that the present section made the addition a "new building," and their bye-laws as to new buildings required the provision of an open space in the rear. As compliance with the bye-law was impossible, an injunction restraining the local authority from enforcing it was granted.

In a case arising under a local Act containing a section identical, so far as is material to the decision, with clause (d) of the present section,³³ the respondent, without depositing plans, pulled down a conservatory erected on the first floor of his house and built a bedroom in its place, raising one of the external walls of the building for the purpose. The bedroom was no higher, and occupied no more space, than the conservatory. The respondent was charged with failing to deposit plans, on the footing that he had made an "addition" to an existing building or "raised" part thereof. The justices dismissed the information on the ground that the bedroom occupied no more space than the conservatory. The court, however, on a case stated, held that this circumstance was not conclusive to show that the work did not constitute an "addition" to or the "raising" of a building, and remitted the case to the justices for them to deal with the question as one of fact.

Partition.

A temporary partition was erected, for the purpose of dividing one dwelling-house into two, pending the construction of a permanent one, the plan of which had been approved. A conviction for not depositing a plan of the temporary one was quashed.^{33a}

Sub-division
of building.

An enactment in a local Act that the erection of a new building should include the conversion of one dwelling-house into two or more was held to have been infringed when a block of three shops with dwelling-rooms over them, having in 1892 been converted into one shop with one dwelling over it, was in 1903 re-converted into three shops and dwellings.³⁴

Uninhabited
dwelling-
houses into
warehouses.

Another local Act³⁵ included "the conversion of a dwelling-house into any other building not intended for human habitation." Before October, 1910, two premises without internal communication were occupied as separate dwelling-houses. In October, 1910, the local authority ordered them to be closed as unfit for human habitation. From October, 1910, to April, 1913, they were used solely as warehouses. In April, 1913, the owner made internal alterations which converted them into one warehouse. The local authority summoned him for a penalty for not depositing a plan of the alterations on the ground that the local Act had made this the erection of a new building. The justices dismissed the summons on the ground that at the date of the alterations the premises were "warehouses and not dwelling-houses." It was held (Darling, J., dissenting) that the justices were wrong in law and that there should have been a conviction. *Per* Atkin, J.: "I do not think that a building which once has been a dwelling-house, as these buildings undoubtedly were, can cease to be a dwelling-house simply because it has got into such a state of disrepair that the law does not allow people to dwell in it; it does not cease to be a dwelling-house because the owner has finally determined that people shall no longer dwell in it. To my mind the definition cannot depend upon the intention of the owner, which may vary from time to time, nor,

(30) See the *Redruth Case*, and others cited *ante*, pp. 404-406.

(31) *Rex (Hoare & Co.) v. Foots Cray U.D.C.* (C. A.), L. R. 1916, 1 K. B. 246; 85 L. J. K. B. 191; 113 L. T. 705; 79 J. P. 521; 13 L. G. R. 1027. Overruling *Leonard v. Hoare & Co.* (K. B. D.), L. R. 1914, 2 K. B. 798; 83 L. J. K. B. 1361; 111 L. T. 69; 78 J. P. 287; 12 L. G. R. 844.

(32) *Repton School Governors v. Repton R.D.C.*, L. R. 1918, 2 K. B. 133; 87 L. J.

K. B. 897; 119 L. T. 176; 82 J. P. 257; 16 L. G. R. 569.

(33) *Meadows v. Taylor* (1890), L. R. 24 Q. B. D. 717; 59 L. J. M. C. 99; 62 L. T. 658; 54 J. P. 757.

(33a) *Hope-Dunbar v. Kirkcudbright C.C.*, 1922 S. C. (J.) 21; 59 Sc. L. R. 285.

(34) 48 & 49 Vict. c. clxv., s. 63. *Hall v. Eastbourne Cpn.* (1908, K. B. D.), 69 J. P. 369.

(35) *Bolton*, 1901 (1 Edw. VII. c. cxxxv.), s. 36.

as I say, do I think it depends upon the actual user to which the building is put. . . . I think in this case this was the conversion of one class of building, namely, a dwelling-house, into another building, namely, a warehouse.”³⁶

Where an old dwelling-house had been structurally altered so that it could be let in three flats, and one of the flats had been let without the surveyor’s certificate that it was fit for human habitation as required by a local Act, a conviction for such letting was upheld, *Salter, J.*, considering that there had been a “physical conversion,” and that it was “beyond argument that the whole reconstructed house containing the flats” was a “new building.”³⁷

A safeguard beyond that provided by sect. 159 of the Public Health Act, 1875, and the present section against the improper use as dwelling-houses of buildings not constructed for habitation is afforded by section 33 of the Public Health Acts Amendment Act, 1890, where that section is in force—see the Note to that section.³⁸

As to the partial exemption of railway and other companies from these provisions, see sect. 33 of the present Act.

Sect. 23, n.

Conversion into flats.

Conversion to dwelling-house.

Exemptions.

Sect. 24. Sect. 157 of the Public Health Act, 1875, shall be extended so as to empower the local authority to make bye-laws—with respect to the height of chimneys of buildings and with respect to the height of buildings; and with respect to the structure of chimney shafts for the furnaces of steam engines, breweries, distilleries, or manufactories.

Sect. 158 of the Public Health Act, 1875, shall also be in force in every district in which this section is in force.

Bye-laws as to height of chimneys, &c.

Note.

Sect. 157 of the Public Health Act, 1875,³⁹ is the section authorising local authorities to make bye-laws with regard to new streets and buildings. Its scope is extended by sect. 23 of the Public Health Acts Amendment Act, 1890,⁴⁰ where that section is in force.

As enacted sect. 157 of the Act of 1875 applies in urban districts only. But rural district councils are very frequently invested with the powers of the section by orders under sect. 268 of that Act. And, apart from such orders, the section is in part applicable in rural districts for which Part III. of the Act of 1890 has been adopted, by virtue of sect. 23 (3) of that Act.

Sect. 158 of the Act of 1875⁴¹ is ancillary to sect. 157. It deals with the approval or disapproval of plans deposited in pursuance of the bye-laws and the pulling down of work executed in contravention of the bye-laws, and provides that the existence of work executed in contravention of the bye-laws shall, subject to certain conditions and limitations, be deemed a continuing offence. The section, like sect. 157, is enacted with reference to urban districts only. It is in practice always extended to rural districts to which sect. 157 is applied; and it also applies in rural districts for which Part III. of the Act of 1890 has been adopted, by virtue of sect. 23 (3) of that Act.

As to the partial exemption of railway and other companies from these provisions, see sect. 33 of the present Act.

Bye-laws.

Exemptions.

Sect. 25. If any yard in connection with, and exclusively belonging to, a dwelling-house shall not be so formed, flagged, asphalted, or paved, or shall not be provided with such works on, above, or below the surface of the yard, as to allow of the effectual drainage of the subsoil or surface of the yard by safe and suitable means to a proper outfall, the local authority may, by notice in writing, require the owner of the dwelling-house, within twenty-one days after the service of the notice, to execute all such works as are necessary for the effectual drainage of the subsoil or surface of the yard to a proper outfall.

If, within the said period of twenty-one days, the owner has failed to complete the execution of the works specified in the notice, the local authority may execute the works, and may recover from the owner in a summary manner as a civil debt the expenses incurred by the local authority in the execution of the works.

Yards to be paved, &c.

(36) *Morgan v. Kenyon* (1913, K. B. D.), 110 L. T. 197; 78 J. P. 66; 12 L. G. R. 140, at p. 147.

(37) *Cammell Laird & Co. v. Brownridge* (1919), 88 L. J. K. B. 1301; 121 L. T. 471; 83 J. P. 190; 17 L. G. R. 441. See also *Alexander v. Tracey* (1915), 84 L. J. K. B. 1890; 79 J. P. 458; 14 L. G. R. 65, as to the necessity for determining, before taking proceedings under a local Act, which of the houses formed out of the old house was the original house.

(38) *Ante*, p. 862.

(39) *Ante*, p. 373.

(40) *Ante*, p. 858.

(41) *Ante*, p. 400.

Sect. 25, n.

Note.

Paving yards.

It seems clear that, under the present section, the decision of the local authority that a yard is not so formed, &c., as to allow of effectual drainage will be conclusive, subject only to the owner's right of appeal under sect. 7.⁴²

It is clear from the second paragraph of the section that the local authority may specify the works to be executed; and a notice not so specifying the works would probably be bad.⁴³

The local authority can clearly exercise their powers under the section from time to time in relation to any yard as occasion may require. But the section would not it seems authorise the local authority, once they had required works of a particular character to be provided in a yard, at any rate in an ordinary case, to require works of a different character to be substituted therefor.⁴⁴

The power to make bye-laws as to the paving of yards under sect. 23 of the Act of 1890,⁴⁵ will be unnecessary in places where the present section is in force, and that section, and sect. 157 of the principal Act, are sometimes, so far as they relate to bye-laws as to the paving of yards and open spaces, excluded as an "adaptation."⁴⁶

Entrances to courts, &c., not to be closed.

Sect. 26. After the commencement of this section the entrances to any court shall not, except with the consent of the local authority, be closed or narrowed or otherwise altered or affected by any permanent structure so as to impede the free circulation of air, and the height of any such entrance shall not, except with that consent, be lowered. The consent of the local authority under this section may be given subject to compliance with such conditions as the local authority by their consent prescribe with respect to the formation or provision of any other sufficient opening or means of access, or with respect to the provision of other sufficient means of securing free circulation of air throughout the court.

Nothing in this section shall have effect in relation to any court which by reason of its situation, use, architectural features, or other characteristics is, either wholly or in part, necessary for or ancillary to the ornament or amenity of any lands or premises.

Any person offending against this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

As to temporary buildings.

Sect. 27.—(1) Before any person erects or sets up a temporary building he shall apply to the local authority for permission so to do.

The application shall be accompanied by a plan and sections of the proposed building drawn to a scale of not less than one inch to every eight feet, and a block plan, drawn to a convenient scale, showing the intended situation and surroundings of the proposed building, together with a specification describing the materials proposed to be used in the construction of the building, and the purpose for which the building is intended.

(2) The local authority shall, within one month after the delivery of the plans and sections and specification, signify in writing their approval or disapproval of the building to the person proposing to erect or set up the building.

(3) The local authority may attach to their approval any condition which they deem proper with regard to the sanitary arrangements of the building, the ingress thereto and the egress therefrom, protection against fire, and the period during which the building shall be allowed to stand.

(4) If any such building is begun, erected, or set up without such application accompanied by such plan, sections, and specification as this section requires, or after the disapproval of the local authority or before the expiration of one month without their approval, or is in any respect not in conformity with any condition attached by the local authority to their approval, the person who began, erected, or set up the building, or, if any such building is not removed within the period allowed by the local authority, the owner of the building shall for every such offence be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding the like amount; and the local authority may cause the building to be pulled down or removed, and any expense incurred by them in and about the pulling down or removal of the building may, at their discretion, be recovered summarily as a civil debt from the owner of the building or from the person erecting or setting up the building.

(5) Where any such building is pulled down or removed by the local authority

(42) See the *Sherborne Case*, and others cited *ante*, p. 109.

(43) See *Wheatley's Case*, *ante*, p. 198 (8).

(44) See *Harrison's Case*, *ante*, p. 317 (56).

(45) *Ante*, p. 858.

(46) See, *e.g.*, *Kingston-upon-Thames Order*, referred to *ante*, p. 886 (37).

under the powers of this section the local authority may sell the materials or any part of the materials, and shall apply the proceeds of the sale in or towards payment of the costs and expenses incurred by them in relation to the pulling down or removal of the building, and shall pay the balance to the owner of the building. **Sect. 27.**

(6) The following buildings shall be exempt from the operation of this section :—

(a) Any building expressly exempt from the operation of the Public Health Acts or the bye-laws made under those Acts and in force for the time being within the district;

(b) Any building erected or set up for the purpose of protecting or of preventing the acquisition of rights to light;

(c) Any temporary building set up as part of the plant to be used in or about or in connection with the construction, alteration, or repair of any building or other work; but so far as regards only so much of this section as relates to plans, sections, and specifications.

[Nothing in this section shall apply to any temporary building erected or set up for use by the Territorial Force.¹]

Note.

The present section is probably intended, in the first place, to give the local authority control over structures which, though in a sense buildings, are of too slight and ephemeral a character to come within the scope of ordinary bye-laws as to buildings. **Slight and ephemeral structures.**

In order that the section should fulfil this object it would be necessary to construe "building" as having a wider meaning in the section than it has in such bye-laws. But there is no reason why such a construction should not be adopted, for the expression "building" is not defined for the purposes of the Public Health Acts and is capable in itself of a very wide meaning. And the question as to the meaning of "building" in bye-laws or in any enactment has always been treated as turning not on the meaning of the word "building" in the abstract, but on the meaning that should be assigned to it in view of the scope of the bye-laws or legislation under consideration.

The Court of Appeal,² while holding that a conservatory was not a building within bye-laws of the usual character, intimated that bye-laws might possibly be framed under sect. 157 of the Public Health Act, 1875, that would apply to such a structure, as a "building."³

A bungalow, which was on wheels and 21 feet long, 9 feet wide, and 9 feet high at its highest point, was removed by the local authority because, among other objections to it, no licence had been obtained under the present section. In an action for damages by the owner, the Court of Appeal reversed Atkin, J., who had held that, though the building was a "temporary building" within the present section, it also came within sect. 157 of the Act of 1875, and therefore could not be dealt with under the present section.⁴ *Per* Lord Reading, C.J., "I see no reason to read the Act of 1907 as if it applied only to such buildings as could not before the passing of the Act of 1907 come within the Act of 1875."⁵

But a wooden structure, used for hoop throwing competitions, and temporarily fixed to the ground by pins driven through plates, was held not within the present section.⁶

A contractor commenced the erection of a sheltered approach to a pavilion without permission from the local authority and without having deposited plans. The sides having been partly erected, the owner was summoned for an offence against the present section. The justices dismissed the summons on the ground that, until the owner had been called upon to remove the building, the only person who could be proceeded against was the person "who began erected or set up" the building, namely, in this case the contractor.⁷

Further as to the compulsory removal of buildings, see the Note to sect. 157 of the Public Health Act, 1875.⁸

(1) Usually added as an "adaptation" under s. 3 (3), *ante*, p. 882. For another common adaptation of the present section, see footnote (37), *ante*, p. 886.

(2) In *Hibbert's Case*, *ante*, p. 385 (23).

(3) See also the *Southend Cases*, *ante*, p. 385 (26) (27), and the observations of Wills, J., as to the meaning of "structure" in *Venner's Case*, *ante*, p. 386 (35).

(4) *Andrews v. Wirrall R.D.C.*, L. R. 1916, 1 K. B. 863; 85 L. J. K. B. 853; 114 L. T. 1006; 80 J. P. 257; 14 L. G. R. 521. Further

as to this case, see *ante*, p. 398 (14). As to buildings on wheels, see also the *Sunderland Case*, *ante*, p. 368 (27), and *Richardson's Case*, *ante*, p. 383 (4).

(5) L. R. 1916, 1 K. B. at p. 873.

(6) *Whitehorn v. Smelt* (1910, K. B. D.), 102 L. T. 35; 74 J. P. 102; 8 L. G. R. 123.

(7) *Morecambe Cpn. v. Anon.* (Petty Sessions), "Municipal Engineering," Oct. 9, 1919, p. 256.

(8) *Ante*, p. 396.

Sect. 27, n.**Larger temporary buildings.****Exemptions.****Housing schemes.****Removal of materials in streets.**

The present section is probably intended, not only, as above suggested, to give the local authority control over structures of a slight or ephemeral character that would not come within bye-laws of the ordinary type, but also to enable the local authority to relax the stringency of bye-laws, and possibly also of enactments, in favour of buildings which, though sufficiently important and permanent to come within the scope of such bye-laws and enactments, are still "temporary."

As to the exemption of railway and other buildings from the present Part of this Act and bye-laws made under any enactment extended thereby, see sect. 33, *post*.

The present section is not to apply to any buildings to which sect. 25 of the Housing, Town Planning, etc., Act, 1919, applies.⁹

Sect. 28. The local authority may remove, appropriate, use, and dispose of all old materials existing in any street at the time of the execution by the local authority of any works in such street unless the owners of buildings and lands in such street within forty-eight hours after notice so to do served on them by the surveyor remove such materials or their respective proportions thereof, and the local authority shall allow such sum as may be the reasonable value thereof to such owners for any materials which have been used or removed by the local authority, and in case of dispute the amount to be allowed shall be settled in the manner provided by the Public Health Act, 1875, with respect to compensation for damage sustained by reason of the exercise of any powers of that Act.

Note.**Removal of road materials.**

Though the present section refers to "any street" and "any works," it must, it seems, be construed as applying only to streets not repairable by the inhabitants at large and to works of making up such streets at the expense of the frontagers. The property in the materials of streets repairable by the inhabitants at large is vested in urban authorities by sect. 149 of the Public Health Act, 1875¹⁰ (though rural authorities are not in this position), and not in the owners of the land; and it can hardly be intended to enable local authorities to confiscate road materials whatever works they may be executing in a street on payment of compensation.

In many cases no doubt the "materials" may be the property of the owner of the soil of the street; but the property in the soil of a street is by no means necessarily vested in the persons to whom the property at the sides of the street belongs; and still less is the property in the soil of the street necessarily vested in the persons who are "owners" of those houses and buildings within the definition of "owner" made applicable to the interpretation of the present Act by sect. 13.

The word "old" in conjunction with "materials" no doubt confines those materials to road making materials and excludes the subsoil excavated during street or sewage works. This subsoil may be valuable, *e.g.*, gravel, and may have been retained by the vendor of the adjoining plots, who might not receive compensation under the present section, though he might be entitled to compensation, under sect. 308 of the Act of 1875,¹¹ as that Act is to be "construed as one with" the present Act.

Deposit of building materials or excavations not to be made without consent.

Sect. 29. It shall not be lawful for any person without the consent of the local authority in writing first obtained to lay any building materials, rubbish, or other thing, or make any excavation on or in any street repairable by the inhabitants at large, and when with such consent any person lays any building materials, rubbish, or other thing, or makes any excavation on or in any street, he shall, at his own expense, cause the same to be sufficiently fenced and a sufficient light to be fixed in a proper place on or near the same and to be continued every night from sunset to sunrise, and shall remove such materials, rubbish, or thing or fill up such excavation (as the case may be) when required by the local authority; and, if any person fails to comply in any respect with the requirements of this enactment, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the local authority may remove any such materials, rubbish, or thing, or fill up such excavation (as the case may be), and recover the expenses from the offender summarily as a civil debt.¹²

(9) See s. 25 (4), *post*, Part II., Div. III.

(10) *Ante*, p. 285.

(11) *Ante*, p. 751.

(12) The present section is an extension of the Towns Improvement Clauses Act, 1847,

ss. 81, 82, *post*, Vol. II., p. 1628. See also the Town Police Clauses Act, 1847, s. 28 [23] [28] [29], *post*, Vol. II., p. 1649; and the Note to sect. 30 of the present Act.

Sect. 30. With respect to the repairing or enclosing of dangerous places the following provisions shall have effect (namely) :—

(1) If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure dangerous to the persons lawfully using the street or footpath, the local authority may by notice in writing served upon the owner, require him, within the period specified in the notice and herein-after in this section referred to as the "prescribed period," to repair, remove, protect, or enclose the same so as to prevent any danger therefrom :

(2) If, after service of the notice on the owner, he shall neglect to comply with the requirements thereof within the prescribed period, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses thereof shall be payable by the owner, and may be recovered summarily as a civil debt.

[Nothing in this section shall apply to any wall or other structure in so far as the same is used either for the support of any street or public footpath repairable by the inhabitants at large, or for the protection of any such street or public footpath from damage or obstruction, by reason of the surface of the street or footpath being above or below the level of the surface of the adjoining land, unless the wall or other structure was built after the street or footpath became a highway repairable by the inhabitants at large by or at the expense of a person other than the highway authority responsible for the repair of the street or footpath.¹²]

Note.

Other powers in connection with the guarding of dangerous places are contained in sects. 75-83 of the Towns Improvement Clauses Act, 1847,¹³ sect. 28 [28] of the Town Police Clauses Act, 1847,¹⁴ the Metalliferous Mines Regulation Act, 1872,¹⁵ the Public Health Act, 1875,¹⁶ the Quarry Fencing Act, 1887,¹⁷ sects. 29, 31, and 32 of the present Act, and sect. 26 of the Coal Mines Act, 1911.¹⁸

An owner or occupier of land is under no common law obligation to fence such land, "unless against some special danger."¹⁹

It is, however, an offence indictable at common law to make a dangerous excavation near to a highway so as to be a nuisance to the public using the highway; but if the excavation exists first, and the highway is afterwards dedicated to the use of the public, the public (so far as the common law is concerned) must use the highway as they find it, namely, subject to the inconvenience or danger.²⁰

A private injury arising from a public nuisance is the subject-matter of an action for damages.^{20a}

The occupier of land is bound to fence off any hole or area which he or his predecessor in title has made so close to a public way that it may be dangerous to passers-by if left unguarded; and he is *primâ facie* liable for any damage that may arise, in the absence of contributory negligence, from his neglect to fence it.²¹

A coroner's inquisition stating that the jury found a verdict of manslaughter against three persons (who were respectively the managing director of the company that owned a quarry, the chairman of the urban district council, and the inspector of nuisances) on the ground that a man was killed by reason of their neglect to cause the quarry to be fenced was quashed, because it did not allege that any of the defendants had any such relation to the quarry as to impose on them a personal liability to fence it.²²

A deep disused chalk pit was separated from a highway by a strip of land belonging to the defendant. It was not originally contiguous to the defendant's land, but by process of erosion the land had crumbled and fallen into the pit to such an extent that the edge of the pit at the time in question was well within the defendant's strip of land, and so near the highway as to be dangerous to the public. The local authority served a notice on the defendant requiring him to

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Dangerous places to be repaired or enclosed.

Dangerous places.

(12) Usually added as an "adaptation," see, e.g., Kingston-upon-Thames Order, referred to *ante*, p. 886 (37).

(13) *Post*, Vol. II., pp. 1625-1629.

(14) *Post*, Vol. II., p. 1649.

(15) See s. 13, *ante*, p. 176.

(16) See s. 149, *ante*, p. 285.

(17) *Ante*, p. 177.

(18) *Ante*, p. 176.

(19) *Potter v. Parry* (1859), 7 W. R. 182; Hunt's "Boundaries and Fences," 1912 ed.,

at p. 115.

(20) *Fisher v. Prowse*, and *Cooper v. Walker* (1862), 2 B. & S. 770; 31 L. J. Q. B. 212; 6 Jur. (N.S.) 1208; 6 L. T. 711.

(20a) See *ante*, p. 179.

(21) *Barnes v. Ward* (1850), 9 C. B. 392; 19 L. J. C. P. 195; 14 Jur. 334.

(22) *Reg. v. Clerk of Assize, Oxford Circuit*, L. R. 1897, 1 Q. B. 370; 66 L. J. Q. B. 271; 76 L. T. 260; 61 J. P. 197.

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Dangerous
places—cont.

fence the pit, and on his default fenced it themselves at a cost of £18. The defendant removed the fence. It was held that the local authority were entitled to an injunction, and the £18, under the present section.²³

An ancient public footway ran along the top of the bank of a broad river. The river washed away portions of the footway, and made it dangerous. The local authority repaired these places, and sought, under the present section, to recover the expense from the persons who owned the soil of the footway and the land *ad medium filum aquæ*. It was held that such owners were not liable, as the river bank was not a "bank" within the meaning of this enactment.²⁴ *Per* Darling, J.²⁵ :—"The 'bank' mentioned in [the present section] is not what we usually call the bank of a river. . . . I think it means some kind of artificial elevation, and that this burden cannot be put upon the owners of the land on which the footpath goes because between the footpath and the river there is that which prevents the river from flowing further inland. . . . It might involve this, that if the footpath runs, as many footpaths do, along the top of precipitous cliffs, such as the cliffs of Dover, it would cast upon the owner of the bit of land between the footpath and the edge of the cliff the duty of preserving that cliff from falling into the sea, unless he were fortunate enough to own it at a time when by some great accident of the weather the whole thing, footpath and all, went into the sea. . . . I cannot imagine that the Legislature, when it used these words, meant to impose upon landowners any such obligation."

Where, however, a local enactment corresponding to the present section used the expression "ground," this was held not to be confined to ground artificially made, but to apply to the top of a cliff which had been undermined by excavations.²⁶ *Per* Lord Reading, C.J.²⁷ :—"The danger which is aimed at is present whether the ground is made or unmade."

Sea walls.

As to the maintenance of sea walls, see the Note to sect. 31 of the Public Health Act, 1875.³¹

Form of
notice.

In the *Hasting's Case*,³² the court overruled an objection that the notices were not sufficiently specific, the surveyor having suggested certain definite works, and an addition, to the effect that other work might be done provided that the ground was secured to his satisfaction, being reasonable. *Per* Lord Reading, C.J.²⁸ :—"All he has purported to do by the notices is to indicate what is in his mind, leaving it open to the appellants, if they like, to suggest another way of obtaining his satisfaction."

As to the meaning of "fronting adjoining or abutting" in sub-sect. (1) of the present section, see the Note to sect. 150 of the Public Health Act, 1875.²⁹

Fencing lands
adjoining
streets.

Sect. 31. If any land (other than land forming part of any common) adjoining any street is allowed to remain unfenced or if the fences of any such land are allowed to be or remain out of repair, and such land is, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purposes, or for any purpose causing inconvenience or annoyance to the public, the [Minister of Health] on the application of the local authority may by order empower the local authority to proceed under this section, and, in that case, at any time after the expiration of fourteen days from the service upon the owner or occupier of notice in writing by the local authority requiring the land to be fenced or any fence of the land to be repaired, the local authority may cause the land to be fenced or may cause the fences to be repaired in such manner as they think fit, and the reasonable expenses thereby incurred shall be recoverable from such owner or occupier summarily as a civil debt.

Note.

Fencing
vacant land.

An application for an order empowering a local authority to proceed under the present section cannot be made at the same time as the application under sect. 3 for an order putting the section in force.

Under a local enactment substantially the same as the present section,³⁰ a local authority, being of opinion that land adjoining a street and fenced with upright

(23) *Carshalton U.D.C. v. Burrage* (Ch. D.), L. R. 1911, 2 Ch. 133; 80 L. J. Ch. 500; 104 L. T. 306; 75 J. P. 250; 9 L. G. R. 1037; 27 T. L. R. 280.

(24) *Cheshire Lines Committee v. Heaton Norris U.D.C.* (K. B. D.), L. R. 1913, 1 K. B. 325; 81 L. J. K. B. 1119; 107 L. T. 348; 76 J. P. 462; 10 L. G. R. 972; 28 T. L. R. 576.

(25) *Ibid*, L. R. 1913, 1 K. B. at pp. 334,

335.

(26) *Hastings*, 1885, 48 & 49 Vict. c. cxvii., s. 159. *Gaby v. Palmer* (1916), 85 L. J. K. B. 1240; 80 J. P. 212; 14 L. G. R. 491.

(27) 80 J. P. at p. 214, col. i., mid.

(28) *Ibid.*, col. iv., top (29) *Ante*, p. 321.

(30) *Willesden*, 1903, 3 Edw. VII. c. clxxxii., s. 32.

(31) *Ante*, p. 104.

(32) *Supra* (26).

posts 4 inches square, 3 feet 4 inches high, and 8 feet apart, with stout fir poles running along tops of posts and bound thereto by hoop iron, was used for purposes causing public annoyance, gave notice to the owner to erect "a proper and adequate fence," and on his default erected a new fence themselves and obtained from the justices an order for payment of the costs. The justices had declined to hear evidence tendered by the local authority as to the public annoyance, considering this solely for the local authority; but it was held, on appeal by special case, that the justices were wrong in rejecting this evidence, and that the case must be remitted for them to determine this question themselves.³¹

Further as to the fencing of streets, see the Note to sect. 149 of the Public Health Act, 1875.³²

Sect. 31, n.

Sect. 32.—(1) A person shall not use any hoarding or similar structure which is in, or abuts on, or adjoins any street, for any purpose, unless it is securely fixed to the satisfaction of the local authority.

(2) If any person acts in contravention of this section he shall be liable, in respect of each offence, to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

Hoards to be securely erected.

Note.

Other provisions as to hoardings are contained in sect. 80 of the Towns Improvement Clauses Act, 1847,³³ sect. 5 of the Advertising Stations Rating Act, 1889,³⁴ sect. 34 of the Public Health Acts Amendment Act, 1890,³⁵ and sect. 2 of the Advertisements Regulation Act, 1907.³⁶

A hoarding erected in the centre of a hedge bank at the side of a street, and thus divided from the street by a continuous narrow strip of private land throughout its length, was held not to come within the provisions of a local Act prohibiting the erection of a hoarding to be used for advertising purposes "in or abutting on or adjoining" any street, without the consent of the local authority.³⁷

The contrary has since been held with regard to the same words in another local Act,³⁸ so that the intervention of a narrow strip of land between the hoarding and the street appears now to be immaterial.³⁹

Further as to the meaning of "abutting" or "adjoining," see the Note to sect. 150 of the Public Health Act, 1875.⁴⁰

Hoardings.

Sect. 33. Nothing in this Part or in any byelaws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorised to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation.

Exemption of buildings of railway companies and others.

Note.

The cases dealing with exemptions such as those in the present section will be found in the Note to sect. 157 of the Public Health Act, 1875,⁴¹ the last paragraph of which contains an exemption in favour of railway companies only. The exemption in the present section is not so confined. See also sect. 22 of the Private Street Works Act, 1892.⁴²

Exemption of railway companies.

PART III.

SANITARY PROVISIONS.

Sect. 34. Sect. 41 of the Public Health Act, 1875, shall have effect as if for the words "(but not otherwise)" there were substituted the words "or where on the report in writing of their surveyor or [sanitary inspector ⁴³] the local authority

Extension of section 41 of 38 & 39 Vict. c. 55.

(31) *Upjohn v. Willesden U.D.C.*, L. R. 1914, 2 K. B. 85; 83 L. J. K. B. 736; 109 L. T. 792; 78 J. P. 54; 11 L. G. R. 1215; 30 T. L. R. 62; 58 Sol. J. & W. R. 81. As to the costs in this case, see *ante*, p. 704 (57).

(32) *Ante*, p. 304.

(33) *Post*, Vol. II., p. 1628.

(34) *Post*, Vol. II., p. 2203.

(35) *Ante*, p. 863.

(36) *Post*, Vol. II., p. 2203.

(37) *Barnett v. Covell* (1903), 90 L. T. 29; 68 J. P. 93; 2 L. G. R. 215; 20 T. L. R. 134.

(38) 62 & 63 Vict. c. cxvii., s. 54.

(39) *Stockport Cpn. v. Rollinson* (1910, K. B. D.), 102 L. T. 567; 74 J. P. 236; 8 L. G. R. 609; following *Rockley's Ld. v. Pritchard*, 7 L. G. R. 1069. For the sequel to the *Stockport Case*, see 1 Glen's Loc. Gov. Case Law 56.

(40) *Ante*, p. 321.

(41) *Ante*, p. 399.

(42) *Ante*, p. 353.

(43) See *ante*, p. 530.

Sect. 34.

have reason to suspect that any such drain, water-closet, earth-closet, privy, ashpit, or cesspool is a nuisance or injurious to health." ¹

Sect. 35. For the purposes of the Public Health Act, 1875—

As to nuisances.

(1) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination, causing or likely to cause risk to health;

(2) Any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building; and

(3) Any deposit of material in or on any building or land which shall cause damp in such building or in an adjoining building so as to be dangerous or injurious to health;

shall be deemed to be a nuisance within the meaning of the said Act.²

Rain-water pipes not to be used as soil pipes.

Sect. 36. No pipe used for the carrying off of rain-water from any roof shall be used for the purpose of carrying off the soil or drainage from any privy or water-closet. Any person who shall offend against this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

Note.

Sewage in down-spouts.

The present section cannot be construed literally, otherwise it would render liable to a penalty the vast number of persons who have no separate roof-water drainage system on their premises, but discharge that water into their soil drains at some point before those drains leave the premises and discharge into the public sewer. It is no doubt intended to prevent the discharge of soil drainage into down-spouts, the expression used in the next section.

Water or stack-pipes not to be used as ventilating shafts.

Sect. 37. No water pipe, stack-pipe, or down-spout in existence at the commencement of this section,³ used for conveying surface water from any premises, shall be used or be permitted to serve or to act as a ventilating shaft to any drain. Any person who shall offend against this section after fourteen days from the service upon him by the local authority of notice of such offence shall be liable to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings.

Local authority may require old drains to be laid open for examination by surveyor before communicating with sewers,

Sect. 38. Before any drain existing at the commencement of this section and then not communicating with any sewer of the local authority shall be made to communicate with any sewer of the local authority, the local authority may require the same to be laid open for examination by the surveyor, and no such communication shall be made until the surveyor shall certify that such drain may be properly made to communicate with such sewer.⁴

Provision and conversion of closet accommodation.

Sect. 39.—(1) In this section unless the context otherwise requires—

The expression "closet accommodation" includes a receptacle for human excreta, together with the structure comprising such receptacle and the fittings and apparatus connected therewith;

The expression "pail closet" means closet accommodation including a moveable receptacle for human excreta;

The expression "water-closet" means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of a fresh water supply, and having proper communication with a sewer;

The expression "slop-closet" means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of slops or waste liquids of the household or rain water, and having proper communication with a sewer;

The expression "a sufficient water supply and sewer" means a water supply

(1) In places where the present section is in force, the point which was taken in the *Wood Green Case*, ante, p. 116 (14), and decided to be bad by the Divisional Court, cannot be taken in any court.

(2) The effect of the present section is to render the "nuisance clauses" (ss. 91-111, ante, pp. 173-214) of the Public Health Act, 1875, available with reference to the defects enumerated. It is generally put in force in an "adapted" form, in urban and rural districts s. 16 of L. G. Act, 1888, and in boroughs s. 23 of M. C. Act, 1882, being rendered inapplicable. In both cases the

section is usually made "subject to the first proviso to" P. H. Act, 1875, s. 91.

(3) Namely, the date on which the section is declared to come into force by the Order of the Local Government Board or Minister of Health—see s. 13.

(4) As to the meaning of "the commencement of this section," see footnote (3), supra. As to the right to connect drains to sewers, see P. H. Act, 1875, ss. 21 and 22, ante, pp. 85, 88, and P. H. Am. Act, 1890, s. 18, ante, p. 850, and the cases cited in the Notes thereto. The present section is usually put in force without prejudice to ss. 22 and 18.

and a sewer which are sufficient and reasonably available for use in, or in connection with, the efficient flushing and cleansing of, and the efficient removal of excreta from such number of proper and sufficient water-closets and slop-closets, or from such one or more of either class of closet as, in pursuance of this section, may be required to be provided in any particular case.

(2) Within one month after the deposit of any plan by a person intending to erect a new building, the local authority, where there are a sufficient water supply and sewer, may by written notice to that person require the new building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary.

Any person who fails to comply with any requirement of the local authority under this subsection shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(3) If, on the report of the medical officer or the surveyor or the [sanitary inspector⁴] the local authority are satisfied that sufficient closet accommodation has not been provided at or in connection with a building and the case is not one in which sufficient closet accommodation can be provided by the alteration of any existing closet accommodation in pursuance of this section, the local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of the building require the building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary.

If the owner or owners of the building fail to comply with any requirement of the local authority under this subsection, the local authority may at the expiration of a time which shall be specified in the notice and shall be not less than fourteen days after the service of the notice, do the work required by the notice, and may recover summarily as a civil debt from the owner or owners the expenses incurred by the local authority in so doing.

(4) The local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of a building require any existing closet accommodation (other than a water-closet or a slop-closet) provided at or in connection with the building to be altered, so as to be converted into a water-closet or slop-closet.

If the owner or owners of the building fail to comply with any requirement of the local authority under this subsection, the local authority may, at the expiration of a time which shall be specified in the notice and shall not be less than fourteen days after the service of the notice, do the work required by the notice.

Where in pursuance of this subsection any work of alteration is done by the local authority in default of the owner or owners in respect of a pail closet, the expenses of the work shall be borne by the local authority, and where in pursuance of this subsection any work of alteration is done by the local authority in default of the owner or owners in respect of any existing closet accommodation other than a pail closet, one half of the expenses of the work shall be borne by the local authority, and the remainder of the said expenses shall be borne by the owner or owners and shall be recoverable summarily as a civil debt.

Every notice in pursuance of this subsection shall state the effect of the subsection.

(5) Nothing in this section shall have effect with respect to a slop-closet, unless or until the [Minister of Health has] been satisfied by the local authority, and [has] by order declared that the circumstances of the district of the local authority are such as to render it necessary or expedient that this section shall have effect with respect to a slop-closet.

Any order in pursuance of this sub-section shall be published in such manner as the [Minister of Health directs].

Note.

The present section must be read in conjunction with sects. 40 (common closet accommodation), 41 (entry on premises), and 42 (special provisions as to appeals).

Provisions corresponding with those in this group of sections, but less elaborate, are contained in sects. 35 and 36 of the Public Health Act, 1875,⁵ and sect. 22 of the Public Health Acts Amendment Act, 1890.⁶

Sect. 39.

Provision and conversion of closet accommodation
—continued.

Closet accommodation.

(4) See *ante*, p. 530.

(5) *Ante*, pp. 107, 108.

(6) *Ante*, p. 857.

**Sect. 39, n.
Jurisdiction
of local
authority
under Act
of 1875.**

Under sect. 36 of the Act of 1875 the local authority are (subject to appeal to the Minister of Health under sect. 268 of that Act ⁷) the judges as to whether the existing accommodation is or is not sufficient, so that it is no defence to proceedings for the recovery of expenses incurred by the local authority under the section to show that the existing accommodation was in fact sufficient.⁸

Also the local authority have power to require the substitution of one kind of sanitary convenience for another, and their requirement in this respect again is final, subject only to appeal to the Minister of Health.⁹

On the other hand, the local authority cannot prescribe the particular form of convenience of a given class that is to be provided or the details of the work. They must confine themselves to requiring the provision of a "sufficient" water-closet, etc., as the case may be.¹⁰

Under sect. 22 of the Public Health Acts Amendment Act, 1890, however, the local authority not only can, but must, specify the particular alterations required, subject only to the right of the owner or occupier to appeal under sect. 7 of that Act to quarter sessions.¹¹

Under sect. 36 of the Act of 1875 the local authority must exercise a *bonâ fide* discretion with reference to the circumstances of each case, and cannot enforce a general scheme for the substitution throughout their district or a part of it of water-closets for other forms of sanitary conveniences regardless of the exigencies of particular property.¹² This doctrine, however, does not preclude the local authority from laying down a general rule as to the course they will *primâ facie* adopt, provided that they are willing to consider any particular case on its own merits.¹³

The present section is evidently intended to enable local authorities to require the substitution of water-closets for other forms of closet accommodation, even in pursuance of a general scheme, subject to their obligation to pay at least half the cost of conversion. It also seems that the Legislature intended to encourage owners to allow the local authority to do the work on their default, because unless the work is so done the authority cannot contribute to the cost.

It is not altogether clear what questions are left to the determination of the local authority, subject only to the owner's right of appeal (as to which see sect. 42 and the Note thereto); and there is doubt also as to how far the local authority are entitled or required to specify details in their notices under it.

It will be observed that the language of sub-sect. (3) of the present section expressly makes the local authority, for the purposes of that sub-section, the judges whether the existing accommodation is sufficient, but that the local authority are not expressly made the judges on any other point arising under the section. But, in view of the whole scope of the legislation contained in the section and in the succeeding sections by which it is supplemented, and particularly having regard to the provisions of sect. 42 (1) limiting the scope of the appeal under that section in certain cases, there can, it seems, be little doubt that, subject to appeal, the decision of the local authority on many other points arising under the section will be conclusive. Thus, it would appear that, subject to appeal, it is for the local authority, and for them alone, to decide, both under sub-sect. (2) and sub-sect. (3), upon the number and class of conveniences to be provided; to decide under sub-sect. (3) whether the case is or is not one in which sufficient accommodation can be provided by the alteration of existing closet accommodation; and to determine under sub-sect. (4) whether the existing accommodation shall be converted into a water-closet or into a slop-closet.

With regard to sub-sects. (3) and (4) of the present section, Lord Sterndale, M.R., said:—"I think myself that sub-sect. (3) is directed in the first instance not to the sufficiency of the closets or privies in the sense of their being sufficient for their work but to what it says, 'sufficient closet accommodation,' that is to say, primarily to the question of the amount of closet or privy accommodation. I do not say it is necessarily limited to such circumstances, and I do not say that cases may not come under both sect. 36 of the earlier Act and sub-sect. (3) of 'the

(7) *Ante*, p. 712.

(8) See the *Sherborne Case*, and others cited *ante*, p. 109.

(9) See the *Epping Case* and others cited *ante*, p. 109.

(10) See the *Widnes Case* and others cited *ante*, p. 110.

(11) See *Tracey's Case* and others cited

ante, p. 857 (11). See also *Hargreaves' Case*, under P. H. Act, 1875, s. 41, cited *ante*, p. 117 (21); and *Gaby's Case*, under s. 30 of the present Act, *ante*, p. 898 (26).

(12) See the *Sunderland Case*, *ante*, p. 110 (17).

(13) See the *Manchester Case*, *ante*, p. 110 (18).

present section. " They may. But there is nothing in the later Act which in any way repeals or limits the effect of the sections of the earlier Act, and the only argument addressed to us that can prevail is the argument that, if the power claimed is given by sect. 36, sub-sect. (3) of " the present section " is otiose and useless. It seems to me that that is an argument which might have great force if it were well founded in fact, but it is not, because on no view is sub-sect. (3) of " the present section " otiose or useless. It undoubtedly gives power to deal with a case of this kind where a building has one, or possibly two, perfectly proper efficient and sufficient water-closets or privies, but it has not sufficient closet accommodation at or in connection with the building; if that be the state of things, sub-sect. (3) of " the present section " is applicable, and sect. 36 is not applicable because sect. 36 only deals with a building which is without a sufficient water-closet and not with a building which is without sufficient closet accommodation." ¹⁴

Sect. 39, n.

As to whether the justices, upon appeal to them under sect. 42, can require the local authority to bear expenses under the present section for which they are not made liable by the section itself, see the Note to sect. 42.

Sect. 40.—(1) Where under sect. 39 of this Act the local authority do any work for the common benefit of two or more buildings belonging to different owners, the expenses which under that section are recoverable by the local authority from the owners shall be paid by the owners of those buildings in such proportions as shall be determined by the surveyor, or in case of dispute by a petty sessional court.

Payment for works of common benefit.

(2) Any moneys expended by the local authority for the purposes of sect. 39 of this Act shall, so far as they are not recoverable from the owner or owners, be part of the expenses of the local authority in the execution of the Public Health Act, 1875.

Expenses.

(3) The local authority may by order declare any expenses incurred by them under sect. 39 of this Act, which are recoverable summarily as a civil debt from the owner or owners, to be expenses to which the provisions of sect. 257 of the Public Health Act, 1875, shall apply, and thereupon those provisions shall apply, with the necessary modifications, as if they were herein re-enacted and in terms made applicable to the said expenses.

Private improvement expenses.

Note.

The present section appears to contemplate that in proper cases the requirements of sect. 39 may be fulfilled by the provision of closet accommodation in common for two or more buildings, as, it has been held, the requirements of sect. 35 of the Public Health Act, 1875, may be fulfilled.¹⁵

Common closet accommodation.

Sect. 41. Any person duly authorised in writing by the local authority shall, on production of his authorisation, be admitted into any premises for the purposes of sect. 39 of this Act, and the provisions of sects. 102 and 103 of the Public Health Act, 1875, shall, with the necessary modifications, apply to his admission.¹⁶

Entry on premises.

Sect. 42.—(1) Where any person deems himself aggrieved by any requirement of the local authority under sect. 39 of this Act, or objects to the reasonableness of any expenses wholly or partially recoverable from him under that section, that person may, within fourteen days after the service of notice of the requirement or of a demand for payment of the expenses, appeal to a court of summary jurisdiction, and the court may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive on all parties :

Appeals.

Provided nevertheless that the right of appeal, subsequent to the service of a demand for payment, shall be restricted to the ground of the reasonableness of the amount of the expenses, and the appellant shall be precluded from raising at that stage any other question.

(2) Pending the decision of the court upon the appeal the local authority shall not be empowered to execute any works to which the notice relates, and any proceeding which may have been commenced for the recovery of the expenses shall be stayed.

(14) *Per Sterndale, M.R., in Carlton Main Colliery Co. v. Hemsworth R.D.C. ante, p. 110 (20), now also reported in L. R. 1922, 2 Ch. 609; 91 L. J. Ch. 664; 127 L. T. 791; 86 J. P. 177; 20 L. G. R. 632. For quotation,*

see L. R. 1922, 2 Ch. at p. 625.

(15) *See Clutton's Case, ante, p. 107 (8).*

(16) *For ss. 102 and 103, see ante, pp. 201, 203.*

Sect. 42, n.

Appeals.

Note.

A person entitled to appeal under the present section will not in any case have an alternative appeal to the Minister of Health under sect. 7 (2), of the Act, for that sub-section expressly provides that its provisions shall not extend to any case in which an appeal is given to a court of summary jurisdiction.

Sect. 7 (1) provides for appeals to quarter sessions from decisions of courts of summary jurisdiction under the present Act, "except where this Act otherwise expressly provides," and the present section, by making the decision of the court of summary jurisdiction "conclusive," appears to provide otherwise expressly.

It would seem that a court of summary jurisdiction acting under the present section would have power, if they thought it equitable, to order that the local authority should defray or contribute towards expenses of works carried out under sect. 39, which they are not required to defray or contribute to by the terms of that section: see the case noted below,¹⁷ which was decided under a section of a provisional order, duly confirmed, practically identical in language with the present section, and giving an appeal against requirements of the corporation under a section of the same general character as sect. 39 of the present Act.

Local authority may require removal or alteration of urinals.

Sect. 43.—(1) If any urinal or other sanitary convenience opening on any street (whether erected before or after the commencement of this section) is so placed or constructed as to be a nuisance or offensive to public decency, the local authority, by notice in writing, may require the owner to remove it within a reasonable time fixed by the local authority.

(2) If the owner fails to comply with the notice, he shall be liable to a penalty not exceeding twenty shillings and to a daily penalty not exceeding ten shillings.

Note.

Sanitary conveniences.

The expression "sanitary convenience" is defined in sect. 11 (3) of the Public Health Acts Amendment Act, 1890,¹⁸ which is in force in both urban and rural districts without adoption. The adoptive Part III. of that Act contains further powers as to "public sanitary conveniences": see sect. 20 of that Act.¹⁹ See also sect. 44 of the present Act.

It would probably be open to the owner on proceedings for a penalty under the present section to defend on the ground that the convenience was not in fact a nuisance, or not in fact offensive to public decency; but it might possibly be held that such questions could only be raised on an appeal, under sect. 7 (1) of the present Act, to quarter sessions brought within fourteen days from the service of the notice of the local authority's requirement: see the Notes to that section, to sect. 39 of the present Act, and to sect. 269 of the Act of 1875.²⁰

As to the meaning of the expression "the commencement of this section," see sect. 13.

Urinals to be attached to refreshment houses, &c.

Sect. 44.—(1) Where any inn, public-house, beer-house, eating-house, refreshment-house, or place of public entertainment, whether built before or after the commencement of this section, has no urinal belonging or attached thereto, the local authority may, by notice in writing, require the owner of the premises to provide and maintain thereon one or more proper and sufficient urinals in a suitable position.

(2) If the owner fails within a reasonable time to comply with a notice under this section he shall be liable in respect of each offence to a penalty not exceeding twenty shillings and to a daily penalty not exceeding ten shillings.

Note.

Form of requirement.

It is not clear whether the scheme of the present section is that the local authority should prescribe the situation and character of the urinal or urinals to be provided, in which case the owner's remedy, if he desired to dispute the reasonableness of the requirements, would be by appeal under sect. 7; or whether the scheme is that the local authority's notice should be expressed in general terms calling upon the owner to provide a "proper and sufficient urinal in a suitable position," or two or more such urinals, as the case may be, leaving it to the owner to carry out the local authority's requirements as he thinks proper, in which case any question as

(17) See the *Bootle Case*, ante, p. 109 (7).

(18) Ante, p. 848.

(19) Ante, p. 856.

(20) Ante, pp. 847, 900, 717 (23).

to the sufficiency, etc., of the work executed by the owner would fall to be determined by the court of summary jurisdiction on proceedings for penalties under sub-sect. (2) : see the cases cited in the Note to sect. 39. **Sect. 44, n.**

Sect. 45.—(1) If the medical officer, surveyor, or [sanitary inspector ²⁰] reports to the local authority that he has reasonable grounds for believing that any drains of any building are so defective as to be injurious or dangerous to health, the local authority may authorise their medical officer, surveyor, or [sanitary inspector ²⁰] to apply the smoke or coloured water test, or other similar test (not including a test by water under pressure), to the drains, subject to the condition that either the consent of the owner or occupier of the building must be given to the application of the test, or an order of a court of summary jurisdiction having jurisdiction in the place where the building is situated must be obtained, authorising the application of the test. **Testing of drains on report of defects.**

(2) If on the application of the test the drains are found to be defective, the local authority may, by notice specifying generally the defect, require the owner of the premises to do all works necessary for remedying it within a reasonable time named in the notice, and if the owner fails so to do the work the local authority may themselves do the work, and the expense of so doing the work may either be recovered from the owner of the building summarily as a civil debt or may be declared by the local authority to be private improvement expenses, and may be recoverable accordingly.

(3) The owner and occupier of any building shall give all reasonable facilities for the application of any test which has been consented to or authorised in pursuance of this section, and, if the owner or occupier fails to do so, he shall be liable in respect of each offence to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings.

Note.

It seems clear that the determination of the local authority under sub-sect. (2) that the drains were defective would be final, subject to the owner's right of appeal under sect. 7. It is, however, not clear whether the notice should specify in detail the work to be done, or whether it should require the necessary work to be done in general terms. See the observations in the Note to the preceding section on a similar question arising under that section, and see the cases cited in the Note to sect. 39. **Testing drains.**

As to the reasonableness of the water test, see the case cited below.²¹

Sect. 46. If it shall appear to the local authority by the report of the medical officer, surveyor, or [sanitary inspector ²⁰] that any cesspool or other receptacle used or formerly used as a receptacle for excreta or other obnoxious matter, or for the whole or any part of the drainage of a house, or that any ashpit or any well or disused well belonging to any such house or part of a house is prejudicial to health, or otherwise objectionable for sanitary reasons, and that it is desirable that the same should be filled up or removed, or so altered as to remove any such objection as aforesaid, the local authority may, if they think fit, by notice in writing, require the owner or occupier of such house or part of a house within a reasonable time, to be specified in the notice, to cause such cesspool, receptacle, ashpit, or well to be filled up or removed, and any drain communicating therewith to be effectually disconnected, destroyed, or taken away, or to cause such cesspool, receptacle, ashpit, or well to be so altered as to remove any such objection as aforesaid. **Provision for filling up cesspools, &c.**

Where it appears that any such cesspool, receptacle, ashpit, or well is used in common by the occupiers of two or more houses, or parts of houses, the notice for filling up or removal of any such cesspool, receptacle, ashpit, or well may be served on any one or more of the owners or occupiers of such houses, and it shall not be necessary to serve such notice on all such owners or occupiers.

If default is made in complying with the requisitions of a notice under this section the local authority may themselves carry out the requisitions, and may recover the expenses incurred by them in so doing from the owners or occupiers in default in a summary manner as a civil debt, or, where the owners are the persons liable, as private improvement expenses are recoverable under the Public Health Acts.

(20) See *ante*, p. 530.

(21) *Savill's Case*, *ante*, p. 83 (5).

Sect. 46, n.

Cesspool.

Note.

The provisions of the present section enabling the local authority to require the alteration of a cesspool, etc., give rise to questions similar to those arising under the two preceding sections and mentioned in the Notes thereto.

As to the meaning of "ashpit," see the Note to sect. 13.

Public conveniences and lavatories.

Sect. 47. The local authority may provide and maintain in proper and convenient situations sanitary conveniences in or under any street repairable by the inhabitants at large, and may provide and maintain in proper and convenient situations lavatories in or under any such street for the use of the public, and may employ and pay attendants and make reasonable charges for the use of any sanitary conveniences (other than a urinal) or of any lavatory so provided. The local authority may make byelaws for the management of the sanitary conveniences and lavatories, and as to the conduct of persons frequenting the same.

The local authority may let any such sanitary conveniences and any such lavatories for such periods, at such rents, and subject to such conditions as to the charges to be made for the use thereof and otherwise, as they think proper.

Note.

Consent of owner of soil.

The present section, expressly authorising the construction of lavatories and conveniences "under" a street, will entitle the local authority to place such constructions under streets against the wish of the owners of the subsoil, notwithstanding the decision in the *Tunbridge Wells Case* cited elsewhere,²² subject to the payment of compensation if such owners can prove damage. At the same time it is remarkable that the section does not, like the corresponding provisions of the Public Health (London) Act, 1891,^{22a} "vest" the subsoil in the local authority for the purpose of the construction of conveniences.

With regard to the land tax on such conveniences, the construction of subways connected with underground lavatories, and nuisances caused by such conveniences, see the Note to sect. 39 of the Public Health Act, 1875.²³ See also sects. 11 (3) and 20 of the Act of 1890.²⁴

Removal of trade refuse.

Sect. 48. If the local authority are required by the owner or occupier of any premises to remove any trade refuse (other than sludge), the local authority shall do so, and the owner or occupier shall pay to them for doing so a reasonable sum, to be settled in case of dispute by order of a court of summary jurisdiction; and if any question arises in any case as to what is to be considered as trade refuse, that question may be decided on the complaint of either party by a court of summary jurisdiction, whose decision shall be final.²⁵

Summary power to provide sinks and drains for buildings.

Sect. 49. In addition to all other powers vested in a local authority, the local authority, if it shall appear to them on the report of the surveyor, medical officer, or [sanitary inspector²⁷] that any building built before or after the commencement of this section of this Act is not provided with a proper sink or drain or other necessary appliances for carrying off refuse water from such building, may give notice in writing to the owner or occupier of such building requiring him in the manner and within the time to be specified in such notice, not being less than twenty-eight days, to provide such sink, drain, or other appliances. If the owner or occupier makes default in complying with such requirement to the satisfaction of the local authority within the time specified in such notice he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and in case of default the local authority may, if they think fit, themselves provide such sink, drain, or other appliances, and the expenses incurred by them in so doing shall be repaid to them by such owner or occupier, and may be recovered summarily as a civil debt.²⁶

Local authority may provide an ambulance.

Sect. 50. The local authority may provide and maintain an ambulance for use in any case of accident, or other sudden or urgent disability, together with suitable attendants, and means of traction, and other requisites; and may allow the ambulance to be used by any other local authority or person subject to such terms and conditions as may be agreed upon.

(22) *Ante*, pp. 113 (39), 294 (27).

(22a) 54 & 55 Vict. c. 76, s. 44.

(23) *Ante*, p. 112.

(24) *Ante*, pp. 848, 856.

(25) As to the removal of "house refuse," see P. H. Act, 1875, ss. 42, 43, *ante*, pp. 118,

121; and as to the distinction between "house refuse" and "trade refuse," see *ante*, pp. 122-124.

(26) See P. H. Act, 1875, ss. 23-25, and Notes thereto, *ante*, pp. 89-92.

(27) See *ante*, p. 530.

Note.

In 1922 the Minister of Health advised an urban district council that they could undertake the upkeep, housing, and insurance of a motor ambulance proposed to be acquired from the Red Cross Society after the present section had been put in force.

As to the provision of conveyances for infected persons, see sect. 123 of the Act of 1875,²⁷ and, as to the provision of life-saving appliances, sect. 93 of the present Act. As to first-aid appliances in factories and workshops, see sect. 29 of the Workmen's Compensation Act, 1923.^{27a}

Sect. 1 of the Metropolitan Ambulances Act, 1909,²⁸ authorises the London County Council to "establish and maintain, or to contribute towards the cost of, or otherwise to aid in establishing or maintaining, an ambulance service for dealing with cases of accident or illness (other than infectious diseases) within the county of London, exclusive of the city of London"; and, by sect. 2 of the same Act,²⁹ that council "may allow the ambulance service . . . to be used, on such terms and conditions as may be agreed upon, by any local authority having powers under" the present section.

Sect. 50, n.**Ambulances, etc.****London.**

Sect. 51.—(1) The words "any other trade, business, or manufacture, which the local authority declare by order confirmed by the [Minister of Health], and published in such manner as the [Minister directs], to be an offensive trade," shall be substituted for the words "any other noxious or offensive trade, business, or manufacture," in sect. 112 of the Public Health Act, 1875.

Power to declare a business to be an offensive business.

(2) The local authority may make byelaws with respect to any trade which is an offensive trade under sect. 112 of the Public Health Act, 1875, as amended by this Act, whether established before or after the commencement of this Act, in order to prevent or diminish any noxious or injurious effects of the trade.

Note.

Sect. 112 of the Public Health Act, 1875,³⁰ prohibits, under penalties, the establishment within the district of an urban authority, without their consent in writing, of any "offensive trade"; and defines "offensive trade" for this purpose as meaning certain specified trades, "and any other noxious or offensive trade, business or manufacture."

Offensive trades.

Under the Act of 1875, therefore, trades *ejusdem generis* with the trades specified in sect. 112 may not be established without the consent of the urban authority. But between the date when the present section is put in force, and the date when a previously unspecified trade is declared under the present section to be an offensive trade, that trade, even if *ejusdem generis* with a trade specified in sect. 112, may be established without the consent of the urban authority. In other words, as soon as the present section is put in force, no offensive trade may be dealt with, unless either it is one of the trades actually specified in sect. 112 or it has been declared to be an offensive trade under the present section before it was established.

Thus, in 1909 the Local Government Board declared the present section in force in a certain district. In 1911 a company established in the district a business which at the time was not an offensive trade. In 1912 the local authority made an order under the present section declaring this business to be an offensive trade, and summoned the company for carrying it on without their consent. It was held that, as the business had been established before the making of such order, and had been continuously carried on down to the time of the summons, no offence had been committed.³¹ The "continuity" is not broken by letting the business for a number of years, and then resuming it, so long as the particular business has been carried on all the time.³²

In one district³³ the following clause was inserted in the order and approved by the Board:—"For the purposes of" sect. 112 of the Public Health Act, 1875, as extended by the present section, "a trade business or manufacture shall be deemed to be established not only if it is established anew, but also if it is removed from any one set of premises to any other premises or if it is resumed on the same set of premises after having been discontinued for a period of six months or upwards, or if any premises on which it is for the time being carried on are enlarged without

(27) *Ante*, p. 241.

(27a) 13 & 14 Geo. V. c. 42, s. 29.

(28) 9 Edw. VII. c. 17, s. 1.

(29) *Ibid.*, s. 2. (30) *Ante*, p. 215.(31) *Butchers' Hide Skin and Wool Co. v. Seacombe* (K. B. D.), L. R. 1913, 2 K. B. 401; 82 L. J. K. B. 726; 108 L. T. 169; 77 J. P.

219; 11 L. G. R. 572; 29 T. L. R. 415; 23 Cox C. C. 400.

(32) *Mayo v. Stazicker*, L. R. 1921, 2 K. B. 196; 90 L. J. K. B. 945; 124 L. T. 825; 85 J. P. 141; 19 L. G. R. 240.(33) Ellesmere Port and Whitby, see *Sanitary Record* for March 3rd, 1916, p. 161.

Sect. 51, n.

the consent in writing of the council, but a trade business or manufacture shall not be deemed to be established anew on any premises by reason only that the ownership of such premises is wholly or partially changed or that the building in which it is established having been wholly or partially pulled down or burnt down has been reconstructed without any extension of its area."

Procedure.

Before local authorities seek the powers of the present section they should have ready the materials for making a declaration as to all businesses which they consider likely to be established in their district, and to be detrimental to the comforts of the inhabitants thereof, and, as the Local Government Board pointed out, it would also be as well if they remade their bye-laws on the subject as soon as the section is put in force.

In the Memorandum of the Local Government Board, dated October, 1911, and attached to their model bye-laws (Series XVI.) for the regulation of "offensive trades," there is the following statement:—"Where a local authority, acting under the powers conferred by the Act of 1907, desire to declare any trades to be offensive trades they should make a declaratory order to that effect and submit it to the Board for confirmation." The Board suggested that the order might conveniently take a form which can now be obtained from the Ministry of Health. The Board desired to see any such order in draft before it was formally made, and except in the case of recognised offensive trades they required to be satisfied that the trades referred to were of such a nature that they might properly be brought within the provisions of the section relating to offensive trades. It was the practice of the Board, before confirming any such order, to require that it should have been advertised in one or more local newspapers at least fourteen days before the application for confirmation was made. In their series of model bye-laws the Board included, in addition to clauses relating to the trades specified in sect. 112 of the Public Health Act, 1875, bye-laws for the regulation of the trades of a blood drier, a leather dresser, a tanner, a fat melter or fat extractor, a glue maker, a size maker, a gut scraper, a dealer in rags and bones, and a fish frier. The Board did not suggest that it would in every case be desirable to adopt the model series in its entirety. Thus, where the present section is not in force, the restricted operation of the earlier statute referred to above must be borne in mind; and where the present section is in force the clauses relating to any trade which is not mentioned in any order made under that section or in sect. 112 of the Public Health Act, 1875, must be omitted.

Trades dealt with by Board.

The Local Government Board were not prepared to authorise the treatment of knackers' yards,³⁴ or manure works,³⁵ as offensive trades, having regard to the other powers possessed by local authorities in this connection; or chipped potato frying, or secondhand clothes dealing; but they authorised orders under the present section in respect of fish frying, fat melting or extracting, blood drying, tanning, gut scraping, hide and skin dealing, rabbit-skin drying, leather dressing, glue making, size making, manufacturing manure from fish or fish offal, and rag and bone dealing,³⁶ the definition of the latter trade in one such order being as follows:—"A rag and bone dealer means a person who, for the purposes of sale carries on, on any premises, the trade of receiving, storing, sorting, or manipulating any rags in an offensive condition, or in a condition likely to become offensive, or any bones, rabbit skins, fat, or any other putrescible products of a like nature."³⁷

Consent of local authority.

Sect. 113 of the Act of 1875 provides that any urban authority may make bye-laws with respect to offensive trades established with their consent, in order to prevent or diminish the noxious or injurious effects thereof. The restriction of the bye-laws to trades established with the consent of the local authority has hitherto prevented such bye-laws from being applicable to trades established before the constitution of the urban authority, and for the establishment of which, therefore, the consent of the local authority had not been obtained. Sub-sect. (2) of the present section removes this restriction on the scope of the bye-law-making power.

In a Scottish case³⁸ certain manufacturers proposed to start the manufacture of glue in a district in which this had been declared to be an "offensive trade" under the Public Health (Scotland) Act, 1897.³⁹ The local authority refused their

(34) See the Knackers Act, 1786, *post*, Vol. II., p. 1680, and the other provisions there mentioned.

(35) See the Alkali Act of 1906, *post*, Vol. II., p. 2190.

(36) See *Mayo's Case*, *ante*, p. 907 (32).

(37) *Sanitary Record*, February 4th, 1916, p. 94 (definition), and March 3rd, 1916, pp. 160, 161.

(38) *Darney v. Calder District Committee of Midlothian C.C.* (1904, Sc. S.), 7 F. 239.

(39) 60 & 61 Vict. c. 38, s. 32.

consent, unless the manufacturers agreed to manufacture their glue “ from hide clippings only.” The manufacturers then sought a declaration that the imposition of this condition was *ultra vires*, and that the sanction was effectual without the condition. It was held that, whether the imposition of the condition was or was not *ultra vires*, the court could not declare the sanction effectual without the condition, as the granting of the sanction was within the exclusive jurisdiction of the local authority. *Per Lord Adam*: “ An unlimited sanction was what was asked for and refused. What authority has this court to convert an order giving a limited sanction into an order giving a sanction unlimited in any way? It has none. The condition is not separable.” The action was accordingly dismissed. Further as to conditional consents, see the Note to sect. 51 of the Public Health Acts Amendment Act, 1890.⁴⁰

Sect. 51, n.

As to the liability of owners and occupiers of land for damage caused through the carrying on of a dangerous trade, see the case cited below.⁴¹

Dangerous trades.

PART IV.

INFECTIOUS DISEASES.

Sect. 52.—(1) If any person knows that he is suffering from an infectious disease, he shall not engage in any occupation or carry on any trade or business unless he can do so without risk of spreading the infectious disease.

Infected person not to carry on occupation.

(2) If any person acts in contravention of this section, he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

Note.

As to the meaning of “ infectious disease ” for the purposes of the present Act, see sect. 13 and the Note thereto.

Meaning of infectious disease.

For other provisions relating to the prevention of danger from the exposure of infected persons and articles, see sects. 120-129 of the Public Health Act, 1875,¹ and sects. 5-15 of the Infectious Disease (Prevention) Act, 1890.² As to the notification of infectious diseases, see the Act of 1889.³

Prevention of spread of infection.

As to the making of wearing apparel in places where there is an infectious disease, and the prohibition of home work in such places, see sects. 109 and 110 of the Factory and Workshop Act, 1901.⁴

Home work.

As to the inspection of dairies in certain cases, see sect. 4 of the Infectious Disease (Prevention) Act, 1890²; and as to the prevention of contamination in dairies, see sects. 53 and 54 of the present Act, and the Milk and Dairies Acts.⁵

Dairies.

Sect. 53.—(1) If the medical officer certifies to the local authority that any person in the district is suffering from infectious disease which the medical officer has reason to suspect is attributable to milk supplied within the district, the local authority may require the dairyman supplying the milk to furnish to the medical officer within a reasonable time fixed by them a complete list of all the farms, dairies, or places from which his supply of milk is derived or has been derived during the last six weeks, and, if the supply, or any part of it, is obtained through any other dairyman, may make a similar requisition upon that dairyman.

Power to require dairy-men to furnish list of sources of supply.

(2) The local authority shall pay to the dairyman for every list furnished by him under this section the sum of sixpence, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list.

(3) Every dairyman shall comply with the requisition of the local authority under this section, and, if he fails to do so, shall be liable in respect of each offence to a penalty not exceeding five pounds and a daily penalty not exceeding forty shillings.

(40) *Ante*, p. 871.
(41) *Rainham Chemical Works v. Belvedere Fish Guano Co.*, L. R. 1921, 2 A. C. 465; 90 L. J. K. B. 1252; 126 L. T. 70; 19 L. G. R. 657, *re* manufacture of explosives. *Fletcher v. Rylands*, *ante*, p. 769 (63), and *Penny v. Wimbledon U.D.C.*, *ante*, p. 771 (84),

considered.
(1) *Ante*, pp. 236-248.
(2) *Post*, Part II., Div. I.
(3) *Post*, Part II., Div. I.
(4) *Post*, Vol. II., p. 2153.
(5) *Post*, Part II., Div. II.

Sect. 53, n.

Dairymen to notify infectious diseases existing among their servants.

Infected clothes not to be sent to laundry.

Filthy and dangerous articles to be purified.

Compensation.

Child suffering from infectious disease not to attend school.

Note.

As to the meaning of "dairy" and "dairyman," see sect. 13 and the Note thereto. The present section and sect. 54 are saved from the repealing provisions of the Milk and Dairies Act of 1915.⁶ See also the Note to sect. 52, *supra*.

Sect. 54.—(1) Every dairyman supplying milk within the district of the local authority from premises whether within or beyond the district aforesaid shall notify to the medical officer all cases of infectious disease among persons engaged in or in connection with his dairy as soon as he becomes aware or has reason to suspect that such infectious disease exists.

(2) Any dairyman who shall fail to comply with this section shall for every such offence be liable to a penalty not exceeding forty shillings.⁷

Sect. 55.—(1) A person shall not take or send to any public washhouse or to any laundry, for the purpose of being washed, any bedding, clothes, or other things which he knows to have been exposed to infection from any infectious disease, unless they have been disinfected by or to the satisfaction of the local authority or their medical officer, or of a legally qualified medical practitioner, or are sent to a laundry with proper precautions for the purpose of disinfection, with notice that they have been exposed to infection.

(2) If any person acts in contravention of the foregoing provision of this section he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

(3) The local authority may, on the application of any person, pay the expenses of the disinfection of any such bedding, clothes, or other things, if carried out by them or under their direction.⁷

Sect. 56. Where the local authority on the certificate of the medical officer are satisfied that the cleansing, purification, or destruction of any article in a dwelling-house is, by reason of the filthy condition of the article, necessary to prevent injury or to remove or obviate risk of injury to the health of any person in the dwelling-house, the local authority may cause the article to be cleansed, purified, or destroyed at their expense.

Where a person sustains damage in consequence of the exercise by the local authority of their powers under this section, and the condition of the article with respect to which those powers have been exercised is not attributable to his act or default, the local authority shall make reasonable compensation to that person.

Note.

As to the assessment, etc., of compensation under the present Act, see sect. 10 and the Note thereto.

Apart from the last sentence of the present section, the persons thereby declared entitled to "reasonable" compensation would, in the cases mentioned in the present section, have been entitled to "full" compensation under sect. 308 of the Public Health Act, 1875,⁸ which would have applied by virtue of the incorporation of the present Act with the Public Health Acts.

Probably the express provisions of the present section as to compensation may be taken to prevent sect. 308 from applying in cases under the present section, and there may be a substantial difference between "reasonable" compensation and "full" compensation.⁹

The provisions of the section in question may be compared with those of sect. 121 of the Public Health Act, 1875,¹⁰ and sect. 6 of the Infectious Disease (Prevention) Act, 1890.¹¹ It is to be observed that the articles which may be dealt with under the present section need not be "infected" articles.

Sect. 57.—(1) No person being the parent or having the care or charge of a child within the district of the local authority who is or has been suffering from infectious disease or has been exposed to infection shall, after a notice from the medical officer that the child is not to be sent to school, permit such child to attend school without having procured from the medical officer a certificate (which shall be granted free of charge upon application) that in his opinion such child may attend without undue risk of communicating such disease to others.

(2) Any person who shall offend against this section shall for every such offence be liable to a penalty not exceeding forty shillings.¹²

(6) See s. 21 (4) and Sched. V., *post*, Part II., Div. II. As to application of present section in London, see *ibid.*, s. 20 (1).

(7) See Notes to ss. 52 and 53.

(8) *Ante*, p. 751.

(9) See the *Huddersfield Case*, *ante*, p. 759 (29).

(10) *Ante*, p. 240.

(11) *Post*, Part II., Div. I.

(12) See Note to s. 58, *infra*.

Sect. 58.—(1) The principal of a school in which any scholar is suffering from an infectious disease shall, if required by the local authority, furnish to them within a reasonable time fixed by them a complete list of the names and addresses of the scholars in or attending at the school or any specified department thereof other than boarders.

Sect. 58.

List of scholars to be furnished where scholar in a school is suffering from an infectious disease.

(2) The local authority of the district shall pay to the principal of the school for every list furnished by them under this section the sum of sixpence, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list.

(3) If the principal of a school fails to comply with any of the provisions of this section he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

(4) In this section the expression "the principal" used in relation to a school means the person in charge of the school, and includes, where the school is divided into departments and there is no single person at the head of the whole school, as respects each department the head of that department.

Note.

As to closing public elementary schools (to which, be it noted, the present section is not confined), and the exclusion of individual scholars from such schools, because of infection, see the Local Government Board Circular of the 20th October, 1909,¹³ and the memorandum therein mentioned.

Infection in schools.

As to cleansing verminous children, see sect. 87 of the Education Act, 1921.¹⁴

Sect. 59.—(1) If any person knows that he is suffering from an infectious disease he shall not take any book or use or cause any book to be taken for his use from any public or circulating library.

Provisions as to library books.

(2) A person shall not permit any book which has been taken from a public or circulating library, and is under his control, to be used by any person whom he knows to be suffering from an infectious disease.

(3) A person shall not return to any public or circulating library any book which he knows to have been exposed to infection from any infectious disease, or permit any such book which is under his control to be so returned, but shall give notice to the local authority that the book has been so exposed to infection, and the local authority shall cause the book to be disinfected and returned to the library, or to be destroyed.

(4) The local authority shall pay to the proprietor of the library from which the book is procured the value of any book destroyed under the power given by this section.

(5) If any person acts in contravention of or fails to comply with this section, he shall be liable in respect of each offence to a penalty not exceeding forty shillings.¹⁵

[(6) Nothing in this section shall apply to a public or circulating library which is not within the district.^{15a}]

Sect. 60. Nothing in sect. 132 of the Public Health Act, 1875, with respect to the recovery of the cost of maintenance in a hospital shall require the local authority to recover the cost of maintenance from a patient who is not a pauper where the local authority have satisfied themselves that the circumstances of the case are such as to justify the remission of the debt.¹⁶

Local authority may pay expenses of person in hospital.

Sect. 61.—(1) The local authority may exercise the powers of sect. 15 of the Infectious Disease (Prevention) Act, 1890, whether that section has or has not been adopted in the district, and, where the local authority so determine, those powers may be exercised for providing temporary shelter or house accommodation with any necessary attendants for any person who, in any case to which this section applies, leaves a house after any infectious disease has appeared therein, and the local authority may borrow, subject to the provisions of the Public Health Acts, for the purpose of providing shelter or house accommodation under sect. 15 of the Infectious Disease (Prevention) Act, 1890, or under this section.

Removal of person from infected premises.

(13) 7 L. G. R. (Orders) 215.

(14) *Ante*, p. 237.

(15) As to bye-laws under the Libraries Acts, see *post*, Vol. II., p. 1416.

(15a) Usually added as an "adaptation" in boroughs and urban districts. See, *e.g.*, Kingston-upon-Thames Order, referred to

ante, p. 886 (37). In rural districts the expression used is "not in any contributory place within the district," see Cockermouth Order, June 22, 1921.

(16) As to the effect of the present section, see the Note to sect. 132 of the Act of 1875, *ante*, p. 257.

Sect. 61.

Where the local authority in pursuance of the aforesaid powers have provided a temporary shelter or house accommodation, they may, on the appearance of any infectious disease in a house, and on the certificate of the medical officer, cause any person who is not himself sick and who consents to leave the house, or whose parent or guardian (where the person is a child) consents to his leaving the house, to be removed therefrom to any such temporary shelter or house accommodation, and in the like case on the like certificate may cause any such person who does not consent to leave the house to be removed therefrom to any such temporary shelter or house accommodation, where two justices, on the application of the local authority and on being satisfied of the necessity of the removal, make an order for the removal, subject to such conditions (if any) as are imposed by the order.

The local authority shall in every case cause the removal to be effected and the conditions of any order to be satisfied without charge to the person removed or to the parent or guardian of that person.

(2) Any person who wilfully disobeys or obstructs the execution of an order under this section, shall be liable to a penalty not exceeding five pounds.

(3) For the purpose of this section the word "house" includes any tent, van, shed, or similar structure used for human habitation or any boat lying in any canal or other water within the district of the local authority and used for the like purpose.¹⁷

Amendment
of s. 126 of
38 & 39 Vict.
c. 55.

Sect. 62. Paragraph two of sect. 126 of the Public Health Act, 1875 (which imposes a penalty on the exposure of infected persons and things), shall be read as if the words "or causes or permits such sufferer to be so exposed" were added after the word "sufferer."¹⁸

Prohibiting
conveyance
of infected
persons in
public vehicles.

Sect. 63. The owner or driver of a public vehicle within the district of the local authority used for the carrying of passengers at separate fares shall not knowingly convey or any other person shall not knowingly place in any such public vehicle a person suffering from any infectious disease, or a person suffering from any such disease shall not enter any such vehicle, and every person who shall offend against this section shall for every such offence be liable to a penalty not exceeding forty shillings.¹⁹

Driver, &c., of
infected person
to give notice.

Sect. 64.—(1) If any person suffering from any infectious disease is conveyed in any public vehicle within the district of the local authority the owner or driver thereof as soon as it comes to his knowledge shall give notice to the medical officer, and shall cause such vehicle to be disinfected, and, if he fails so to do, he shall be liable to a penalty not exceeding five pounds, and the owner or driver of such vehicle shall be entitled to recover in a summary manner from the person so conveyed, or from the person causing that person to be so conveyed, a sufficient sum to cover any loss and expense incurred by him in connection with such disinfection.

(2) It shall be the duty of the local authority when so requested by the owner or driver of such public vehicle to provide for the disinfection of the same free of charge, except in cases where the owner or driver conveyed a person knowing that he was suffering from infectious disease.¹⁹

Section 124 of
38 & 39 Vict.
c. 55, to apply
to persons
who cannot
be isolated.

Sect. 65. Sect. 124 of the Public Health Act, 1875,²⁰ shall extend and apply to all cases of persons suffering from any dangerous infectious disease, and being in or upon any house or premises where such persons cannot be effectually isolated so as to prevent the spread of the disease.

Cleansing and
disinfecting of
premises, &c.

Sect. 66.—(1) If the medical officer, or any other legally qualified medical practitioner certifies that the cleansing and disinfecting of any house, or part of a house, and of any articles therein likely to retain infection, or the destruction of those articles would tend to prevent or check any dangerous infectious disease the local authority shall serve notice on the master, or, where the house or part is unoccupied, on the owner of the house or part, that the house or part, and any such articles therein, will be cleansed and disinfected or (as regards the articles) destroyed, by the local authority unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles, or destroy the articles to the satisfaction

(17) In districts where the present section is in force, there is no need to adopt the I. D. (Prevention) Act, 1890, s. 15, *post*, Part II., Div. I.

(18) As to the effect of the present section, see the Note to sect. 126 of the Public Health

Act, 1875, *ante*, p. 245.

(19) See also P. H. Act, 1875, ss. 126, 127, *ante*, pp. 245, 247; and I. D. (Prevention) Act, 1890, s. 11, *post*, Part II., Div. I.

(20) *Ante*, p. 242.

of the medical officer or of any other legally qualified medical practitioner within a time fixed in the notice.

(2) If either—(a) Within twenty-four hours from the receipt of the notice the person on whom the notice is served does not inform the local authority as aforesaid; or (b) Having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected, or the articles destroyed as aforesaid, within the time fixed in the notice; or (c) The master or owner without any such notice gives his consent; the house or part and articles shall be cleansed and disinfected, or the articles destroyed by the officers and at the cost of the local authority under the superintendence of the medical officer.

(3) For the purpose of carrying into effect this section the local authority may enter by day on any premises.

(4) When the local authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of the house, or part of a house, or the owner of the article, for any unnecessary damage thereby caused to the house, part of a house, or article; and when the local authority destroy any article under this section they shall compensate the owner thereof, and the amount of any such compensation shall be recoverable in a summary manner.

(5) The expression “master” means the person in occupation of or having the charge, management, or control of the house or part of a house, and where the house is wholly let out in separate tenements, or is a lodging-house wholly let to lodgers, includes the person receiving the rent payable by the tenants or lodgers either on his own account, or as the agent of another person; and the expression “by day” means during the period between six o’clock in the morning and the succeeding nine o’clock in the evening.

Note.

Compare the present section with sect. 5 of the Infectious Disease (Prevention) Act, 1890.²¹

While sub-sect. (4) of the present section provides that compensation payable under its provisions shall be recoverable summarily, it does not, like the similar provision in sect. 6 of the Act of 1890,²¹ provide that the amount of the compensation shall, in case of dispute, be settled by a court of summary jurisdiction. It seems accordingly that the general provisions as to the assessment of compensation will apply if the amount is disputed: see sect. 10 and the Note thereto.

How far, if at all, the right to compensation under sect. 308 of the Public Health Act, 1875,²² is impliedly taken away by the express provision of sub-sect. (4) is not clear.

It is also to be observed that the right to compensation under sub-sect. (4) for damage by disinfection is confined to cases of “unnecessary” damage, while the right to compensation for the destruction of an article is not confined to cases of “unnecessary” destruction; and that the right to compensation is not, in terms at least, confined to cases where the claimant is not in default.

The notice must be sufficiently specific as to the parts of the premises to be cleansed.²³

Sect. 67.—(1) The local authority may provide nurses for attendance on patients suffering from any infectious disease in their district who, owing to want of accommodation at the hospital or danger of infection, cannot be removed to the hospital, or in cases where removal to the hospital is likely to endanger the patients’ health.

(2) The local authority may charge such reasonable sums for the services of nurses provided by them as they think fit.

(3) Nothing in this section shall be deemed to take away or diminish the necessity of providing proper hospital accommodation for persons suffering from infectious disease.

Sect. 68. It shall not be lawful to hold any wake over the body of any person who has died of infectious disease, and the occupier of any house or premises or part of a house or premises who permits or suffers any such wake to take place in such house or premises, or part of a house or premises, and every person who attends to take part in such wake shall be liable to a penalty not exceeding forty shillings.

Sect. 66.

Cleansing and disinfecting of premises, &c.—*continued.*

Cleansing premises.

Form of notice.

Provision of nursing attendance by local authority.

Wake not to be held over body of person dying of infectious disease.

(21) *Post*, Part II., Div. I.

(22) *Ante*, p. 751.

(23) *Gala-Water District Committee v.*

Buchan, 1920 S. C. (J.) 87; 57 Sc. L. R. 647. See the judgments for a discussion on the meaning of “filthy” and “unwholesome.”

Sect. 69.

PART V.

COMMON LODGING-HOUSES.

Discretion as to registration of lodging-house keeper.

Sect. 69.—(1) The local authority may, at their discretion, refuse to register any person as a common lodging-house keeper, unless they are satisfied of his character and of his fitness for the position.

(2) The registration of a person as a common lodging-house keeper shall, if that person is newly registered after the commencement of this section, remain in force only for such time not exceeding one year as may be fixed by the local authority, but may be renewed from time to time by the local authority.

Note.

Common lodging houses.

As to the meaning of the expression “common lodging-house,” and as to “keepers” of such places, see the Note to sect. 89 of the Public Health Act, 1875.¹ Under sect. 76 of that Act, the local authority are bound to register any person applying to them to be registered if he produces a certificate of character in accordance with sect. 78 of the same Act²; and under that Act registration is of permanent effect, subject to provisions under which on a third conviction for offences against the provisions of the Act as to common lodging-houses, the keeper may be prohibited for a time from keeping a common lodging-house.³ Note the repeal effected by sect. 75 (2) of the present Act.

Obligation on common lodging-house keeper to provide for proper control of his house.

Sect. 70.—(1) Either the keeper of a common lodging-house or a deputy registered under this Act shall manage and control the lodging-house and exercise supervision over those using it, and either the keeper or the deputy so registered shall be and remain at the lodging-house between the hours of nine in the evening and six in the morning of the following day.

(2) If any provision of this section is not complied with in the case of any common lodging-house, the keeper of the house shall, unless he shows to the court that there was a reasonable excuse for the non-compliance, be liable in respect of each offence to a penalty not exceeding forty shillings, and to a daily penalty not exceeding twenty shillings.

Deputy lodging-house keepers.

Sect. 71.—(1) The local authority shall keep a register for the purposes of this section, and shall enter therein the name of any person whose name is submitted to them by a common lodging-house keeper as his deputy, and who is approved by them for the purpose.

(2) The local authority may register more than one deputy for any common lodging-house keeper.

(3) The local authority, if at any time they are of opinion that any person registered as a deputy of a common lodging-house keeper is not a fit person for the purpose, may cancel the registration.

Power of court convicting common lodging-house keeper to cancel registration.

Sect. 72. Where the keeper of a common lodging-house is convicted of any offence against any provision of the Public Health Acts or this Act relating to common lodging-houses, or of any byelaw made thereunder, the court before whom he is convicted may cancel his registration as a common lodging-house keeper, and he shall cease to be registered accordingly.

Unregistered lodging-house keepers liable to penalties under 38 & 39 Vict. c. 55, s. 86.

Sect. 73. If a person keeps a common lodging-house he shall, although he is not registered as a common lodging-house keeper under sect. 77 of the Public Health Act, 1875, be liable to the penalties imposed under sect. 86 of that Act for the offences named therein.⁴

Provision of proper sanitary conveniences in a common lodging-house.

Sect. 74.—(1) Every common lodging-house, whether registered before or after the commencement of this section, shall be provided—(a) With sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in that house, and also, where persons of both sexes are received in the common lodging-house, with proper separate accommodation for persons of each sex; and (b) With a water supply laid on sufficient for flushing any water-closets or urinals which are used in the house.

(2) If it appears to the local authority that, in the case of any common lodging-house, default is made in any respect in complying with the provisions

(1) *Ante*, pp. 168-170.

(2) See *Blake's Case*, *ante*, p. 162 (1).

(3) See s. 88, *ante*, p. 167.

(4) The present section removes any

ambiguity there may have been as to the application of P. H. Act, 1875, s. 86, *ante*, p. 166, to unregistered keepers of common lodging-houses.

of this section, the local authority, may, by notice in writing specifying the default, require the keeper of the common lodging-house to remedy the default. **Sect. 74.**

(3) If within twenty-eight days of the notice being served the default is not remedied to the satisfaction of the local authority, they may themselves do the work required to be done, and may recover in a summary manner from the keeper of the common lodging-house the expenses incurred by them in so doing, or may by order declare these expenses to be private improvement expenses.

Note.

Though a notice given by the local authority under sub-sect. (2) of the present section is required to specify the default to be remedied, it is not expressly required to specify the means of remedying it, and it is not clear whether the notice ought to specify such means, or to require the keeper of the common lodging-house in general terms to remedy the default. See the Notes to sects. 7 and 39.

Form of notice.

Sect. 75.—(1) At a time not less than one month before the commencement of this Part of this Act the local authority shall give notice of the fact to the keeper of every common lodging-house in their district.

Notice of commencement of Part V. and repeal.

(2) On and after the commencement of this Part of this Act sect. 78 from the words “and the local authority may” to the end of the section, and sect. 88 of the Public Health Act, 1875, shall be repealed as far as relates to the district.

[(3) The date of the order of the Minister of Health by which this Part is declared to be in force shall be the beginning of the period within which the local authority shall give notice for the purposes of sub-sect. (1) of this section.¹]

Note.

As to the meaning of “the commencement of this Part of this Act,” see sect. 13. It is to be observed that the notice referred to in sub-sect. (1) is only required, and the repeals effected by sub-sect. (2) only come into operation, if the whole of the present Part is put in force; but no doubt, in most cases, the Minister of Health will decline to put in force particular sections only of this Part.

Adoption of Part.

The repealed part of sect. 78 of the Public Health Act, 1875, enables the local authority to refuse to register as the keeper of a common lodging-house a person not producing a certificate of character as thereby required. These provisions are rendered superfluous, where the present Part of the present Act is in force, by sect. 69. Sect. 88 of the Act of 1875 provides that a temporary disability to keep a common lodging-house may be imposed on the keeper of a common lodging-house on a third conviction for an offence against the provisions of the Act as to common lodging-houses. The section is rendered superfluous, where the present Part of the present Act is in force, by sect. 72.

Reason for repeals.

PART VI.

RECREATION GROUNDS.

Sect. 76.—(1) The [Minister of Health], for the purposes of this section, may make rules prescribing restrictions or conditions subject to which any powers conferred by the section shall with respect to any area in a public park or pleasure ground be exerciseable in relation to the enclosure or setting apart of the area or in relation to the use of the area as the site of a building or convenience.

Powers as to parks and pleasure gardens.

Subject to the restrictions or conditions prescribed by rules made under this section, the local authority shall, in addition to any powers under any general Act, have the following powers with respect to any public park or pleasure ground provided by them or under their management and control, namely, powers—

(a) To enclose during time of frost any part of the park or ground for the purpose of protecting ice for skating, and charge admission to the part inclosed, but only on condition that at least three-quarters of the ice available for the purpose of skating is open to the use of the public free of charge;

(b) To set apart any such part of the park or ground as may be fixed by the local authority, and may be described in a notice board affixed or set up in some conspicuous position in the park or ground for the purpose of cricket, football, or any other game or recreation, and to exclude the public from the part set apart while it is in actual use for that purpose;

(c) To provide any apparatus for games and recreations, and charge for the use thereof, or let the right of providing any such apparatus for any term not exceeding three years to any person;

(1) Usually added as an “adaptation.” referred to *ante*, p. 886 (37). See, *e.g.*, the Kingston-upon-Thames Order,

Sect. 76.

Powers as to
parks and
pleasure
gardens—*cont.*

(d) To provide or contribute towards the expenses of any band of music to perform in the park or ground;

(e) To enclose any part of the park or ground, not exceeding one acre, for the convenience of persons listening to any band of music, and charge admission thereto;

(f) To place, or authorise any person to place, chairs or seats in any such park or ground, and charge for, or authorise any person to charge for, the use of the chairs so provided;

(g) To provide and maintain any reading rooms, pavilions, or other buildings and conveniences, and to charge for admission thereto, subject in the case of reading rooms to the limitation that such a charge shall not be made on more than twelve days in any one year, nor on more than four consecutive days;

(h) To let any pavilion or other building so provided by them to any person for the purpose of entertainments, and authorise that person to charge for admission thereto;

(i) To provide and maintain refreshment rooms in any such park, and either manage them themselves, or, if they think fit, let them to any person for any term not exceeding three years.

(2) Any expenses of the local authority incurred in the exercise of the powers given to them by this section shall be defrayed out of the fund or rate out of which the expenses of the park or ground as to which the powers are exercised are payable, and any receipts arising from the exercise of any such powers shall be carried to the credit of the same fund or rate.

(3) The expenses incurred by the council in the exercise of their power under this section to provide or contribute to a band shall not in any one year exceed an amount equal to that which would be produced by a rate of an amount which shall be approved by the [Minister of Health] and shall not exceed a penny on the property liable to be assessed for the purpose of the rate out of which the expenses of the park or ground are payable, as assessed for the time being for the purposes of that rate.

(4) No power given by this section shall be exercised in such a manner as to contravene any covenant or condition subject to which a gift or lease of a public park or pleasure ground has been accepted or made, without the consent of the donor, grantor, lessor, or other person or persons entitled in law to the benefit of such covenant or condition.

[(5) In every case for which no other provision is made by this section and in which any such action or proceeding as is authorised by this section will contravene any covenant or condition subject to which a public park or pleasure ground has been acquired and is held by the local authority, no such action or proceeding shall be taken without the consent of every person entitled in law to the benefit of the covenant or condition.³]

Note.

The cases relating to the establishment and regulation of public pleasure grounds will be found in the Note to sect. 164 of the Public Health Act, 1875.¹

A local authority for some years had under their control a seaside promenade. They alleged that it was a public pleasure ground within the Public Health Acts, and, purporting to act under sub-sect. (1) (e) of the present section, ordered that a space not exceeding one acre should be enclosed during band performances, and that fees should be charged for admission thereto. The defendant disputed their right to do this. The proceedings ended, however, by a motion for judgment on terms agreed, namely, that the court should declare the promenade to be a public pleasure ground, in respect of which the above step could be taken.²

The plaintiff was engaged by the defendants to provide a band on the sea front. The defendants were to let to the plaintiff 500 chairs at a fixed rent, and the plaintiff was to maintain them and re-deliver them in good condition. The jury found that many chairs so let were unfit for use; that the plaintiff had suffered loss through people using some free seats near the stand; and that the plaintiff had failed to repair some chairs before re-delivering them. Judgment was given in the King's Bench Division for the plaintiff for £135 on his claim, and for the defendants for £1 0s. 3d. on their counterclaim. It was held by the Court of Appeal that it cannot be laid down as universally applying to all contracts that, whenever something is done by a grantor which has the effect of preventing or

(1) *Ante*, p. 422.

(2) *Withernsea U.D.C. v. Pygas* (1911, Ch. D.), 2 *Glen's Loc. Gov. Case Law* 4, 5.

(3) Added as an "adaptation" under s. 3 (3), *ante*, p. 882, in Reading Cpn. Order, Feb. 3, 1920.

Public
pleasure
grounds.

Enclosure of
band space.

Letting seats.

reducing the profits which the grantee reasonably expected to get out of the transaction, an action for damages lies against the grantor, but that each contract must be considered by itself. The part of the judgment awarding £75 in respect of the defective chairs was ordered to stand, but the part awarding £60 in respect of the free seats was set aside. No costs were granted on either side.³

As to the entertainments duty, and the liability to pay it in respect of bands on piers, see the Note to sect. 23 of the Local Government Act, 1888.⁴ See also the case cited below.⁵

A testator bequeathed his property to two executors and an urban district council in trust (*inter alia*) (1) to keep his house property in repair; (2) to set apart £5 per annum to provide a quinquennial dinner "for my trustees, the clerk of the urban district council for the time being, and such others as my trustees shall decide to invite, not exceeding" twenty-five, the will to be "read at every dinner in order that it may be discussed, and perhaps by this means my trustees may get some valuable suggestions as to the carrying out of the trusts herein mentioned"; and (3) to apply the balance "for the purpose of fostering, encouraging, and providing the means of obtaining healthy recreation, including the singing in classes or choruses for the residents of the town of Portadown and the surrounding districts, and for the purpose of providing music and instruments (in so far as my trustees think advisable) for the town band in such manner and form as my trustees in their absolute discretion consider best; but in no case shall my trustees pay any moneys derived out of my estate for football or for rowing for speed." It was held that the third of the above-mentioned directions constituted a valid charitable gift, and that the preliminary directions were in aid of, and ancillary to, that main charitable purpose, and could be "discussed at a later stage in connection with the details of the scheme."⁶ *Per* Barton, J.:—"To provide music and instruments for a town band would seem to be a typical means of providing healthy recreation for the residents of a busy town. . . . The testator was not thinking of benefiting the individuals who played the trombone, big drum, and other instruments, but of benefiting the residents. . . . Few people who had any acquaintance with these urban districts, of which Portadown was a type, would fail to recognise that the testator's purpose was not merely public, but was rational and well directed. . . . The Legislature" in sub-sect. (1) (d) and (e) of the present section has recognised "the public usefulness of this particular means of healthy recreation for an urban population. . . . It would, in my opinion, be catching at straws to hold that the purpose of any part of this bequest is other than a charitable and public purpose."

Local authorities that engage military bands to play on their public pleasure grounds should remember that persons engaging military bands to play at civilian entertainments can only do so subject to an implied term that the contract is subservient to any claims upon the members of the band in connection with their military duties, for it was held,⁷ in an action by the bandmaster of the Scots Guards against a pier company for the balance of an amount alleged to be due from the pier company for performances by the band on the company's pier, that the defence based on non-attendance of pipers, which was owing to their battalion being in training at Aldershot, failed, and that the doctrine of *quantum meruit* applied.

Though the consent of the "grantor" is required by sub-sect. (4) in cases of breaches of covenant, and this word would include a "vendor," the application of the sub-section must, it appears, be confined to cases of "gifts" or "leases" direct to the local authority, and therefore does not include either a direct purchase from the freeholder or the purchase of a lease from a lessee.

Sect. 77. The local authority may appoint officers for securing the observance of this Part of this Act, and of the regulations and byelaws made thereunder, and may procure such officers to be sworn in as constables for that purpose, but any such officer shall not act as a constable unless in uniform or provided with a warrant.⁸

Sect. 76, n.

Entertain-
ment duty.Validity of
bequest for
town band.Military
bands.

Covenants.

Power to
appoint officers.

(3) *Dare v. Bognor U.D.C.* (1912), 76 J. P. 425; 10 L. G. R. 797.

(4) *Post*, Vol. II., pp. 1911, 1912 (6).

(5) *A.G. v. Swan*, L. R. 1922, 1 K. B. 682; 91 L. J. K. B. 367; 127 L. T. 61; 20 L. G. R. 287, *re* cricket club matches.

(6) *Re Watson; Shillington v. Portadown*

U.D.C. (1910, Ch. D., I.), 44 Ir. L. T. 200; 1 Glen's Loc. Gov. Case Law 4, 5.

(7) In *Wood v. Victoria Pier (Colwyn Bay) Co.* (1913, K. B. D.), 29 T. L. R. 317; 4 Glen's Loc. Gov. Case Law 3.

(8) See Note to s. 76, *supra*.

Sect. 78.

PART VII.

POLICE.

Regulations
as to street
traffic.

Sect. 78. The local authority may from time to time make regulations with respect to such streets, to be specified in the regulations, as are specially liable to be obstructed by reason of the amount and nature of the traffic :—

- (a) Prescribing the line to be kept at any street crossing by all persons riding or driving ;
- (b) Requiring the drivers of heavy and slow-moving vehicles to keep their vehicles to a particular portion of the street.

All regulations under this section shall be subject to the approval of the Secretary of State.

Any person who shall contravene any such regulation after warning given by word or signal by a police constable stationed in the street to direct the traffic shall be liable to a penalty not exceeding forty shillings.

Note.

Adoption
of Part.
Street traffic.

The power of putting in force the present Part, or any section thereof, is in the hands of the Secretary of State : see sect. 3 (4).

Other provisions relating to street traffic, under which public health authorities can act, are contained, in addition to sects. 78-81 of the present Act, in sects. 20-23 and 28 of the Town Police Clauses Act, 1847,¹ See also sect. 78 of the Highway Act, 1835,² and sect. 35 of the Offences against the Person Act, 1861,³ under which common informers may take proceedings in respect of similar offences,⁴ but public health authorities would have no power to pay the costs of such proceedings.⁵

Dangerous
riding and
driving.

Sect. 79. Every person who shall ride or drive so as to endanger the life or limb of any person or to the common danger of the passengers in any thoroughfare shall be liable to a penalty not exceeding forty shillings and may be arrested without warrant by any constable who witnesses the offence.⁶

Note.

Thorough-
fares.

The expression “ in any thoroughfare ” apparently qualifies both descriptions of offence, and so prevents the act from being an offence if committed in a *cul-de-sac*.

As to leading
or driving
animals.

Sect. 80. The local authority may, by order, prescribe the streets in which, and the manner according to which, the leading or driving of animals shall be permitted within their district, provided that the route or routes which it shall be lawful for the local authority so to prescribe shall not be such as would prevent the passage of cattle between any market on the one hand, and any railway station or landing wharf in the district, or any place beyond the district, on the other hand, when such animals are merely passing between such market and railway station, landing wharf, or other place aforesaid, and the local authority shall be bound to allow at all times a reasonably short and efficient route or routes for the passage of such animals. Provided also that any such order shall only operate between the hours of nine in the morning and nine in the evening, and shall not prevent the owner of any animals driving the same to or from his own premises, and nothing in this enactment contained shall authorise the local authority to interfere with the leading or driving of any animals to any duly licensed slaughter-house.

Note.

Remedy for
breach of
order.

There being no penalty clause in the present section, the only remedies for breach of an order made under it would appear to be an indictment for misdemeanour,⁷ or an action in the name of the Attorney General for an injunction.⁸

Injuries by
animals.

Actions for damages for injuries caused by animals on or straying from highways,

(1) *Post*, Vol. II., pp. 1645, 1647. See, particularly, *Teale's Case*, at p. 1645 (3), *Lord's Case*, at p. 1646 (2), *Bolton's Case*, at p. 1651 (5), and *Nuttall's Case*, at p. 1654 (4).

(2) *Ante*, p. 275 (69).

(3) 24 & 25 Vict. c. 100, s. 35, *re* personal injuries from wanton driving of vehicles, including bicycles (see *Reg. v. Parker*, 1896,

59 J. P. 793).

(4) *Back v. Holmes* (1887), 57 L. J. M. C. 37; 56 L. T. 713; 51 J. P. 693; 16 Cox C. C. 263.

(5) See the *Shoreditch Case*, *ante*, p. 662 (20).

(6) See note to s. 78, *supra*.

(7) See *Walker's Case*, *ante*, p. 743 (15).

(8) See the *Friary Holroyd Brewery Case*, *ante*, p. 391 (39).

or places where the public go, have in some cases been successful,⁹ and in others unsuccessful.¹⁰

The owner of an ass illegally left on a highway with its fore feet tethered recovered damages from a person who killed it by negligent driving of a wagon.¹¹ And where a county court judge dismissed an action against a motorist for injuring three out of a hundred sheep on the ground that the plaintiff was himself negligent in driving so many sheep at night with no light and only one man and a dog in charge, a new trial was ordered as the defendant's car was inadequately lighted.¹²

Sect. 80, n.

Injuries to animals.

Sect. 81. Any place of public resort or recreation ground belonging to, or under the control of the local authority, and any unfenced ground adjoining or abutting upon any street in an urban district shall for the purpose of the Vagrancy Act, 1824, and of any Act for the time being in force altering or amending the same, be deemed to be an open and public place, and shall be deemed to be a street for the purposes of sect. 29 of the Town Police Clauses Act, 1847, and also for the purposes of so much of sect. 28 of that Act as relates to the following offences:—

Extending definition of public place and street for certain purposes.

Every person who suffers to be at large any unmuzzled ferocious dog, or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle:

Every common prostitute or night walker loitering and importuning passengers for the purpose of prostitution:

Every person who wilfully and indecently exposes his person:

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language:

Every person who wantonly discharges any firearm or discharges any missile or makes any bonfire:

Every person who throws or lays any dirt, litter, ashes, or night soil, or any carrion, fish, offal, or rubbish, on any street.

Note.

A definition of "place of public resort," for the purpose of sect. 36 of the Public Health Acts Amendment Act, 1890, is contained in sect. 36 (6) of that Act.¹³

Meaning of place of public resort.

The provisions of the Vagrancy Act, 1824, and the amending Acts directed against what may be broadly called misconduct in open and public places, do not (with the exception of those of the amending Act of 1873 as to gaming, referred to below) actually use the expression "open and public place." Some of the provisions use the expression "public place," but none, except those of the Act of 1873, use the expression "open place."

An unenclosed piece of building land, in fact used by bookmakers and about 300 members of the public daily for betting purposes, was held to be a "place of public resort," though the owner had not authorised such user.¹⁴

(9) *Illidge v. Goodwin* (1831), 5 C. & P. 190 (pedestrian and horse, left unattended, frightened by malicious act of third party); *Lynch v. Nurdin* (1841), 1 Q. B. 29; 10 L. J. Q. B. 73; 5 J. P. 319 (child playing on unattended cart and horse driven on by other children); *Gilligan v. Robb*, 1910 S. C. (S.) 856; 47 Sc. L. R. 733; 1 Glen's Loc. Gov. Case Law 54 (cow enters shop and terrifies plaintiff); *Rowlands v. Gush* (1910), 1 Glen's Loc. Gov. Case Law 54 (pedestrian, and two dogs chained together); *Lowery v. Walker*, L. R. 1911 A. C. 10; 80 L. J. K. B. 138; 103 L. T. 674 (savage horse in field unlawfully used by public as short cut to station); *Pinn v. Rew* (1916), 32 T. L. R. 451 (pedestrian and cow with calf); *Turnbull v. Wieland* (1916), 33 T. L. R. 143 (motorist and cow in charge of licensed drover); *Turner v. Coates*, L. R. 1917, 1 K. B. 670; 86 L. J. K. B. 321; 115 L. T. 366 (cyclist and colt without halter).

(10) *Cox v. Burbidge* (1863), 13 C. B. N. S. 430; 32 L. J. C. P. 89; 9 Jur. (N.S.) 970 (child and horse); *Millns v. Garratt* (1906), *Times*, March 6 (cyclist and blind dog); *Hadwell v. Righton*, L. R. 1907, 2 K. B. 345; 76 L. J. K. B. 891; 97 L. T. 133; 71 J. P. 499; 5 L. G. R. 881 (cyclist and straying fowl frightened by dog); *Ellis v. Banyard*, *post*,

Vol. II., p. 1630 (1) (pedestrian and straying cows); *Jones v. Lee*, *ibid.* (cyclist and straying horse); *Higgins v. Searle* (1909, C. A.), 100 L. T. 280; 73 J. P. 185; 7 L. G. R. 640 (sow causes horse to shy and injure motorist); *Heath's Garage Co. Case*, *ante*, p. 304 (17) (motorist and straying sheep).

(11) *Davies v. Mann* (1842), 10 M. & W. 546; 12 L. J. Ex. 10; 7 J. P. 53.

(12) *Catchpole v. Minster* (1912), 109 L. T. 953; 12 L. G. R. 280; 30 T. L. R. 111.

(13) *Ante*, p. 865.

(14) *Kitson v. Ashe*, *ante*, p. 500 (52). See also *Turnbull v. Appleton* (1881), 45 J. P. 469, *re* colliery recreation ground; *Langrish v. Archer* (1882), L. R. 10 Q. B. D. 44; 52 L. J. M. C. 47; 47 L. T. 548; 47 J. P. 295, *re* railway carriage in transit; *Breslin v. Thomson*, 1910 S. C. (J.) 5, *re* field with dilapidated fences; *Woods v. Lindsay*, 1910 S. C. (J.) 88; 47 Sc. L. R. 774; 1 Glen's Loc. Gov. Case Law 98; *Walker v. Reid*, 1911 S. C. (J.) 41; 48 Sc. L. R. 99; 1 Glen's Loc. Gov. Case Law 57; and *Ross v. Cameron*, 1921 S. C. (J.) 41; 58 Sc. L. R. 180, *re* railway premises; *Campbell v. Kerr*, 1912 S. C. (J.) 10; 49 Sc. L. R. 197; 3 Glen's Loc. Gov. Case Law 97, *re* quay shed.

Sect. 81, n.

And payment for admission does not prevent premises being such a place. "If the public in fact have access, the fact that they have to pay makes no difference."¹⁴ But the words "any other public place" were held not to enlarge previous words so as to include an enclosed recreation ground, to which the public were admitted on race days for payment.¹⁵

To constitute one of the offences mentioned below, exposing the person "in a public place," it is not necessary for the exposure itself to be made in such a place.¹⁶

Vagrancy Acts.

The provisions of the Vagrancy Acts, probably intended to be extended by the present section, are to the following effect:—

Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do, is to be deemed an "idle and disorderly person," or, if previously convicted as an "idle and disorderly person," is to be deemed a "rogue and vagabond," and is punishable accordingly.¹⁷

Every person wilfully exposing to view, in any street, road, highway, or public place, or wilfully exposing or causing to be exposed to public view in the window or other part of any shop or other building in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition¹⁸; and every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in view thereof, or in any place of public resort, with intent to insult any female¹⁹; and every person playing or betting by way of wagering or gaming in any street, road, highway, or other open and public place, or in any open place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance (Vagrant Act Amendment Act, 1873²⁰); and every suspected person or reputed thief frequenting or loitering about or in any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent to a street or highway, with intent to commit felony²¹; and every male person who in any public place persistently solicits or importunes for immoral purposes,²² is to be deemed a "rogue and vagabond," or, if previously convicted as a "rogue and vagabond," is to be deemed an "incorrigible rogue," and is punishable accordingly.²³ An alternative is, however, open to the court in the case of an offence against the Act of 1873.

It is beyond the scope of this work to deal further with the Vagrancy Acts. It may, however, be mentioned that the Act of 1824 authorises the summary arrest of offenders against the Act.²⁴

As to other offences in streets, see the Note to sect. 78 of the present Act.

Bye-laws as to seashore.

Sect. 82. The local authority for the prevention of danger, obstruction, or annoyance to persons using the seashore may make and enforce byelaws to—

(1) Regulate the erection or placing on the seashore, or on such part or parts thereof as may be prescribed by such byelaws, of any booths, tents, sheds, stands, and stalls (whether fixed or moveable), or vehicles for the sale or exposure of any article or thing, or any shows, exhibitions, performances, swings, roundabouts, or other erections, vans, photographic carts, or other vehicles, whether drawn or propelled by animals, persons or any mechanical power, and the playing of any

(14) *Per* Lord Alverstone, C.J., in *Airton v. Scott* (1909), 73 J. P. at p. 149, *re* Sheaf House Athletic Grounds, Sheffield.

(15) Glasgow Police Act, 1892 (55 & 56 Vict. c. clxv.), s. 3. *Young v. Nielson* (1893, Sc. J.), 30 Sc. L. R. 640; 20 Rettie 62. But see, as to racecourses, *Tollet v. Thomas* (1871), L. R. 6 Q. B. 514; 40 L. J. M. C. 209; 24 L. T. 509.

(16) *Rex v. Thallman* (1863), 33 L. J. M. C. 58. See also *Mantle v. Jordan*, *ante*, p. 500 (51), *re* obscene language, and *Howard v. Daniels*, *post*, Vol. II., p. 1650 (2), *re* emptying privies, "in any street or public place," and other cases there cited.

(17) 1824, 5 Geo. IV. c. 83, ss. 3, 4.

(18) 5 Geo. IV. c. 83, s. 4; 1838, 1 & 2 Vict. c. 38, s. 2.

(19) *Ibid.* See *Thallman's Case*, *supra* (16).

(20) 1873, 36 & 37 Vict. c. 38, s. 3.

(21) 5 Geo. IV. c. 83, s. 4; Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 15; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 7; Criminal Law Am. Act, 1912 (2 & 3 Geo. V. c. 20), s. 7 (2).

(22) 1898, 61 & 62 Vict. c. 39, s. 1.

(23) 5 Geo. IV. c. 83, ss. 4, 5.

(24) *Ibid.*, s. 6.

games on the seashore, and generally regulate the user of the seashore for such purposes as shall be prescribed by such byelaws; **Sect. 82.**

(2) Regulate the user of the seashore for riding and driving;

(3) Regulate the selling and hawking of any article, commodity, or thing on the seashore;

(4) Provide for the preservation of order and good conduct among persons using the seashore. Provided that no byelaws affecting the foreshore below high-water mark shall come into operation until the consent of the Board of Trade has been obtained.

Note.

For the cases decided with regard to the validity of bye-laws made under enactments similar in scope to the present section, see the Notes to sects. 157, 164, and 182 of the Public Health Act, 1875.²⁵ **Bye-laws.**

Bye-laws under the present section and sect. 83 will require confirmation by the Secretary of State, and not by the Minister of Health: see sect. 9.

Sect. 83. The local authority may, for the prevention of danger, obstruction, or annoyance to persons using the esplanades or promenades within the district, make byelaws prescribing the nature of the traffic for which they may be used, regulating the selling and hawking of any article, commodity, or thing thereon, and for the preservation of order and good conduct among the persons using the same.²⁶ **Bye-laws as to promenades.**

Sect. 84.—(1) The local authority may from time to time grant to any person whom they think fit a licence to carry on the calling of a luggage porter, light porter, public messenger, or commissionaire, and may charge a fee of one shilling for any such licence. **Licences to porters.**

(2) The local authority may from time to time make byelaws for regulating the conduct of any persons so licensed and for fixing the charges to be made by them.

(3) Every such licence may be granted for a year or for any less period according as the local authority may think fit, and may be suspended or revoked or endorsed by the local authority for a breach of such byelaws or whenever they shall deem such suspension or revocation or endorsement to be necessary or desirable in the interests of the public: Provided that the existence of this power to suspend or revoke or endorse a licence shall be plainly set forth in the licence itself.

(4) Every such licence whensoever issued shall expire on the thirty-first day of March next following the date of its issue, and may contain conditions as to the badge which the holder of any such licence shall wear.

(5) If any person while unlicensed represents himself to be licensed, or wears any badge for the purpose of representing himself as licensed to carry on any of the callings specified in this section, he shall be liable to a penalty not exceeding twenty shillings.

Note.

There is nothing in the present section to prohibit an unlicensed person from acting as a porter, etc., so long as he does not represent himself to be licensed. The licensing powers of the local authority in this respect resemble the power of an urban authority to license proprietors of pleasure boats, and the boatmen in charge thereof, under sect. 172 of the Public Health Act, 1875.²⁷ **Porters.**

Bye-laws under the section will require confirmation by the Secretary of State: see sect. 9.

Sect. 85.—(1) Every person who shall carry on for the purpose of private gain, the trade or business of keeper of a female domestic servants' registry shall register his name and place of abode, and also the premises in which such trade or business is carried on, in a book to be kept at the offices of the local authority for the purpose. **Registries for servants.**

(2) The local authority may make byelaws prescribing the books to be kept and the entries to be made therein, and any other matter which the local authority may deem necessary for the prevention of fraud or immorality in the conduct of such trade or business and for regulating any premises used for the purposes of or in connection with such trade or business.

(25) *Ante*, pp. 396, 427, 496. For seashore bye-laws in particular, see *Gray's Case*, *ante*, p. 427 (9); *Slee's Case*, *ante*, p. 500 (45); *Parker's Case*, *ante*, p. 501 (67).

(26) As to the use of promenades for motor car races, see the *Blackpool Case*, *ante*, p. 425 (31).

(27) See Note thereto, *ante*, p. 440.

Sect. 85.Registries for
servants—*cont.*

(3) The person registered shall keep a copy of the byelaws made by the local authority under this section hung up in a conspicuous place in the registered premises.

(4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall at all reasonable times be afforded by the person registered full and free power of entry into the registered premises for the purpose of inspecting the registered premises and the books required to be kept by such person.

(5) Any person carrying on such trade or business as aforesaid whose name, place of abode, and premises in which such trade or business is carried on have not been registered in accordance with subsection one of this section, or whose registration has been cancelled or suspended as herein-after provided, or acting in contravention of any of the provisions of this section or of any byelaw made thereunder, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the court may (in lieu of or in addition to imposing a penalty) order the suspension or cancellation of the registration.

(6) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient.

Note.Servants'
registries.

The provisions of the present section may be compared with those of the London County Council (General Powers) Act, 1905.²⁸

Bye-laws under the section will require confirmation by the Secretary of State : see sect. 9.

Public
notice.

As to the effect of not giving the notice prescribed by sub-sect. (6) of the present section, it may be mentioned that sect. 4 (1) of the Wild Birds Protection Act, 1894,²⁹ requires county councils to give public notice every year of any order in force in their district which prohibits the taking of wild birds, such notice to be given "during the three weeks preceding the commencement of the period of the year during which the order operates," and justices dismissed a summons for contravention of the order, as the prosecution admitted inability to prove the giving of such public notice; but it was held that this was not a "condition precedent,"³⁰ and the same decision might be given with regard to the present section.

As to dealers
in old metal and
marine stores

Sect. 86.—(1) Every person who shall carry on business as a dealer in old metal or as a marine store dealer shall register his name and place of abode and every place of business, warehouse, store, and place of deposit occupied or used by him for the purpose of such business, in a book to be kept for the purpose at the offices of the local authority.

(2) Every person carrying on business as aforesaid shall correctly enter in a book to be kept by him for that purpose the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom the same were purchased or otherwise acquired.

(3) Every person who shall carry on such business without having so registered or without keeping such book and making such entries as required by this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept, and every person who shall prevent, hinder, or obstruct any officer or person so authorised in the execution of his duty under this subsection shall be liable to a penalty not exceeding five pounds.

(5) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient.

(28) 5 Edw. VII. c. ccvi., ss. 45-53, set out in 3 L. G. R. (Statutes) 33-37.

(29) 57 & 58 Vict. c. 27, s. 4 (1).

(30) *Duncan v. Knill* (1907, K. B. D.), 96 L. T. 911; 71 J. P. 287; 6 L. G. R. 620.

Note.

Sect. 86, n.
Notice.

As to the effect of not giving the notice required by sub-sect. (5), see the Note to sect. 85.

Old metal
and marine
stores.

For the purposes of the Old Metal Dealers Act, 1861,³¹ the term “dealer in old metals” is defined as meaning “any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with secondhand goods or marine stores”; and “old metals” mean “the said articles.” There is an identical definition of “dealer in old metals” in the Prevention of Crimes Act, 1871.³²

For the purposes of the Merchant Shipping Act, 1894,³³ the expression “marine store dealer” is defined as “every person dealing in, buying, or selling, any of the articles following, that is to say, anchors, cables, sails, old junk, or old iron, or other marine stores of any kind.”

The Public Stores Act, 1875,³⁴ incorporates these definitions for the purposes of that Act.

For the purposes of the present section, no doubt, persons dealing, etc., in the above articles would be held to come within its provisions; but the definitions, not being incorporated, are not to be taken as exclusive.

A conviction under sect. 13 of the Act of 1871 was quashed in Scotland on the ground that the charge did not describe the defendant as a “dealer in old metals.”³⁵

The following Irish decisions may also be noted :—A general dealer who traded from house to house, in a place outside the district in which his licensed premises were situate, was held not to have “used premises” other than those licensed.³⁶ Horsehair not being mentioned among the articles the selling of which constitutes a person a “general dealer,” no offence was committed by failure to register a deal in horsehair.³⁷ Entry of a false name and address given by a person who sold goods to a general dealer was held to be an offence, though the dealer had no reason to believe that it was false, *mens rea* not being necessary under the Act.³⁸ A publican, who had not taken out a general dealer’s licence and purchased forty-three bottles from a general dealer, was held to have committed no offence.³⁹ Licensed general dealers may act through unlicensed agents.⁴⁰

PART VIII.

FIRE BRIGADE.

Note.

The power of putting the ensuing Part of the present Act, or any section of that Part, in force is in the hands of the Secretary of State : see sect. 3 (4).

Adoption
of Part.

Sect. 87. Any police constable acting under the orders of his superior officer, and any member of the fire brigade of the local authority being on duty, and any officer of the local authority, may enter and if necessary break into any building in the district being or reasonably supposed to be on fire, or any building or land adjoining or near thereto, without the consent of the owner or occupier thereof respectively, and may do all such acts and things as they may deem necessary for extinguishing fire in any such building or for protecting the same or rescuing any person or property therein from fire.

Power to police
constable to
enter and break
open premises
in case of fire.

Sect. 88. The officer in charge of the police at any fire in the district shall have power to stop or regulate the traffic in any street whenever in his opinion it is necessary or desirable to stop or regulate such traffic for the purpose of extinguishing the fire or for the safety or protection of life or property, and any person who wilfully disobeys any order given by such officer in pursuance of this section shall be liable to a penalty not exceeding five pounds.

Power to police
officer to control
street traffic
at fires.

Sect. 89. The captain or superintendent of the fire brigade of the local authority

Captain of fire
brigade or other
officer to have
control of
operations.

(31) 24 & 25 Vict. c. 110, s. 3.

(32) 34 & 35 Vict. c. 112, s. 13.

(33) 57 & 58 Vict. c. 60, s. 538.

(34) 38 & 39 Vict. c. 25, s. 9.

(35) *Adams v. Mackenna* (1906), 43 Sc. L. R. 868.

(36) *Hall v. O'Brien* (1905), 40 Ir. L. T. 33.

(37) *Kelly v. Rice*, 1906 Ir. K. B. 1.

(38) General Dealers (Ireland) Act, 1903 (3 Edw. VII. c. 44), s. 2. *Toppin v. Marcus*, 1908 Ir. K. B. 432.

(39) *Gamble v. Rainey* (1912), 46 Ir. L. T. 200.

(40) *Dunne v. Lee*, 1913 Ir. K. B. 205.

Sect. 89.

or other officer of such fire brigade for the time being in charge of the engine or other apparatus for extinguishing fires attending at any fire within the district shall from the time of his arrival and during his presence thereat have the sole charge and control of all operations for the putting out of such fire, whether by the fire brigade of the local authority or any other fire brigade, including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or water supply, and the selection of the parts of the building on fire or of adjoining buildings against which the water is to be directed.

Note.**Fires outside district.**

The captain of a fire brigade acting outside its district must, by reason of the present section, submit himself and his men and apparatus to the control of the captain of the local fire brigade, if there is one. The section does not provide for the common case where there is no local brigade. See also the Notes to sects. 32 and 33 of the Town Police Clauses Act, 1847.¹

Agreements with local authorities for common use of fire appliances.

Sect. 90. The local authority of the district and the local authority of any borough or urban or rural district or the parish council of any parish may enter into and carry into effect agreements for the common use of any fire engines with their appurtenances and firemen or for mutual assistance in case of fire.

Note.**Fire appliances.**

Urban authorities have power to provide fire engines and employ firemen under the provisions of the Town Police Clauses Act, 1847, with respect to fires,² as incorporated with the Public Health Act, 1875, by sect. 171 of that Act.³ Rural district councils have no power to provide fire engines or employ firemen, unless invested with urban powers in this respect. Parish councils may provide fire engines and employ firemen under the Lighting and Watching Act, 1833,⁴ if sect. 44 of that Act is in force in their parish, and in other cases under sect. 29 of the Poor Law Amendment Act, 1867.⁵

The power given by the present section to a rural district council to enter into agreements with a local authority in whose district the present section is in force is not expressly confined to rural district councils invested with urban powers in regard to fire engines and firemen, but is no doubt intended to be so confined.

Meaning of common use.

Whether the expression "common use" means the joint use of one local authority's apparatus by two local authorities, one of which has no such apparatus, or means that where each of two or more local authorities has such apparatus they may all agree to use each other's when occasion arises, is not clear. The alternative form of agreement, for "mutual assistance," no doubt implies that each party has apparatus to share with the other.

Charge for services.

There is nothing in the present section to correspond with the provision of the Parish Fire Engines Act, 1898,⁶ that where a fire engine is sent beyond the limits of a borough or district in pursuance of an agreement, or to the use of the apparatus of another authority, the owner of the premises shall not be liable for any charge under sect. 33 of the Town Police Clauses Act, 1847. And questions of great difficulty may arise as to the power of an authority to charge for the services of their fire engines and firemen, where such services are rendered pursuant to an agreement under the present section at a fire outside their district or parish. Such questions may depend to a great extent on the terms of the particular agreement.

PART IX.**SKY SIGNS.****Sky signs.**

Sect. 91.—(1) (a) It shall not be lawful to erect or fix to, upon, or in connection with any building or erection any sky sign, and it shall not be lawful to retain any existing sky sign so erected or fixed for a longer period than three years after the commencement of this section, nor during that period except with the licence of the local authority, and in the event of such licence being granted then only for such period not exceeding three years from the commencement of this section and under and subject to such terms and conditions as shall be therein prescribed.

(1) *Post*, Vol. II., pp. 1658, 1659.

(2) See ss. 30-33, *post*, Vol. II., pp. 1657-1660.

(3) *Ante*, p. 438.

(4) *Ante*, p. 155 (18).

(5) *Ante*, p. 155 (19).

(6) *Post*, Vol. II., p. 1659.

(b) Provided that in any of the following cases a licence of the local authority under this subsection shall become void (namely):—(i) If any addition to any sky sign be made except for the purpose of making it secure under the direction of the surveyor; (ii) If any change be made in the sky sign or any part thereof; (iii) If the sky sign or any part thereof fall either through accident, decay, or any other cause; (iv) If any addition or alteration be made to or in the house, building, or structure on, over, or to which any sky sign is placed or attached if such addition or alteration involves the disturbance of the sky sign or any part thereof; or (v) If the house, building, or structure over, on, or to which the sky sign is placed or attached become unoccupied or be demolished or destroyed.

(c) Provided also that if any sky sign be erected or retained contrary to the provisions of this Act, or after the licence for the erection, maintenance, or retention thereof for any period shall have expired or become void, it shall be lawful for the local authority to take proceedings for the taking down and removal of the sky sign in the same manner and with the same consequence as to recovery of expenses and otherwise in all respects as if it were an obstruction within the meaning of sect. 69 (Future projections of houses, &c., to be removed on notice) of the Towns Improvement Clauses Act, 1847.

(2) Any person acting in contravention of any of the provisions of this section, or of the terms and conditions (if any) of any approval, licence, or consent under this section, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(3) For the purposes of this section—

“ Sky sign ” means—Any word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction supported on or attached to any post, pole, standard, frame-work, or other support wholly or in part upon, over, or above any house, building or structure which or any part of which sky sign shall be visible against the sky from some point in any street or public way, and includes all and every part of any such post, pole, standard, frame-work, or other support;

The expression “ sky sign ” shall also include—

Any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any house, building, structure, or erection of any kind, or on or over any street or public way;

But shall not include—

(a) Any flagstaff, pole, vane, or weathercock unless adapted or used wholly or in part for the purpose of any advertisement or announcement;

(b) Any sign or any board, frame, or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof: Provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall or parapet or ridge to, against, or on which it is fixed or supported;

(c) Any word, letter, model, sign, device, or representation as aforesaid relating exclusively to the business of a railway or canal company, and placed wholly upon or over any railway, canal, railway station, wharf, quay, yard, platform, or station or wharf or quay approach belonging to a railway or canal company, and so placed that it cannot fall into any street or public place.

Note.

The power of putting the present section in force is in the hands of the Secretary of State: see sect. 3 (4).

The provisions of the present section are very similar to those of Part XII. of the London Building Act, 1894,¹ by which sky signs in London are prohibited, subject to temporary provisions, which are now spent, for the retention of existing sky signs under licence; and in particular the definition of “ sky sign ” in sub-sect. (3) of the present section is practically identical with that in sect. 125 of the Act of 1894, save that the provisions in sub-sect. (3) (c) of the present section as to canal companies have no counterpart in sect. 125.

Part XII. of the London Building Act, 1894, replaced, with some modifications, legislation contained in the London Sky Signs Act, 1891.²

A case decided under the Act of 1891³ shows that a structure may be a sky

Sect. 91.

Sky signs—*continued.*

Metropolitan legislation.

Meaning of “ sky sign.”

(1) 57 & 58 Vict. c. cccxiii., ss. 125-135.

(2) 54 & 55 Vict. c. lxxviii., as amended by L. C. C. (General Powers) Act, 1893 (56 &

57 Vict. c. ccxxi.), s. 17.

(3) *London C.C. v. Carwardine* (1892), 62 L. J. M. C. 40; 68 L. T. 761; 57 J. P. 181.

Sect. 91, n.

sign within the definition, although it serves purposes other than that of advertisement. In that case the question arose with reference to a structure erected over a building, and consisting of an open tower or framework of timber some fifty feet high, with a windmill on the top. Half-way up the tower was a gallery surrounding the tower, with a fence consisting of large letters forming the proprietor's name; and on the rudder of the windmill was painted the proprietor's name and business. It was held that the structure was a sky sign, although the windmill was used to drive machinery within the building for useful purposes.

In another case under the same Act,⁴ the owner of a waxworks exhibition had fixed the letters "Madame Tussaud's" to a galvanised iron trellis, supported on a palisade surmounting one of the end walls of a large building. The dome of the building was some thirty feet higher than, and separated from, these letters. At one small part of the street the letters were visible against the sky. The magistrate held that the structure was a sky sign. But the court, on a case stated, reversed his decision on the ground that the structure was not within the definition of sky sign in that Act, chiefly, it would seem, on the ground that it was not "wholly or in part over" the building to which it was attached. The definitions in sect. 125 of the London Building Act, 1894, and in the present section, however, instead of the words "wholly or in part over," contain the words "wholly or in part upon, over, or above"; and the decision, which seems open to question, is hardly likely to be followed with reference to the latter definitions.

In a case under the Act of 1894,⁵ a hotel company had affixed to their hotel a structure composed of boards, to which were affixed embossed glass letters in metal frames. The boards to which the letters were affixed were visible from the streets against the sky; but the letters themselves were not visible against the sky, but only against the boards. It was held on a case stated by a magistrate, reversing his decision, that the structure was a sky sign; and Wills, J., pointed out the above-mentioned distinction between the definitions in the Act of 1891 and 1894.

The meaning of the word "sign" in a local Act dealing with hanging signs and other things over footpaths was discussed in the case cited below.⁶

Procedure for
removal of
sky sign.

The effect of sect. 69 of the Towns Improvement Clauses Act, 1847,⁷ as applied to the taking down and removal of sky signs by sub-sect. (1) (c) of the present section, appears to be that the local authority may by notice require the occupier of the house or building to which the sky sign is attached to take it down and remove it. The occupier must take down and remove the sky sign in accordance with the notice within fourteen days of the service of the notice on him, and in default is liable to a penalty not exceeding forty shillings. On default of the occupier, also, the local authority may take down and remove the sky sign themselves, and recover the expense of so doing from the occupier in default; and except when the sky sign was put up by the occupier, the occupier is entitled to deduct the expense of its removal from the rent payable by him to the owner of the house or building.

PART X.

MISCELLANEOUS.

Sect. 92. The local authority—

Bathing places.

(a) may make byelaws with regard to any public bathing, whether from bathing machines or not, for any of the purposes mentioned in sect. 69 of the Town Police Clauses Act, 1847, and also for the purpose of regulating the hours of bathing and enforcing the provision and maintenance of any life-saving apparatus or other means of protecting bathers from danger by persons providing accommodation for public bathing; and

(b) may, if they think fit, provide and maintain on or at any place within their district which abuts on the sea or any river, bathing-sheds or other conveniences with all necessary appliances, and may charge for the use thereof.

[Nothing in this section or in any byelaws made thereunder shall be deemed or taken to prejudice, diminish, alter or affect the estates, rights, titles, privileges, powers, or authorities of any persons in, over, or under the foreshore or sands within or in front of the district or the immediate approaches thereto, or any part thereof respectively.⁸]

(4) *Tussaud v. London C.C.* (1892), 57 J. P. 184.

(5) *London C.C. v. Savoy Hotel Co.* (1896), 60 J. P. 457. The magistrate had been ordered to state the case, *Reg. (London C.C.) v. Vaughan* (1896), 12 T. L. R. 193.

(6) *Goldstraw v. Jones*, *post*, Vol. II., p. 1623.

(7) *Post*, Vol. II., p. 1622.

(8) An "adaptation" added to Lowestoft Order referred to *ante*, p. 891 (26a).

Note.

Sect. 92, n.

Sect. 69 of the Town Police Clauses Act, 1847, which is incorporated with the Public Health Act, 1875, by sect. 171 of that Act, was confined to matters in connection with bathing from machines, and from the seashore or rivers. As to the cases on this subject, see the Note to that section.¹

A bye-law prohibiting bathing from the seashore, "except at such places as may from time to time be appointed" by the local authority, was held bad.²

Bye-laws under the present section must be confirmed by the Minister of Health: see sect. 9.

Bathing places.

Sect. 93. The local authority of any district may provide and maintain life-saving appliances at any place in their district where they think those appliances are likely to be of use.³

Provision of life-saving appliances.

Sect. 94.—(1) The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire, and to the boatmen or persons assisting in the charge or navigation of such boats and vessels, and may charge annual fees for such licences, for a boat or vessel a fee not exceeding the sum of five shillings, and for a boatman or other person a fee not exceeding the sum of one shilling.

Power to license pleasure boats.

(2) Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public: Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(3) No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel not so licensed or at any time during the suspension of the licence for the boat or vessel.

(4) A licence under this section shall not be required for any boat or vessel duly licensed by or under any regulations of the Board of Trade.

(5) No person shall carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than shall be specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form "Licensed to carry persons."

(6) Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding forty shillings.

(7) Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation: Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the clerk, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt.

[(8) Nothing in this section shall prejudicially affect the operation of any enactment conferring powers or imposing duties on the [...], or the exercise or discharge of any powers or duties so conferred or imposed; and where, in pursuance of any such enactment, or in the exercise or discharge of any such powers or duties, or where, in pursuance of any other enactment which has effect within limits comprising waters at a distance not exceeding five miles from the nearest point in the boundary of the district, the grant or holding or operation of a licence for any purpose of this section is authorised or required, nothing in this section shall have effect so as to authorise or require the grant or holding or operation of a licence for the like purpose.⁴]

(1) *Post*, Vol. II., p. 1671.

(2) See *McGregor's Case*, *ante*, p. 501 (68).

(3) As to ambulances, see s. 50 and Note, *ante*, pp. 906, 907.

(4) In the Middlesbrough Cpn. Order,

May 25, 1909, this clause was added as an "adaptation" under s. 3 (3), *ante*, p. 882, for the protection of the Tees Conservancy Commissioners, and the adaptation is common where there are such bodies.

Sect. 94, n.
Pleasure
boats.

Note.

The present section is an amplification of sect. 172 of the Public Health Act, 1875.³ That section, though enabling urban authorities to licence the proprietors of pleasure boats, and the boatmen in charge thereof, and to make bye-laws for certain purposes in relation to such boats, does not prohibit, nor authorise the making of a bye-law prohibiting, the letting of boats by unlicensed persons; nor can a borough council make such a bye-law under sect. 23 of the Municipal Corporations Act, 1882.⁴ The defectiveness of the existing law in this respect is to some extent removed by sub-sect. (3) of the present section, but it is to be observed that that sub-section does not prohibit the letting of a licensed boat by an unlicensed person.

Plying for
hire.

Under the Merchant Shipping Acts, a Board of Trade certificate is necessary for motor boats carrying for hire more than twelve passengers.^{4a}

The owner of a pleasure boat brought his boat from an adjoining district by sea, landed in the district of the complainants, solicited custom on the shore, took customers for sails, and landed them again on the shore. He had no licence from the complainants. There was no evidence as to whether the boundary of the complainants' district included the foreshore, but it was held that the above evidence was sufficient. There was no evidence by any passenger as to the nature of the hiring; but it was held that evidence that the defendant had been heard saying to persons on the shore, "Are you going for a sail?" and that some of those addressed subsequently went for a sail with the defendant, was sufficient evidence of his having "plied for hire."⁵

Extension and
amendment of
38 & 39 Vict.
c. 55, ss. 175, 176.

Sect. 95. The powers of a local authority under sects. 175 and 176 of the Public Health Act, 1875, shall extend to highway purposes, and notwithstanding anything in sect. 175 of the Public Health Act, 1875, or any general provision in any local Act, any lands acquired by a local authority and not required for the purposes for which those lands have been acquired may be appropriated for any purpose approved by the [Minister of Health], subject, nevertheless, to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority, or to any special provision affecting the use of the lands contained in any local Act: Provided that the local authority shall not, on any lands so appropriated, create or permit any nuisance; and that the local authority shall not, on any such lands, sink any well for the public supply of water, or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless after local inquiry and consideration of any objections made by persons affected, the [Minister of Health], subject to such conditions as [he thinks] fit, [authorises] the work or construction.

Nothing in this section shall affect any rights acquired before the commencement of this section under any judgment or order of a court of competent jurisdiction, or under any agreement in writing, but if a dispute, one of the parties to which is a local authority, arises under such an agreement as to any such right, the dispute shall, if either party so require, be settled by the [Minister of Health] as if it were a doubt or difference within the meaning of sect. 304 of the Public Health Act, 1875,⁶ and the [Minister of Health] may for that purpose deal by order with any matters which may be dealt with by an order or provisional order under the said section.

Note.

Use of land
for different
purpose.

In most cases, unless the present section is in force, land acquired under statutory authority for one purpose cannot lawfully be utilised for another purpose, except temporarily in some way not inconsistent with its being ultimately utilised for the purpose for which it was acquired. As to this doctrine, see the cases cited in the Note to sect. 175 of the Public Health Act, 1875.⁷

SCHEDULE.

* * * * *

Note.

The present Schedule only contains "references to the Public Health (Ireland) Act, 1878,⁸ to be substituted for references to the Public Health Act, 1875," and is accordingly omitted.

(3) *Ante*, p. 439.

(4) *Post*, Vol. II., p. 1808. See *Byrne's Case*, *ante*, p. 440 (9).

(4a) 57 & 58 Vict. c. 60, s. 271; 6 Edw. VII. c. 48, s. 21; *Yeudall v. Sweeney*, 1922 S. C. (J.) 32; 59 Sc. L. R. 299.

(5) *Fearon v. Warrenpoint U.D.C.* (1910, K. B. D., I.), 44 Ir. L. T. 265; 1 Glen's Loc. Gov. Case Law 91, 92.

(6) *Ante*, p. 747.

(7) *Ante*, p. 468.

(8) 41 & 42 Vict. c. 52.

PART II.

OTHER PUBLIC HEALTH ACTS.

DIVISION I.

ACTS RELATING TO DISEASES.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

52 & 53 VICT. c. 72.

An Act to provide for the Notification of Infectious Disease to Local Authorities.
[30th August, 1889.]

Sect. 1. This Act may be cited as the Infectious Disease (Notification) Act, 1889.

Sect. 2. This Act shall extend . . .

(b.) to any urban, rural, or port sanitary district [*after the adoption thereof.*]

Short title,
Extent of Act.

Note.

Sub-sect. (a), which applied the Act to London, is repealed by the Public Health (London) Act, 1891,¹ and other provisions were made by that Act for the notification of infectious diseases in London.²

From the 1st October, 1920, the Welsh Board of Health, "so far as concerns Wales and Monmouthshire," have exercised the functions of the Ministry of Health in relation to various matters, including "infectious diseases, except that notifications and returns should continue to be forwarded to Whitehall."^{2a}

The words in italics in sub-sect. (b) were repealed by the Infectious Disease (Notification) Extension Act, 1899.³ By sect. 1 of that Act,⁴ the present Act shall, after the 1st January, 1900,⁵ "extend to and take effect in every urban, rural and port sanitary district, as defined for the purposes of" the present "Act,"⁶ in England or Wales, whether "the present Act" "has or has not been adopted therein before the" above date.

The Act may be extended to diseases other than those to which it is in terms applied by sect. 6, by resolution of the district council or port sanitary authority, subject to the approval of the Minister of Health under sect. 7.

The Act requires not only medical practitioners, but also the persons mentioned in sect. 3 (1) (a), to give notice to the medical officer of health of the fact that an inmate of a habitable building, ship, tent, van, etc.,⁷ in the district is suffering from any of the diseases to which the Act applies or has been extended.

London.

Wales.

Adoption of
Act.

Extension of
Act.

Notification.

Sect. 3.—(1.) Where an inmate of any building used for human habitation within a district to which this Act extends is suffering from an infectious disease to which this Act applies, then, unless such building is a hospital in which persons suffering from an infectious disease are received, the following provisions shall have effect, that is to say:—(a.) the head of the family to which such inmate (in this Act referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the building or being in attendance on the patient, and in default of such relatives every person in charge of or in attendance on the patient, and in default of any such person the occupier of the building shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which

Notification
of infectious
disease.

(1) 54 & 55 Vict. c. 76, s. 142, and Sched. IV.

(2) *Ibid.*, ss. 55-57. See M. H. Circular, July 21, 1921, 19 L. G. R. (Orders) 242-244.

(2a) See M. H. Circular, Sept. 30, 1920, 18 L. G. R. (Orders) 397, 398.

(3) 62 & 63 Vict. c. 8, s. 3 (2), Sched. The above short title is given by s. 3 (1), which also provides that the present Act and that

Act "may be cited together as the Infectious Disease (Notification) Acts, 1889 and 1899."

(4) *Ibid.*, s. 1. In s. 2 there is a saving for "any local Act which immediately before the passing of this Act was in force within the county borough of Huddersfield."

(5) *Ibid.*, s. 3 (3).

(6) See s. 16, *post*, p. 934.

(7) See s. 13, *post*, p. 934.

Sect. 3.

this Act applies, send notice thereof to the medical officer of health of the district : (b.) every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering.

(2.) Every person required by this section to give a notice or certificate who fails to give the same, shall be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding forty shillings; Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given.

Note.**Notification.**

The present section requires the notice to be given by the head of the family or other person mentioned in clause (1) (a), although the patient may be attended by a medical man whose duty it is to send in a certificate under clause (1) (b). It is only the diseases specified in sect. 6, and any other diseases to which the Act may be extended under sect. 7, that are to be notified.

Occupier of building.

The term "occupier" is defined by sect. 16.

A building of three stories, each of which was adapted for separate occupation, was held to be one building for the purposes of regulations made by the London County Council under the Dairies, Cowsheds, and Milkshops Order, 1885,⁷ requiring every purveyor of milk to notify any outbreak of infectious diseases within the building or upon the premises in which he kept milk; so that it was the duty of a purveyor of milk, who occupied the ground floor as a milkshop, to give notice of an outbreak of infectious disease occurring on the second floor, which he occupied as a residence for himself and his family, the first floor being sub-let by him.⁸

Certificate.

It is to be noticed that a medical practitioner is only required to send in the certificate, and consequently entitled to the fee mentioned in sect. 4, if he is "attending on or called in to visit" the patient. Where the patient is attended at different times by two medical men practising in partnership, it would not appear to be intended that they should each send in a certificate and obtain a separate fee. But the Local Government Board stated that they were advised that, if a second and independent practitioner is called in to meet the patient's usual medical attendant, the Act requires a second certificate, and a second fee is payable. As to the form of the certificate, see the Note to sect. 4, *infra*.

Where the medical officer of health himself attends the patient, he is entitled to the fee under sect. 4 (2) of 2s. 6d. or 1s., as the case may be: see sect. 11. A single bacteriological examination yielding a negative result does not, so the Local Government Board held, disentitle the medical practitioner to his fee, unless he withdraws his notification in consequence.

Common lodging-houses.

In making bye-laws for the regulation of common lodging-houses, district councils may insert provisions "for the giving of notices and the taking precautions in the case of any infectious disease."⁹

Public vehicles.

The fact that a public vehicle has been used by an infected person must be notified if sect. 64 of the Public Health Acts Amendment Act, 1907,¹⁰ is in force.

Plague.

The Local Government Board extended the present section to the notification of cases of plague by an order of the 19th September, 1900, which provides as follows:—"We, the Local Government Board, in the exercise of the powers given to us by the Public Health Acts, and any other Acts enabling us in this behalf, do, by this our Order, make the following Regulations, and declare the same to be in force in the district of every sanitary authority in England and Wales, and to apply to all vessels within the jurisdiction of a port sanitary authority or a riparian authority: I. In this Order—The expression 'sanitary authority' means every port sanitary authority and every council of a county borough and every urban or rural district council, and in the administrative county of London every sanitary authority for the execution of the Public Health (London) Act, 1891. The expression 'medical officer of health' includes any duly qualified medical practitioner appointed or employed by a sanitary authority to act in the execution of

(7) Set out *post*, Vol. II., Part V., under heading "FOOD."

(8) *London C.C. v. Edwards*, L. R. 1898,

2 Q. B. 75; 67 L. J. Q. B. 648; 62 J. P. 377.

(9) See P. H. Act, 1875, s. 80, *ante*, p. 165.

(10) *Ante*, p. 912.

any regulations made by us in pursuance of any of the enactments referred to in this Order. II. In the district of every sanitary authority which is situate without the administrative county of London, the persons mentioned in "the present section" and the sanitary authority shall, under this Order, have the same powers and duties in relation to the notification of cases of plague as they would have under that Act if plague were an infectious disease to which that Act applied. In the district of every sanitary authority in the administrative county of London, and in the district of the port sanitary authority of the Port of London, the persons mentioned in sect. 55 of the Public Health (London) Act, 1891 (including the Managers of the Metropolitan Asylum District), and the sanitary authority shall, under this Order, have the same powers and duties in relation to the notification of cases of plague as they would have under that section if plague were an infectious disease to which that section applied. The sanitary authority shall forthwith cause circular letters to be sent to all legally qualified medical practitioners in the district informing them of their duties under this Regulation. III. It shall be the duty of every medical officer of health to report forthwith to us any case of plague which may be notified to him, or which may otherwise come or be brought to his knowledge and which may occur in the district or area assigned to his charge." For other orders relating to cholera, see the list given elsewhere.¹¹

This list also contains references to the numerous Orders, Memoranda, and Circulars which have been issued in regard to diseases.

With regard to the notification to the Home Office of cases of lead, phosphorus, arsenical, or mercurial poisoning, or of anthrax, in factories and workshops, see the Factory and Workshop Act, 1901.¹² As to the sending of infected clothes to laundries without notice, see sect. 55 of the Public Health Acts Amendment Act, 1907¹³; and as to the notification of infectious diseases among servants of dairymen, see sect. 54 of the same Act.¹⁴

As to diseases occurring in a building in the occupation of His Majesty's Forces, see sect. 5 (b) of the Local Government (Emergency Provisions) Act, 1916.¹⁵

Sect. 4.—(1.) The [Minister of Health] may from time to time prescribe forms for the purpose of certificates under this Act, and any forms so prescribed shall be used in all cases to which they apply.

(2.) The local authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this Act a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution.

(3.) Where in any district of a local authority there are two or more medical officers of health of such authority a certificate under this Act shall be given to such one of those officers as has charge of the area in which is the patient referred to in the certificate, or to such other of those officers as the local authority may from time to time direct.

Note.

As to the medical certificate, see the Note to sect. 3.

The Public Health (Notification of Infectious Disease) Regulations, 1918,¹⁶ rescinded certain previous Orders and provided that the form of certificate in Sched. A thereto "shall, unless we otherwise prescribe, or save as we otherwise sanction, be the form for any certificate or notification of an infectious disease to be given by a medical practitioner to the medical officer of health for a municipal borough or for any other urban district or for a rural district or for a port sanitary district (other than the Port of London) under"—(a) sect. 3 (1) (b) of the present Act; (b) the Order of 1900 as to plague;¹⁷ (c) the Cerebro-spinal Fever and Acute Poliomyelitis Regulations of 1912; (d) the Tuberculosis Regulations of 1912, Art. 5; (e) the Ophthalmia Regulations of 1914; and (f) the Measles Regulations of 1915; and that the form in Sched. B "shall, until we otherwise prescribe, be the form for the purpose of any certificate or notification of an infectious disease to be given by a medical practitioner to the medical officer of health for the City of London, for the Port of London, or for a metropolitan borough, under"—(a) to (f), *supra*, and sect. 55 (1) (b) of the Public Health (London) Act, 1891.¹⁸ The Order

Sect. 3, n.

Orders, etc.,
as to diseases.

Factories and
workshops.

Military
buildings.

As to forms
and case of
several medical
practitioners.

Form of
certificate.

(11) *Post*, Vol. II., Part V., under heading "DISEASES, Cholera."

(12) 1 Edw. VII. c. 22, s. 73.

(13) *Ante*, p. 910.

(14) *Ante*, p. 910.

(15) *Post*, Vol. II., p. 2265.

(16) 16 L. G. R. (Orders) 3-8, Circular 1, 2.

(17) Quoted *ante*, p. 930, and *supra*.

(18) 54 & 55 Vict. c. 76, s. 55 (1) (b).

Sect. 4, n.

also added to Art. 9 of the Tuberculosis Regulations of 1912, Art. 7 of the Ophthalmia Regulations of 1914, and Art. 7 of the Measles Regulations of 1915, the following: "Provided that the requirement herein contained that a notification shall be enclosed in a sealed envelope shall be deemed to be complied with if the notification is folded in such a manner that during its transmission the particulars of the notification cannot be observed."

The following is a summary of the form of certificate given in Sched. A. :—
 "I hereby declare that in my opinion" ["Name in full of person suffering from disease"] "an inmate of" ["No. or name of the house, and name of the street or road, and parish or place, where person is resident. In the case of a ship, boat, tent, van, shed, or other similar structure, the name or description of the dwelling and the name of the place where it is situate should be given. The particulars given should be sufficient to enable the address to be promptly found."] "is suffering from" ["Name of disease"] followed by these additional particulars, namely, "age of patient, sex, date of onset of the disease, and, in the case of tuberculosis, localisation of the disease (stating organ or part affected), occupation, usual place of residence (if other than above)," in the case of ophthalmis neonatorum, "date of birth, name and address of person (if any) having charge of child," and, in the case of measles, "date of first appearance of rash." The additional particulars required by Sched. B are :—"If patient is inmate of a hospital, the place from which the patient was brought to the hospital. Date on which patient was so brought. If case occurred in private practice. If case occurred in practice as medical officer of a public body or institution, and, if so, what body or institution." The certificate is to be dated and signed by the medical practitioner.

The Local Government Board considered that local authorities might add to the form a footnote requesting particulars as to the age of, and school attended by, children, so long as it was made clear that the giving of this information was optional.

Testing of certificates.

The Local Government Board considered it unnecessary and undesirable that a medical officer of health should in general make a personal examination in order to test the accuracy of certificates sent to him; and they pointed out that he could only make such an examination with the consent of the patient, and should only do so after communication with the medical practitioner attending the case.

Adoption of Act in urban or rural district.

Sect. [5.—(1) *The local authority of any urban, rural, or port sanitary district may adopt this Act by a resolution passed at a meeting of such authority; and fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either: (a) given in mode in which notices to attend meetings of the local authority are usually given, or (b) where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England.*

(2) A resolution adopting this Act shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution as the local authority may fix, and upon its coming into operation this Act shall extend to the district.

(3) A copy of the resolution shall be sent to the [Minister of Health] when it is published.]

Note.**Adoption.**

The Act having been put in force in all urban and rural and port sanitary districts by the Act of 1899, quoted in the Note to sect. 2, the present section was repealed by that Act.¹⁶ It is printed here in full, because of the provision referring to its terms which is contained in sect. 7 (1).

Definition of infectious disease.

Sect. 6. In this Act the expression "infectious disease to which this Act applies" means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any particular district any infectious disease to which this Act has been applied by the local authority of the district in manner provided by this Act.

Note.

The Local Government Board stated that it appeared to them that the term "puerperal fever" in the present section may be regarded as a general one, including the several affections which may occur as the direct result of child-birth.

Sect. 6, n.**Puerperal fever.**

Sect. 7.—(1.) The local authority of any district to which this Act extends may, from time to time, by a resolution passed at a meeting of such authority where the like special notice of the meeting and of the intention to propose the resolution has been given as is required in the case of a meeting held for adopting this Act, order that this Act shall apply in their district to any infectious disease other than a disease specifically mentioned in this Act.

Power to local authority to extend definition of infectious disease.

(2.) Any such order may be permanent or temporary, and, if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the local authority which made the same.

(3.) An order under this section and the revocation and variation of any such order shall not be of any validity until approved by the [Minister of Health].

(4.) When it is so approved, the local authority shall give public notice thereof by advertisement in a local newspaper and by handbills, and otherwise in such manner as the local authority think sufficient for giving information to all persons interested. They shall also send a copy thereof to each registered medical practitioner whom, after due inquiry, they ascertain to be residing or practising in their district.

(5.) The said order shall come into operation at such date not earlier than one week after the publication of the first advertisement of the approved order as the local authority may fix, and upon such order coming into operation, and during the continuance thereof, an infectious disease mentioned in such order shall, within the district of the authority, be an infectious disease to which this Act applies.

(6.) In the case of emergency three clear days' notice under this section shall be sufficient, and the resolution shall declare the cause of such emergency and shall be for a temporary order, and a copy thereof shall be forthwith sent to the [Minister of Health] and advertised, and the order shall come into operation at the expiration of one week from the date of such advertisement, but unless approved by the [Minister of Health] shall cease to be in force at the expiration of one month after it is passed, or any earlier date fixed by the [Minister of Health].

(7.) The approval of the [Minister of Health] shall be conclusive evidence that the case was one of emergency.

Note.

In their Circular of 2nd December, 1908,¹⁷ the Local Government Board stated that they had been approached by the Board of Agriculture and Fisheries as to the desirability of making arrangements for the notification of cases of glanders, anthrax and hydrophobia in man, where the facts point to the possibility of infection having been derived from an animal or its carcase, or where inquiry under the Diseases of Animals Acts seemed to the medical men concerned to be *primâ facie* desirable. The Board were satisfied as to the advantage of such an arrangement with a view to checking the spread of these diseases, and asked local authorities to invite their medical officers of health to intimate in future to the clerk to the local authority, under the Diseases of Animals Acts, of their respective districts such cases or suspected cases of glanders, anthrax and hydrophobia in man as might come to their knowledge. The Board also drew attention to art. 1 (3) of the Anthrax Order of 1899,¹⁸ and to art. 4 of the Glanders and Farcy Order of 1907,¹⁹ with reference to the duty of inspectors under the Diseases of Animals Act, 1894, to notify to the medical officer of health outbreaks of anthrax and glanders. They added that, if the council should wish to extend the provisions of the present Act in their district to the diseases in question, they would be prepared to entertain favourably an application for their approval of the resolution which, after due notice, it would be necessary for the council to pass on the subject.

Extension to other diseases.

The Board declined to extend the Act to cancer.

As to the notice of the meeting, etc., see sect. 5 and the Memorandum of the Local Government Board of the 12th December, 1911.²⁰

Procedure.

Sect. 8.—(1.) A notice or certificate for the purposes of this Act shall be in writing or print, or partly in writing and partly in print; and for the purposes of this Act the expression "print" includes any mechanical mode of reproducing words.

Notices and certificates.

(17) 7 L. G. R. (Orders) 1.

(19) 5 L. G. R. (Orders) 77.

(18) Revoked by Order of 1910; see 8 L. G. R. (Orders) 288.

(20) 10 L. G. R. (Orders) 28.

Sect. 8.

(2.) A notice or certificate to be sent to a medical officer of health in pursuance of this Act may be sent by being delivered to the officer or being left at his office or residence, or may be sent by post addressed to him at his office or at his residence.

Expenses.

Sect. 9. Any expenses incurred by a local authority in the execution of this Act shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health and in the case of a rural authority shall be general expenses.²¹

Non-disqualifi-
cation of
medical officer
by receipt of
fees.

Sect. 10. [*Repayment of expenses in London as expenses of managers of asylum district.*²²]

Sect. 11. A payment made to any medical practitioner in pursuance of this Act shall not disqualify that practitioner for serving as member of the council of any county or borough, or as member of a sanitary authority, or as guardian of a union, or in any municipal or parochial office.

Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which he would be entitled if he were not such medical officer.

Note.

Disqualifica-
tions.

As to the disqualification of county, borough, district, and parish councillors, and members of boards of guardians, see sect. 46 of the Local Government Act, 1894, and the Note thereto.²³ Paid officers engaged in the administration of the poor law are incapable of serving as guardians, and persons receiving any fixed salary or emolument from the poor rates in any parish or union are incapable of serving as guardians in such parish or union.²⁴

Fees.

With regard to the fees payable for certificates under the Act, see sect. 4 (2).
On the 31st August, 1921, they reverted to 2s. 6d.^{24a}

Application of
Act to vessels,
tents, &c.

Sect. 12. [*Application of Act to Woolwich.*²⁵]

Sect. 13.—(1.) The provisions of this Act shall apply to every ship, vessel, boat, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a building.

(2.) A ship, vessel, or boat, lying in any river, harbour, or other water not within the district of any local authority within the meaning of this Act shall be deemed for the purposes of this Act to be within the district of such local authority as may be fixed by the [Minister of Health], and where no local authority has been fixed, then of the local authority of the district which nearest adjoins the place where such ship, vessel, or boat is lying.²⁶

(3.) This section shall not apply to any ship, vessel, or boat belonging to any foreign Government.

Saving for
local Act.

Sect. 14. Where this Act is put in force in any district in which there is a local Act for the like purpose as this Act, the enactments of such local Act, so far as they relate to that purpose, shall cease to be in operation.²⁷

Exemption
of Crown
buildings.

Sect. 15. Nothing in this Act shall extend to any building, ship, vessel, boat, tent, van, shed, or similar structure belonging to [His] Majesty the [King], or to any inmate thereof.

Definitions.

Sect. 16. In this Act—
The expression “local authority” means each of the following authorities; that is to say,—
* * * * *
(c.) an urban or rural sanitary authority in England within the meaning of the Public Health Acts; and
(d.) the port sanitary authority of any port sanitary district in England.

(21) As to expenses of urban district councils, see P. H. Act, 1875, s. 207; of rural district councils, ss. 229, 230; and of port sanitary authorities, s. 290—*ante*, pp. 561, 606, 732.

(22) Repealed by P. H. (London) Act, 1891 (54 & 55 Vict. c. 76, s. 142, and Sched. IV.), and re-enacted with amendments (*ibid.*, s. 55 (4)). The Metropolitan Asylum district is constituted under the Metropolitan Poor Act, 1867 (30 Vict. c. 6; amended by 32 & 33 Vict. c. 63), and L. G. B. Order of May 15, 1867, made in pursuance of that Act. It does not extend beyond the metropolis as defined by the Metropolitan Management Act, 1855.

(23) *Post*, Vol. II., p. 2068.

(24) 5 & 6 Vict. c. 57, s. 14.

(24a) See M. H. Circular, Feb. 24, 1922, 20 L. G. R. (Orders) 25, 26.

(25) Repealed by P. H. (London) Act, 1891 (54 & 55 Vict. c. 76, s. 142, Sched. IV.), the Woolwich B.C. being now a “sanitary authority” under that Act (*ibid.*, s. 99 (1) (d)).

(26) The present Act is in force in the district of every port sanitary authority—see Note to s. 2.

(27) For the saving in relation to Huddersfield, see footnote (4), *ante*, p. 929.

The expression "urban or rural district" means the district for which any such urban or rural sanitary authority is elected : **Sect. 16.**

The expression "port sanitary district" means the port sanitary district of London and any port or part of a port for which a port sanitary authority has been constituted under the Public Health Acts, and any such port sanitary district shall form no part, for the purposes of this Act, of any urban or rural district : **Definitions—continued.**

The expression "occupier" includes a person having the charge, management, or control of a building, or of the part of a building in which the patient is, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers either on his own account or as the agent of another person, and in the case of a ship, vessel, or boat, the master or other person in charge thereof.

Note.

As to port sanitary authorities, see sects. 287 to 292 of the Public Health Act, 1875.²⁸ **Ports.**

Sub-sects. (a) and (b), and the definition of "London District," under which the City Commissioners of Sewers and the vestries and district boards were local authorities under the present Act, were repealed by the Public Health (London) Act, 1891.²⁹ **London.**

Sects. 17, 18. [*Application to Scotland and Ireland.*]

(28) *Ante*, pp. 730-733.

(29) 54 & 55 Vict. c. 76, s. 142, and Sched. IV.

THE INFECTIOUS DISEASE (PREVENTION) ACT, 1890.

53 & 54 VICT. c. 34.

An Act to prevent the Spread of Infectious Disease.

[4th August, 1890.]

Short title.	Sect. 1. This Act may be cited as the Infectious Disease (Prevention) Act, 1890. ¹
Definitions.	<p>Sect. 2. Expressions used in this Act shall, unless the context otherwise requires, have the same meaning as the like expressions used in the Infectious Disease (Notification) Act, 1889; and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease in the same manner as that Act may be applied to such disease.</p> <p>In this Act—</p> <p>“Dairy” shall include any farm, farmhouse, cowshed, milk-store, milkshop, or other place from which milk is supplied, or in which milk is kept for purposes of sale :</p> <p>“Dairyman” shall include any cowkeeper, purveyor of milk, or occupier of a dairy :</p> <p>“Medical officer of health” shall include any person duly authorised to act temporarily as medical officer of health :</p> <p>[“Local authority” . . .]</p>
Definitions.	<p>Note.</p> <p>Sect. 16 of the Infectious Disease (Notification) Act, 1889,² gives definitions of “local authority,” “urban or rural district,” “port sanitary district,” “occupier.” It also declares that its provisions shall apply to every ship, vessel, boat, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a building.³</p>
Infectious diseases.	The Act of 1889 gives a list of infectious diseases, ⁴ and empowers the local authority to add other infectious diseases to the list either temporarily or permanently. ⁵
Dairies.	As to dairies, see the Milk and Dairies Acts, ⁶ and sect. 4 of the present Act.
Woolwich.	The definition of “local authority,” which enacted that the Woolwich Local Board of Health should be included in that expression, was repealed by the Public Health (London) Act, 1891, ⁷ and the board (now the metropolitan borough council ⁸) is a “sanitary authority” under that Act. ⁹
Wales.	As to the transfer of functions from the Ministry of Health to the Welsh Board of Health, see the Note to sect. 2 of the Act of 1889. ¹⁰
Extent of Act.	<p>Sect. 3. The provisions of this Act shall extend— * * *</p> <p>(b.) to any urban or rural sanitary district after the adoption thereof; and the local authority of any urban or rural sanitary district may adopt all or any of the sections of this Act by a resolution passed at a meeting of such authority. Fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either—(a.) given in the mode in which notices to attend meetings of the local authority are usually given; or (b.) where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England.</p> <p>Every such resolution shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the local authority may fix; and upon its coming into operation such of the sections of this Act as are mentioned in such resolution shall extend to the district.</p>

(1) The present Act is still “adoptive”; see s. 3 and Note.

(2) *Ante*, p. 934.

(3) See s. 13, *ante*, p. 934.

(4) See s. 6, *ante*, p. 932.

(5) See s. 7, *ante*, p. 933.

(6) *Post*, Part II., Div. II.

(7) 54 & 55 Vict. c. 76, s. 142, Sched. IV.

(8) Under the Borough of Woolwich Order in Council, 1900.

(9) 54 & 55 Vict. c. 76, s. 99 (1, d).

(10) *Ante*, p. 929 (2a).

A copy of the resolution shall be sent to the [Minister of Health] when it is published. **Sect. 3.**

A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement.

Note.

It is to be noticed that under the present section the Act need not be adopted as a whole, but such sections as the local authority may think it advisable to adopt may be put in force in their district. **Adoption of Act.**

The whole Act or any section or sections which may have been adopted may be subsequently abandoned under sect. 21. **Abandonment.**

Clause (a), which extended the Act to London, was repealed by the Public Health (London) Act, 1891,¹⁰ and other provisions are made by that Act with reference to the prevention of infectious diseases in London.¹¹ **London.**

As to the powers of port sanitary authorities under the present Act, see the Note to sect. 5, *post*. **Port sanitary authorities.**

Sect. 4. In case the medical officer of health is in possession of evidence that any person in the district is suffering from infectious disease attributable to milk supplied within the district from any dairy situate within or without the district, or that the consumption of milk from such dairy is likely to cause infectious disease to any person residing in the district, such medical officer shall, if authorised in that behalf by an order of a justice having jurisdiction in the place where such dairy is situate, have power to inspect such dairy, and if accompanied by a veterinary inspector or some other properly qualified veterinary surgeon to inspect the animals therein, and if on such inspection the medical officer of health shall be of opinion that infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the local authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the local authority may thereupon give notice to the dairyman to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until such order has been withdrawn by the local authority, and if, in the opinion of the local authority, he fails to show such cause, then the local authority may make such order as aforesaid; and the local authority shall forthwith give notice of the facts to the sanitary authority and county council (if any) of the district or county in which such dairy is situate, and also to the [Minister of Health]. An order made by a local authority in pursuance of this section shall be forthwith withdrawn on the local authority or the medical officer of health on its behalf being satisfied that the milk supply has been changed, or that the cause of the infection has been removed. Any person refusing to permit the medical officer of health on the production of such order as aforesaid to inspect any dairy, or if so accompanied as aforesaid to inspect the animals kept there, or after any such order not to supply milk as aforesaid has been given, supplying any milk within the district in contravention of such order, or selling it for consumption therein, shall be deemed guilty of an offence against this Act. Provided always, that proceedings in respect of such offence shall be taken before the justices of the peace having jurisdiction in the place where the said dairy is situate. Provided also, that no dairyman shall be liable to an action for breach of contract if the breach be due to an order from the local authority under this Act. **Inspection of dairies in certain cases: power to prohibit supply of milk.**

Note.

The present section is one of the enactments saved by sect. 21 (4) and Sched. V. of the Milk and Dairies Act of 1915.¹² **Disease from milk.**

Further as to dairies, cowsheds, and milkshops, see sect. 24 and Note, *post*.

As to the dissemination of infectious disease by means of milk, see sects. 53 and 54 of the Public Health Acts Amendment Act, 1907,¹³ and, as regards London, the London County Council (General Powers) Act, 1907.¹⁴

(10) 54 & 55 Vict. c. 76, s. 142, Sched. IV.

(11) *Ibid.*, ss. 58-75.

(12) *Post*, Part II., Div. II.

(13) *Ante*, p. 909.

(14) 7 Edw. VII. c. clxxv., ss. 24-35. Set out in 5 L. G. R. (Statutes) 128-133.

**Sect. 4, n.
Veterinary
surgeon.**

The expression in the present section, "properly qualified veterinary surgeon," means a person on the register of the Royal College of Veterinary Surgeons.¹⁵ As to misuse of the title, see the cases cited below.¹⁶

**Cleansing and
disinfecting of
premises, &c.**

Sect. 5. . . . Sect. 120 of the Public Health Act, 1875, so far as it applies to any urban or rural sanitary district in which this section is adopted, shall be repealed, and the following provisions shall be in force instead thereof, viz. :

(1.) Where the medical officer of health of any local authority, or any other registered medical practitioner, certifies that the cleansing and disinfecting of any house, or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, the clerk to the local authority shall give notice in writing to the owner or occupier of such house or part thereof that the same and any such articles therein will be cleansed and disinfected by the local authority at the cost of such owner or occupier, unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part thereof and any such articles therein to the satisfaction of the medical officer of health, within a time fixed in the notice.

(2.) If, within twenty-four hours from the receipt of the notice, the person to whom the notice is given does not inform the local authority as aforesaid, or if, having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected as aforesaid within the time fixed in the notice, the house or part thereof and articles shall be cleansed and disinfected by the officers of the local authority under the superintendence of the medical officer of health, and the expenses incurred may be recovered from the owner or occupier in a summary manner.

(3.) Provided that where the owner or occupier of any such house or part thereof is unable in the opinion of the local authority, or of their medical officer of health, effectually to cleanse and disinfect such house or part thereof, and any articles therein likely to retain infection, the same may without any such notice being given as aforesaid, but with the consent of such owner or occupier, be cleansed and disinfected by the officers of and at the cost of the local authority.

Note.**Disinfection
of premises.**

Under sect. 120 of the Public Health Act, 1875,¹⁷ for which this enactment may be substituted, the district council are themselves to cause the notice to be given to the owner or occupier, and on his default to cause the premises to be cleansed and disinfected, but the present section obviates the delay which that procedure necessitates. The notice under that section requires the owner or occupier to cleanse and disinfect the premises, and he is liable to a penalty for default, unless excused by the council.

Sect. 17 of the present Act gives the necessary power of entry on premises for the purpose of carrying out the present section, and sect. 15 deals with the provision of temporary shelter.

Byelaws.

Byelaws may be made for the periodical cleansing of working class dwellings, and for the taking of precautions in the case of any infectious disease.²¹

Schools.

The Local Government Board considered a public elementary school to be a "house" which could be disinfected by the sanitary authority under the present section, but intimated that this was the duty of the local education authority.

**Sufficiency of
disinfection.**

The Local Government Board expressed the opinion that the present section leaves to the medical officer of health the responsibility of determining what action on his part is necessary for satisfying himself as to the sufficiency of any particular cleansing and disinfection of premises.

**Port sanitary
authority.**

As to port sanitary authorities generally, see sects. 287 to 292 of the Public Health Act, 1875.¹⁸

By the Port Sanitary Authorities (Assignment of Powers) Order, 1912,¹⁹ made under sect. 1 of the Public Health (Ports) Act, 1896,²⁰ the Local Government Board assigned "to every port sanitary authority other than the port sanitary

(15) See V. S. Act, 1881 (44 & 45 Vict. c. 62), s. 3.

(16) *Royal College of Veterinary Surgeons v. Robinson*, L. R. 1892, 1 Q. B. 557; 61 L. J. M. C. 446; 66 L. T. 263; 56 J. P. 313; *R.C.V.S. v. Groves* (1893), 57 J. P. 505. Cf. *Blain v. King* (as to dentists), ante, p. 655 (27).

(17) Ante, p. 236. See also P. H. Act, 1875, ss. 46, 80, 90, ante, pp. 127, 165, 171; and P. H. Am. Act, 1907, ss. 56, 66, ante,

pp. 910, 912.

(18) Ante, pp. 730-733.

(19) Dated Aug. 20, 1912, and set out with accompanying L. G. Bd. Circular in 10 L. G. R. (Orders) 233-236. It came into operation on Sep. 1, 1912.

(20) Ante, p. 730.

(21) See H. T. P. Act, 1919, s. 26 (1) (g) (j), post, Part II., Div. III.

authority of the port of London, all powers, rights, duties, capacities, and obligations under the provisions of " the present section, " in relation to any infectious disease to which the Public Health Act, 1875, applies, and under sects. 16, 17, 18, and 20 of the " present Act " so far as those sections relate to the exercise of the powers, rights, duties, capacities, and obligations under the provisions of " the present section " as hereby assigned."

By Art. III. of the same Order the following modifications were made :—
 " Sect. 120 of the Public Health Act, 1875, so far as it applies to any port sanitary district, shall be no longer in force, and the following provisions shall be in force in lieu thereof; that is to say :—(1) Where the medical officer of health of any port sanitary authority certifies that the cleansing and disinfecting of—(a) any berth, cabin, or other place which is or has been occupied, or is or has been provided or appropriated for occupation, by any person while on board any ship, or (b) any articles on board any ship which are likely to retain infection, would tend to prevent or check infectious disease, the clerk to the port sanitary authority shall give notice in writing to the master of such ship, that such berth, cabin, or other place or that such articles will be cleansed and disinfected by the port sanitary authority at the cost of the master of such ship, unless such master informs the port sanitary authority within six hours from the receipt of the notice that he will forthwith cleanse and disinfect such berth, cabin or other place or such articles to the satisfaction of the medical officer of health. (2) If within six hours from the receipt of the notice the master does not inform the port sanitary authority as aforesaid, or if, having so informed the port sanitary authority, he fails to have such berth, cabin or other place or such articles disinfected as aforesaid, the berth, cabin or other place or such articles shall be cleansed and disinfected by the officers of the port sanitary authority under the superintendence of the medical officer of health, and the expenses incurred may be recovered from the master in a summary manner. (3) Provided that where the master of any such ship is unable, in the opinion of the port sanitary authority or of their medical officer of health, effectually to cleanse and disinfect any such berth cabin or other place or such articles, the same may without any such notice being given as aforesaid, but with the consent of such master, be cleansed and disinfected by the officers of and at the cost of the port sanitary authority, and such cleansing and disinfection shall be completed with all reasonable despatch by such officers."

By Art. IX. of the Port Sanitary Authorities (Infectious Diseases) Regulations, 1920,²¹ Art. III. of the Order of 1912 was " extended so as to apply to the whole of any ship or to any part thereof."

Sect. 16 of the present Act was modified by the Order of 1912 as follows :—
 " Every person who shall wilfully obstruct any duly authorised officer of the port sanitary authority in carrying out the provisions of sects. 5 and 17 of " the present Act " shall be liable to a penalty not exceeding £5, and if the offence is a continuing one, to a daily penalty not exceeding 40s. a day so long as the offence continues."

Sect. 17 of the present Act was modified as follows :—" For the purpose of carrying into effect the provisions of " the present section " the port sanitary authority may, by any officer appointed in that behalf, who shall produce his authority in writing, enter at any time on any ship."

Sect. 18 of the present Act was modified as follows :—" Every penalty imposed by sect. 16 of " the present Act " shall be recoverable in a court of summary jurisdiction on the information or complaint of the port sanitary authority, or of their duly authorised officer, but not otherwise, and shall be paid to the port sanitary authority."

Sect. 20 of the present Act was modified as follows :—" Any expenses incurred by a port sanitary authority in the execution of any of the provisions of sects. 5, 17 or 18 of " the present Act " shall be paid as part of the expenses of that authority in the execution of the Acts relating to public health."

By Art. IV. of the Order, " In the provisions of the " present Act " applied as modified by this Order to port sanitary authorities other than the port sanitary authority for the port of London, the expression ' medical officer of health ' shall include any person duly authorised to act temporarily as medical officer of health."

The commencement of the present section, relating to London, was repealed by the Public Health (London) Act, 1891.²²

(21) Dated July 14, 1920, and set out with accompanying M. H. Circular on " Port Sanitary Administration " in 18 L. G. R.

(Orders) 275-284. It came into operation on Aug. 1, 1920.

(22) 54 & 55 Vict. c. 76, s. 142, Sched. IV.

Sect. 5. n.

Port sanitary authorities—
continued.

London.

Sect. 6.

Disinfection of bedding, &c.

Sect. 6. Any local authority, or the medical officer of health of any local authority generally empowered by the authority in that behalf, may by notice in writing require the owner of any bedding, clothing, or other articles which have been exposed to the infection of any infectious disease to cause the same to be delivered over to an officer of the local authority for removal for the purpose of disinfection; and any person who fails to comply with such a requirement shall be liable to a penalty not exceeding ten pounds.

The bedding, clothing, and articles shall be disinfected by the authority, and shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same and the amount of compensation shall be recoverable in, and in case of dispute shall be settled by, a court of summary jurisdiction.

Note.**Bedding.**

Sects. 121 and 122 of the Public Health Act, 1875,²³ enable the district council to provide places for the disinfection of bedding, etc., and to disinfect such articles as may be brought to them, free of charge; and it also enables them to order the destruction of infected articles on payment of compensation.

Penalty on persons ceasing to occupy houses without previous disinfection or giving notice to owner, or persons making false answers.

Sect. 7. Every person who shall cease to occupy any house, room, or part of a house in which any person has within six weeks previously been suffering from any infectious disease without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a registered medical practitioner, as testified by a certificate signed by him, or without first giving to the owner of such house, room, or part of a house, notice of the previous existence of such disease, and every person ceasing to occupy any house, room, or part of a house, and who on being questioned by the owner thereof, or by any person negotiating for the hire of such house, room, or part of a house as to the fact of there having within six weeks previously been therein any person suffering from any infectious disease knowingly makes a false answer to such question shall be liable to a penalty not exceeding ten pounds.

Note.**Notification of infectious disease.**

Where the present section has been adopted, the district council are to give notice of its provisions to the occupier of any house, in which they are aware that there is a case of infectious disease: see sect. 14.

With regard to the notification of the outbreak of infectious disease to the council, by the head of the family in which the outbreak takes place, or by a relative or other person on his default, see the Infectious Disease (Notification) Act, 1889.²⁴

Sects. 128 and 129 of the Public Health Act, 1875,²⁵ impose penalties on persons who let infected houses or rooms without having had them properly disinfected, or who make false answers to questions as to infection on letting houses or rooms.

As to implied warranties, see the cases, etc., cited below.²⁶

Prohibiting retention of dead bodies in certain cases.

Sect. 8. No person without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom, for more than forty-eight hours, the body of any person who has died of any infectious disease.

Note.**Burial of the dead.**

The principles of the common law with respect to the right of burial were laid down by Lord Denman, C.J., as follows:—"Every person dying in this country, and not within certain exclusions laid down by the ecclesiastical law, has a right to Christian burial; and that implies the right to be carried from the place where his body lies to the parish cemetery. Further, to use the words of Lord Stowell,²⁷ 'that bodies should be carried in a state of naked exposure to the grave, would be a real offence to the living, as well as an apparent indignity to the dead.' We

(23) *Ante*, pp. 240, 241.

(24) *Ante*, p. 929.

(25) *Ante*, pp. 247, 248.

(26) *Humphreys v. Miller*, *ante*, p. 246 (11).
See also Housing Act of 1909, s. 14, *post*,

Part II., Div. III.; and, as to furnished houses, *Collins v. Hopkins* (1923, McCardie, J.), *Times*, June 5, p. 5, col. i.

(27) In *Gilbert v. Buzzard* (1821), 2 Hagg. Consist. Rep. 333, at p. 344.

have no doubt, therefore, that the common law casts on some one the duty of carrying to the grave, decently covered, the dead body of any person dying in such a state of indigence as to leave no funds for that purpose. The feelings and the interests of the living require this, and create the duty. . . . It should seem that the individual under whose roof a poor person dies is bound to carry the body decently covered to the place of burial: he cannot keep him unburied, nor do anything which prevents Christian burial: he cannot therefore cast him out, so as to expose the body to violation, or to offend the feelings or endanger the health of the living: and, for the same reason, he cannot carry him uncovered to the grave." ²⁸

Poor law guardians are authorised to bury the bodies of any poor persons within their parish or union at the cost of the poor rate,²⁹ but they are not bound to do so where the body is not lying in the workhouse or on premises belonging to the parish or union.³⁰

As to the duty of parents, husbands, executors, and householders in this connection, see the work referred to below.³¹

With regard to the provision and regulation of public mortuaries, see sect. 141 of the Public Health Act, 1875, and the Note to that section.³²

A local Act prohibited anyone in charge of the body of a person who has died of an infectious disease from allowing others "unnecessarily to come into contact with such body." ³³ The mother of a child that had died after measles talked for three or four minutes, in the room where the child's body lay, to a woman who had come to do some washing. It was held that, though the woman was never less than four feet from the body, an offence had been committed if, on further consideration, the magistrate was able to find (*per* Low, J.) that "there was sufficient nearness to make the communication of disease highly probable." ³⁴

Sect. 9. If any person shall die from any infectious disease in any hospital or place of temporary accommodation for the sick, and the medical officer of health, or any other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place except for the purpose of being forthwith buried, it shall not be lawful for any person or persons to remove such body from such hospital or place except for the last-mentioned purpose; and when the body is taken out of such hospital for that purpose it shall be forthwith carried or taken direct to some cemetery or place of burial, and shall be forthwith there buried; and any person wilfully offending against this section shall be liable to a penalty not exceeding ten pounds. Nothing in this Act shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.³⁵

Sect. 10. Where the body of any person who has died from any infectious disease remains unburied elsewhere than in a mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom, for more than forty-eight hours after death without the sanction of the medical officer of health or of a registered medical practitioner, or where the dead body of any person is retained in any house or building so as to endanger the health of the inmates of such house or building, or of any adjoining or neighbouring house or building, any justice may, on the application of the medical officer of health, order the body to be removed at the cost of the local authority to any available mortuary, and direct the same to be buried within a time to be limited in the order; and any justice may, in the case of the body of any person who has died of any infectious disease, or in any case in which he shall consider immediate burial necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury and do bury the body within the time limited by such order, it shall be the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or in which the body shall be, if it has not been so removed, to bury

Sect. 8, n.

Burial of the dead—*cont.*

Mortuaries.

Meaning of contact.

Bodies of persons dying of infectious diseases in hospital, &c., to be removed only for burial.

Justices may in certain cases order dead bodies to be buried.

(28) *Reg. v. Stewart or Stennett* (1840), 12 A. & E. 773; 4 P. & D. 349; 10 L. J. M. C. 42. See also *Reg. v. Price*, *post*, Vol. II., p. 2174 (2).

(29) 7 & 8 Vict. c. 101, s. 31.

(30) *Reg. v. Stewart*, *supra*.

(31) Lord Halsbury's "Laws of England,"

Vol. III., p. 405.

(32) *Ante*, p. 264.

(33) *Middlesbrough*, 1914, 4 & 5 Geo. V. c. cv., s. 73.

(34) *Kitchen v. Douglas* (1915), 85 L. J. K. B. 462; 80 J. P. 47; 14 L. G. R. 342.

(35) See Note to s. 8.

Sect. 10.

Disinfection of public conveyances if used for carrying corpses.

such body, and any expense so incurred may be charged by the relieving officer in his accounts, and may be recovered by the board of guardians in a summary manner from any person legally liable to pay the expenses of such burial.³⁵

Sect. 11. Any person who hires or uses a public conveyance other than a hearse for the conveyance of the body of a person who has died from any infectious disease, without previously notifying to the owner or driver of such public conveyance that the person whose body is or is intended to be so conveyed has died from infectious disease, and after any such notification as aforesaid, any owner or driver of a public conveyance, other than a hearse, which has been used for conveying the body of a person who has died from infectious disease, who shall not immediately afterwards provide for the disinfection of such conveyance, shall be guilty of an offence under this Act.

Note.

Public conveyances.

Sect. 126 of the Public Health Act, 1875,³⁶ imposes a penalty on a person suffering from infectious disease who enters a public conveyance without notifying the fact that he is so suffering. See also sects. 63 and 64 of the Public Health Acts Amendment Act, 1907.³⁷

Detention of infected person without proper lodging in hospital by order of justice.

Sect. 12. Any justice of the peace acting in and for the district of the local authority, upon proper cause shown to him, may make an order directing the detention in hospital at the cost of the local authority of any person suffering from any infectious disease, who is then in an hospital for infectious disease and would not on leaving such hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disorder by such person. Any order so to be made by any such justice may be limited to some specific time, but with full power to any justice to enlarge such time as often as may appear to him to be necessary. It shall be lawful for any officer of the local authority or inspector of police acting in the district, or for any officer of the hospital, on any such order being made to take all necessary measures and do all necessary acts for enforcing the execution thereof.

Note.

Removal to hospital.

Under sect. 124 of the Public Health Act, 1875,³⁸ persons suffering from infectious disease, and being without proper lodging or accommodation, may be removed to a hospital under a justice's order. Paupers so suffering may be detained in the workhouse.³⁹

Supply of anti-toxin.

If a district council are advised by their medical officer of health that the use of anti-toxin on persons who have been exposed to the infection of diphtheria is likely to prevent the spread of the disease, the council may, the Local Government Board stated, without the sanction of the Board, supply the officer with the material for use as a prophylactic under his general supervision. They pointed out, however, that a district council have no power to supply anti-toxin for curative as distinguished from preventive purposes, except for the treatment of patients in an isolation hospital provided by them.

In July, 1922, the Minister of Health issued a Memorandum on the supply and administration of diphtheria anti-toxin, and in the use of the Schick test, and methods of active immunisation for the prevention of diphtheria.⁴⁰

As to anti-toxin for use in cases of "botulism," see the Ministry of Health Circular of the 19th September, 1922.⁴¹

Infectious rubbish thrown into ashpits, &c., to be disinfected.

Sect. 13. Any person who shall knowingly cast, or cause or permit to be cast, into any ashpit, ash-tub, or other receptacle for the deposit of refuse matter any infectious rubbish without previous disinfection, shall be guilty of an offence under this Act.

Notice of certain provisions.

Sect. 14. Where sects. 7 and 13 of this Act, or either of them, are in force in any district, the local authority shall give notice of the provisions thereof to the occupier of any house in which they are aware that there is a person suffering from an infectious disease.

(35) See Note to s. 8.

(36) *Ante*, p. 245.

(37) *Ante*, p. 912.

(38) *Ante*, p. 242.

(39) P. L. Am. Act, 1867 (30 & 31 Vict. c. 106), s. 22.

(40) Set out in 20 L. G. R. (Orders) 206-212.

(41) *Ibid.*, pp. 222-224.

Sect. 15. The local authority shall from time to time provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any infectious disease has appeared, who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected by the local authority.

Sect. 15.

Temporary shelter, &c.

Note.

There is no power to *compel* persons to leave their dwellings for the purpose referred to; and the section appears to have reference to any cause in which it is not reasonably practicable for the inmates to live on the premises while they are being disinfected.

Removal from dwelling.

The powers of the present section may be exercised where sect. 61 of the Public Health Acts Amendment Act, 1907,⁴² is in force, although the present Act may not have been adopted in the district. Such powers then extend to the provision of temporary shelter or house accommodation, with any necessary attendants, for any person who, in the cases provided for by sect. 61, leaves a house (or a canal or other boat, or a tent, van, or other structure used for human habitation) after infectious disease has appeared in it; and they also extend to borrowing money for the purpose of providing shelter or accommodation under either section.

Temporary shelter.

Sect. 16. Every person who shall wilfully obstruct any duly authorised officer of the local authority in carrying out the provisions of this Act, or who shall obstruct the carrying out of an order made by a justice under this Act, or who shall offend against any enactment of this Act for the time being in force in any district by which no penalty is specifically imposed, shall be liable to a penalty not exceeding five pounds, and if the offence is a continuing one, to a daily penalty not exceeding forty shillings a day so long as the offence continues.⁴³

Penalties.

Sect. 17. For the purpose of carrying into effect the provisions of sect. 5 of this Act the local authority may, by any officer appointed in that behalf, who shall produce his authority in writing, enter on any premises between the hours of ten o'clock of the forenoon and six o'clock of the afternoon.⁴⁴

Power of entry for purposes of sect. 5.

Sect. 18. Every penalty imposed by this Act shall be recoverable in a court of summary jurisdiction on the information or complaint of the local authority, or of their duly authorised officer, but not otherwise, and shall be paid to the local authority.⁴⁵

Recovery and application of penalties.

Sect. 19. Where a provision of this Act is put in force in any district in which there is any similar provision in force contained in any local Act, such last-mentioned provision shall cease to be in operation.

Superseding in certain cases of provisions in local Acts.

Sect. 20. Any expenses incurred by a local authority in the execution of any of the provisions of this Act, including the reasonable remuneration of any veterinary inspector or surgeon employed under sect. 4, shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health, and in the case of a rural authority shall be general expenses.⁴⁶

Expenses.

Sect. 21. Any resolution adopting all or any of the sections of this Act may be rescinded, either wholly or as regards any of the adopted sections, by resolution of the local authority, but notice of the meeting at which such resolution is to be proposed, and of the intention to propose the same, shall be given, and such resolution shall be published, and shall come into operation, in like manner and at such time as is hereinbefore provided with respect to resolutions adopting this Act, and a copy of the resolution shall be sent to the [Minister of Health] when it is published.

Power of local authority to rescind adoption of Act.

On the resolution coming into effect the sections of this Act, the adoption of which is thereby rescinded, shall cease to extend to the district.

The provisions hereinbefore contained, as to evidence of and objections to the effect of a resolution adopting this Act, shall apply to any resolution rescinding such adoption.⁴⁷

(42) *Ante*, p. 911.

(43) See Note to P. H. Act, 1875, s. 306, *ante*, p. 750. See also footnote (44), *infra*.

(44) As to application of present section and ss. 16, 18, and 20 to port sanitary authorities, see the Note to s. 5, *ante*, p. 939.

(45) See Note to P. H. Act, 1875, s. 251, *ante*, p. 649. See also footnote (44), *supra*.

(46) As to expenses of urban district councils, see P. H. Act, 1875, s. 207; and of rural district councils, ss. 229 and 230—*ante*, pp. 561, 606, 608. See also footnote (44), *supra*.

(47) As to adoption of present Act, see s. 3 and Note, *ante*, p. 936.

Sects. 22, 23.

Saving for Acts
relating to
dairies, animals
&c.

Sects. 22, 23. [*Scotland and Ireland.*]

Sect. 24. Nothing in or done under this Act shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, or of any order, licence, or act of [His] Majesty's Privy Council or the Local Government Board [or Minister of Health] made, granted, or done, or to be made, granted, or done, thereunder; or of any order, regulation, licence, or act of a local authority made, granted, or done under any such order of the Privy Council or the Local Government Board [or Minister of Health]; or exempt any dairy, or building, or thing whatsoever, or any body or person from the provisions of any general Act relating to dairies, milk, or animals, already passed, or to be passed in this or any future session of Parliament.⁴⁸

(48) As to dairies, etc., see sect. 4 and Note, *ante*, and the Milk and Dairies Acts (set out *post*, Part II., Div. II.). As to the

Diseases of Animals Acts, see the Notes to M. & D. Act, 1922, s. 7, *post*, p. 1038.

THE ISOLATION HOSPITALS ACT, 1893.

56 & 57 VICT. c. 68.

An Act for enabling County Councils to promote the Establishment of Hospitals for the reception of Patients suffering from Infectious Diseases.

[21st December, 1893.]

Sect. 1. This Act may be cited for all purposes as the Isolation Hospitals Act, 1893. Short title.

Note.

The present Act is amended by the Isolation Hospitals Act, 1901.¹ That Act and the present Act "may be cited together as the Isolation Hospitals Acts, 1893 and 1901."²

The functions of the Minister of Health as to isolation hospitals in Wales have been transferred to the Welsh Board of Health.^{2a}

Isolation Hospitals Acts.

Welsh Board of Health.

Limits of Act.

Sect. 2. This Act shall not extend to Scotland or Ireland, or to the administrative county of London, or to any county borough, or without the consent of the council of the borough to any borough containing, according to the census for the time being in force, a population of ten thousand persons or upwards, or to any borough containing a less population without the like consent, unless the [Minister of Health] by order [directs] that the Act shall apply to such borough.

Sect. 3. The council of every county may, on such application being made to them, and proof adduced, as is in this Act mentioned, provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases (in this Act referred to as "an isolation hospital").

County council to provide for establishment of isolation hospitals on application, &c.

Note.

With regard to the powers of urban and rural district councils to provide hospitals themselves, see sect. 131 of the Public Health Act, 1875, and Note.³

District councils are "local authorities" under the present Act, and as such may apply to the county council to establish an isolation hospital for a "hospital district," which may consist of one or more urban or rural districts or contributory places.

The structural and establishment expenses of the hospital will be paid by the district councils, whether they applied for the establishment of the hospital or not.

Joint hospital boards may be formed by provisional order under sects. 279-285 of the Public Health Act, 1875.⁴

Hospitals.

Joint boards.

By sect. 1 of the Act of 1901,⁵ "(1.) Any local authority (including a joint board) within the meaning of the Public Health Act, 1875, which has provided under that Act, or any local Act, a hospital for the reception of the sick, may, with the sanction of the [Minister of Health], and with the consent of the council, transfer it to the council of the county within which the hospital, or any part of the district of the authority, is situate. (2) The [Minister of Health] may give [his] sanction under this section subject to such terms and conditions as [he thinks] fit, but shall not give [his] sanction unless [he is] satisfied that hospital accommodation sufficient for the needs of the district has been or will be provided. (3.) Any money paid to a local authority on any such transfer shall be applied as the [Minister of Health directs], either in repayment of any loan of the local authority, or for any other purpose for which capital moneys may properly be applied. (4.) Any hospital transferred under this section shall be appropriated to a district formed under the Isolation Hospitals Act, 1893 (in this Act referred to as the principal Act), and may be adapted as an isolation hospital, and any hospital so appropriated shall be treated as if it had been originally established under that Act for the district. (5.) The expenses incurred by a county council in or incidental to the transfer of any hospital under this Act shall be defrayed as structural expenses incurred by a hospital committee within the meaning of sect. 17 of the principal Act."

Transfer of hospitals.

This section applies only to a hospital which the local authority under the Public Health Act, 1875, "has provided under that Act, or any local Act." These words would no doubt receive a wide construction. Thus, a hospital originally provided

(1) See Notes to ss. 1, 3, 8, 9, 10, 17, 21, 22, and 26 of the present Act.

(2) 1 Edw. VII. c. 8, s. 9. Royal assent, July 26, 1901.

(2a) See footnote (2), *post*, p. 953.

(3) *Ante*, p. 251.

(4) *Ante*, p. 725.

(5) 1 Edw. VII. c. 8, s. 1. Marginal Note: "Transfer by local authority of hospitals for use as isolation hospitals."

Sect. 3, n.

under the Act of 1875 by one local authority, and afterwards transferred to another by an order constituting a new district, or by an agreement or award under sect. 62 of the Local Government Act, 1888,⁶ or sect. 68 of the Local Government Act, 1894,⁷ would doubtless fall within the scope of the section. But it may be doubted whether the words could be stretched to cover a hospital transferred to a rural district council by a board of guardians under sect. 14 of the Poor Law Act, 1879.⁸

Formation of district.

The transferred hospital is, by sub-sect. (4) of the above section, to be appropriated to a district formed under the present Act. The sub-section would not appear to dispense with the necessity for a petition or report of the medical officer and an inquiry thereon in accordance with the present Act before the district is constituted.

Vesting of hospital.

Though an isolation hospital provided under the present Act is generally, if not always, the property of the hospital committee, who are a corporate body, it appears to be intended that a hospital transferred under the above section should remain the property of the county council.

Application, by whom to be made.

Sect. 4.—(1.) An application to a county council for the establishment of an isolation hospital may be made by any one or more of the authorities, by this Act defined as local authorities, having jurisdiction in the county, or any part of the county; and any such application may be made in pursuance of a resolution passed at a meeting of such authority by a majority of the members assembled thereat, and voting in manner in which votes are required by law to be given at a meeting of the authority. Any such meeting shall be called together by notice given in manner in which notices of the meetings of the authority concerned are required to be given by law, and specifying the object of the meeting to be the making an application to the county council under this Act.

(2.) An application for the establishment of an isolation hospital may also be made by any number of ratepayers not less than twenty-five, in any contributory place as defined by this Act.

Application, how made.

Sect. 5.—(1.) The application shall be made by petition, and shall state the district for which the isolation hospital is required, and the reasons which the petitioners adduce for its establishment.

(2.) The county council shall, by themselves, or by a committee of their body appointed for that purpose, consider the petition, and, if satisfied by the statements of the petition as originally prepared, or by any amendments made therein, that a *prima facie* case is made out for a local inquiry, they shall cause such inquiry to be made as to the necessity for the establishment of an isolation hospital.

Effect of report of medical officer of county.

Sect. 6. The county council may direct an inquiry to be made by the medical officer of health of the county as to the necessity of an isolation hospital being established for the use of the inhabitants of any particular district in the county, and in the event of such medical officer reporting that such an hospital ought to be established for the use of the inhabitants of a district, may take the same proceedings in all respects for the establishment of such hospital as if a petition had been presented by a local authority for the establishment of an isolation hospital for the district named in the report of such medical officer of health.

Note.**Medical practitioner.**

The Local Government Board considered it doubtful whether a medical practitioner employed temporarily to report to the council as to the necessity for an isolation hospital, could be regarded as the "medical officer of health of the county" for the purposes of the present section.

Conduct of local inquiry.

Sect. 7. The county council shall conduct the local inquiry into the necessity for the establishment of an isolation hospital, and as to the proper site for the hospital, and the district for which it is to be established (in this Act called the "hospital district"), by a committee consisting of such number of their members, either with or without the addition of such other persons, or in such other manner as the council think expedient. All expenses properly incurred by any such committee shall be paid as herein-after directed. The local inquiry shall be held subject to such regulations and otherwise as the council think fit. Due notice of the time and place at which any inquiry is to be held by the county council shall be given in such manner as the county council may think the best adapted

(6) *Post*, Vol. II., p. 1938.

(7) *Post*, Vol. II., p. 2100.

(8) *Ante*, p. 251 (3).

to inform any persons interested, and such persons may attend and state their case before the members appointed to conduct such inquiry.

Sect. 8.—(1.) Every hospital district constituted under this Act shall consist of a single local area, or two or more local areas, as defined by this Act.

(2.) The county council may vary any proposed hospital district by adding to it or subtracting from it any local area. A local area which is already provided with such isolation hospital accommodation as may in the opinion of the county council be sufficient for the reasonable exigencies of such area, shall not, without the assent of the local authority of such area testified by a resolution of such authority, be included in a hospital district under this Act.

(3.) If any local authority, having jurisdiction within any part of the proposed hospital district, object to the formation of such a district, or to the addition or subtraction thereto or therefrom of any local area within their jurisdiction, such authority may at any time within three months from the date of the order appeal to the [Minister of Health], and the decision of such [Minister] shall be conclusive.

Sect. 7.

Variation of district and appeal.

Note.

By sect. 5 of the Act of 1901,⁹ "On any appeal against any order including any area in a hospital district under subsection three of section eight of the principal Act, the [Minister of Health] may by [his] decision confirm, disallow, or modify the order as [he thinks] fit."

Appeal.

Parish councils are no longer "local authorities" under the Act; but any parish council may appeal to the Minister under sub-sect. (3).¹⁰

Parish councils.

Sect. 9. On conclusion of a local inquiry by the county council as to the necessity for the establishment of an isolation hospital, the county council shall make an order, either dismissing the petition, or constituting a hospital district, and directing an isolation hospital for such district to be established: Provided that the county council shall not take steps for the constitution of a hospital district for one or more contributory places forming a portion of a rural sanitary district within the jurisdiction of the county council, or for one local area, unless the sanitary authority of such place or places, or area, assent to the application, or are proved to the satisfaction of the county council to be unable or unwilling to make suitable hospital accommodation for such place, places, or area.

Order as to dismissal of petition or constitution of district.

Note.

By sect. 7 of the Act of 1901,¹¹ "The county council shall as soon as may be send a copy of any order made by them under" sect. 9 of the present Act to the Minister of Health.

Copy of order.

Sect. 10.—(1.) When a hospital district has been constituted, a committee shall be formed by the county council. Any such committee may consist wholly of [representatives of the county council, whether members of the council or not¹²], or partly of [representatives of the county council, whether members of the council or not¹²] and partly of representatives of the local area or areas in the district, or wholly of such local representatives. The county council shall make regulations for the election, rotation, and qualification, and for all other matters relating to the constitution of any such committee, subject to these qualifications, that where no contribution is made by the county council to the funds of the hospital, such committee shall consist, unless the constituent local authorities otherwise desire, wholly of representatives of the local area or local areas of the district, and that if any local authority within the hospital district feels aggrieved by the mode in which any such committee is constituted, it may appeal to the [Minister of Health], and that [Minister] may modify the constitution of any committee so formed by the county council in such manner as the [Minister thinks] expedient and just.

Hospital committee.

(2.) A hospital committee shall have all such powers of acquiring land as are herein-after mentioned, also all such other powers of providing a hospital by purchase or otherwise, and managing and maintaining the same when so provided, as the county council may delegate to them: Provided that the county council shall retain to themselves the power of inspecting any such hospital, and of raising money by loan for the purposes of such hospital.

(9) 1 Edw. VII. c. 8, s. 5.

(11) 1 Edw. VII. c. 8, s. 7.

(10) See s. 6 (1) of Act of 1901, *post*, p. 951 (30).

(12) Substituted for "members of the county council" by 1 Edw. VII. c. 8, s. 8.

Sect. 10.

(3.) A hospital committee shall be a body corporate, having a perpetual succession and a common seal, under such name and style as may be conferred on it by the county council. It shall be capable of acquiring land, by devise, gift, purchase or otherwise, without licence in mortmain.

(4.) Where a hospital district is an area wholly or as to the greater part thereof under the jurisdiction of any corporate local authority, the county council may, if they think fit, invest such local authority with all the powers of a hospital committee under this Act, and thereupon such authority shall be deemed to be the hospital committee for such district, and shall exercise all the powers of such committee under its original corporate name.

Purchase of
land for
hospital.

Sect. 11. Subject to any directions given by the county council a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erecting thereon an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purpose of this section the provisions contained in sects. 175 to 178 (inclusive),¹³ and sects. 296 to 298 (inclusive),¹⁴ of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act.

Management of
hospital and
regulations.

Sect. 12. A hospital committee may from time to time make all necessary rules and regulations for the conduct and management of their hospital and the patients therein.¹⁵

Ambulances to
be provided.

Sect. 13. Every isolation hospital shall be provided with an ambulance or ambulances for the purpose of conveying patients to the hospital, and shall, so far as practicable, be in connexion with the system of telegraphs.

Additional
hospital
accommodation.

Sect. 14. A hospital committee may, in expectation of or in the event of an outbreak of any infectious disease, provide any accommodation in addition to their existing accommodation, by hiring or otherwise acquiring, any buildings, tents, wooden houses, or other places for the reception of patients. A hospital committee may, in addition to, or instead of, providing a central hospital, establish within their district hospitals in cottages or small buildings, or otherwise as they may think expedient. A hospital committee may also, before they have established a permanent hospital or hospitals, provide for their district such temporary accommodation as is in this section mentioned.

Training of
nurses.

Sect. 15. Subject to any regulations made by the county council, a hospital committee may make arrangements for the training of nurses for attendance on patients suffering from any infectious disease, either inside or outside the hospital, and may charge for the attendance of such nurses outside the hospital; and the expenses of any such nurses, after deducting any profits derived from their services, shall be establishment expenses of the hospital, within the meaning of this Act.¹⁶

Charges for
patients.

Sect. 16.—(1.) There shall be charged with respect to every person admitted into the hospital such sum as the hospital committee may think sufficient to defray the expenses in this Act defined as patients' expenses incurred in respect of such person; and there shall be added thereto, in the case of persons brought from beyond the hospital district, such sum as the committee may think fit, as a contribution to the structural and establishment expenses.

(2.) Persons desirous of being provided with accommodation of an exceptional character may be so provided on their undertaking, to the satisfaction of the committee, to pay for the same a sum fixed by the committee, and also to pay for all other expenses incurred in respect of their maintenance in the hospital, and all expenses so incurred in respect of such a patient are in this Act referred to as "special patients' expenses."

Classification
of expenses.

Sect. 17.—(1.) The expenses to be incurred in respect of any isolation hospital under this Act shall be classified as structural expenses, establishment expenses, and patients' expenses.

"Structural expenses" shall include the original cost of providing the hospital, including the purchase (if any) of the site, and the furnishing such hospital with the necessary appliances and furniture required for the purpose of receiving patients; also any permanent extension or enlargement of the hospital, or any alteration or repair of the drainage, and any structural repairs; but shall not include ordinary repairs, painting, cleaning, or the renewal or keeping in order of the appliances and furniture, or the supply of new appliances or furniture.

(13) *Ante*, pp. 464 *et seq.*

(14) *Ante*, pp. 735 *et seq.*

(15) As to agreements for use of hospital,

see Act of 1901, s. 3, *post*, p. 949 (16).

(16) As to registration of nurses, see Act of 1919 referred to *post*, Vol. II., p. 2178 (5).

“ Establishment expenses ” means the cost of keeping the hospital, its appliances and furniture, in a state requisite for the comfort of the patients, also the salaries of the doctors, nurses, servants, and all other expenses for maintaining the hospital in a fit state for the reception of patients. Sect. 17.

“ Patients’ expenses ” means the cost of conveying, removing, feeding, providing medicines, disinfecting, and all other things required for patients individually, exclusive of structural and establishment expenses.

(2.) All expenses incurred by a county council in and about the formation of a hospital district, including the costs of any inquiries, and the expenses of obtaining land and other preliminary expenses, shall be deemed to be structural expenses.

(3.) In the case of any doubt arising as to what are structural expenses, establishment expenses, or patients’ expenses within the meaning of this Act, the decision of the hospital committee shall be conclusive.

Note.

By sect. 3 of the Act of 1901,¹⁶ “ (1.) The hospital committee of any hospital district under the principal Act may make and give effect to agreements for the use of any hospital or part of a hospital, or for the reception into any hospital of the sick of their district, upon payment of such annual or other sums as may be agreed upon. (2.) Any expenses incurred by a hospital committee under this section shall be defrayed under the principal Act as structural, establishment, or patients’ expenses, in such proportions as the committee direct.”

**Expenses
under
agreement.**

With regard to the mode in which the several classes of expenses are to be defrayed, or, in the case of patients’ expenses, recovered, by the hospital committee, see sects. 18 and 19 of the present Act.

With reference to the proposal of a county council to enter into an agreement under sect. 3 of the Act of 1901 with the committee of a sanatorium for consumptives for the reception into the institution of consumptive persons from the county, the Local Government Board pointed out that an agreement under that section could only be entered into by a hospital committee constituted by the county council under the present Act, and that such a committee could only be constituted to provide hospital accommodation, etc., for “ patients suffering from infectious disease ”—that is, according to sect. 26 of the present Act, the diseases specified in the Infectious Diseases (Notification) Act, 1889. Under sect. 26, however, the term “ infectious disease ” may be applied to any other disease by order of the county council, in like manner as if the council were a local authority acting under the Act of 1889. If, therefore, the county council were to constitute a hospital district under the present Act, to include all the urban and rural districts in the county, for the specific purpose of providing hospital accommodation for consumptive patients, and were also to make an order under sect. 26 of the present Act (which would require the Minister’s approval), applying the expression “ infectious disease ” to pulmonary tuberculosis strictly for the purposes of the present Act, it would apparently be practicable for the committee of such hospital district to enter into an agreement under sect. 3 of the Act of 1901, and the county council would be able, under sects. 21 and 22 of the present Act, to contribute.

**Sanatorium
for
consumptives.**

The expenses incurred by a county council in relation to the transfer of a hospital to them from a district council under the Act of 1901, are to be treated as “ structural expenses.” ¹⁷

**Transfer
expenses.**

The Local Government Board considered that the reasonable expenses of a member of an isolation hospital committee in attending meetings of the committee may be defrayed as part of the expenses of such committee.

**Members’
expenses.**

Sect. 18. All expenses incurred by a county council or by a hospital committee under this Act, with the exception of patients’ expenses and special patients’ expenses, shall, when a hospital district consists of a single local area, be defrayed out of the local rate of that area. Where the hospital district consists of more than one local area, all the expenses, save as aforesaid, incurred by the hospital committee shall be paid out of a common fund to which all receipts shall be carried, and to which the local authorities in the hospital district shall contribute in such proportions as the county council by their order constituting the district may determine.

**Payment of
expenses.**

(16) 1 Edw. VII. c. 8, s. 3. Marginal Note: “ Power of hospital committee to contract for hospital accommodation.”

(17) See s. 1 (5) of Act of 1901, ante, p. 945.

Sect. 18.

Sect. 284 of the Public Health Act, 1875,¹⁸ shall apply to the sums to be contributed by the local authorities under this section as if the same were sums to be contributed by component districts and the hospital committee were a joint board under that Act.

Recovery of patients' expenses.

Sect. 19.—(1.) Patients' expenses, in respect of any person who at the time of his reception into the hospital, or at any time within fourteen days previously, is or has been in receipt of poor law relief, shall be a debt due to the hospital committee from the guardians of the union from which he is sent, and shall be recoverable from them in a summary manner or otherwise.

(2.) Patients' expenses, in respect of a non-pauper patient, shall be a debt due to the hospital committee, and recoverable in a summary manner from the local authority of the local area from which the patient is sent, and shall be paid out of the local rate.

(3.) Where a patient has been brought from a place beyond the hospital district, any additional charges made by the hospital committee in respect of such patient shall be recoverable as if they were part of the patients' expenses.

(4.) Special patients' expenses shall be a debt recoverable in a summary manner from the patient, or from the estate of the patient, in respect of whom the expenses have been incurred.

(5.) The expenses of the burial of any patient dying in the hospital shall be payable in the same manner in which the expenses of his maintenance are payable.

Power of county council to alter order.

Sect. 20. A county council may, on the application of a hospital committee, and with the assent of any local authority concerned in such alteration, alter any order made by them for the establishment of a hospital.

Power of county council to contribute to hospitals.

Sect. 21. A county council may, where they deem it expedient so to do for the benefit of the county, contribute out of the county rate a capital or annual sum towards the structural and the establishment expenses of an isolation hospital, or to either class of such expenses.

Note.

Contributions for other hospitals.

By sect. 2 (1) of the Act of 1901,¹⁹ "The power conferred on a county council by " the present section " to contribute to the expenses of an isolation hospital is hereby declared to include the power to contribute, in manner provided by that section, to any hospital provided by a local authority (including a joint board) within the meaning of the Public Health Act, 1875, for the reception of patients suffering from infectious disease, whether within the area of the county council or not, but the consent of the [Minister of Health] shall be required to an annual contribution under this section by the county council to a hospital, the cost of providing which, or of any permanent extension or enlargement of which, has been defrayed otherwise than out of borrowed money."

Power to borrow money.

Sect. 22. A county council may borrow on the security of the county rate, and in manner provided by the Local Government Act, 1888,²⁰ any money required for the purpose of carrying into effect the provisions of this Act; and any loans so borrowed, and any other money expended by them for the purposes of this Act, together with interest thereon [*at the rate of four pounds per centum per annum* ²¹], shall be repaid to the county council out of the local rate, as in this Act directed; and, in the case of a loan, shall be repaid within a period not exceeding that within which the loan is repayable by the county council.

Note.

Rate of interest.

By sect. 4 (1) of the Act of 1901,²² "The interest to be paid in pursuance of " the present section " on any money repayable to a county council shall be interest at such a rate as may be agreed upon between the county council and the hospital committee concerned, or, in default of agreement, determined by the " Minister of Health.

The Local Government Board were advised that their consent was necessary to the borrowing of money under the present section, and that the constituent authorities could not borrow money separately for the purposes of the Act.

(18) *Ante*, p. 727.

(19) 1 Edw. VII. c. 8, s. 2 (1). Marginal Note: "Contributions to hospitals provided by local authority." For s. 2 (2), see *post*,

p. 951 (23).

(20) See s. 69, *post*, Vol. II., p. 1945.

(21) Repealed by 1 Edw. VII. c. 8, s. 4 (2).

(22) 1 Edw. VII. c. 8, s. 4 (1).

By sect. 2 (2) of the Act of 1901,²³ " A county council may borrow, in manner provided by " the present section, " any sum required for the contribution of a capital sum under " sect. 21 of the present Act, " as amended by this Act, but sums so borrowed shall not be repayable to the county council out of the local rate, as directed by " the present section.

The " local rate " is defined by sect. 26 of the present Act.

Sect. 22, n.
Loans for capital expenditure.

Sect. 23. A person shall not by reason of his being admitted into and maintained in a hospital established in pursuance of this Act suffer any disqualification or any loss of franchise or other right or privilege.

Treatment in hospital not to disqualify.

Sect. 24. Sub-sects. (1) and (5) of sect. 87 of the Local Government Act, 1888,²⁴ shall apply in every case where the [Minister of Health is] authorised to determine any question on appeal to [him].

Inquiries by [Minister of Health.]

Sect. 25. The provisions of sects. 245, 247, 249, and 250 of the Public Health Act, 1875,²⁵ as amended by the District Auditors Act, 1879,²⁶ shall apply to the accounts of any hospital committee, and of any officers or assistants of such committee, and to the audit of such accounts, as if such committee were an urban authority other than the council of a borough.

Audit of accounts.

Sect. 26. A " local area " means in this Act any one of the following localities, that is to say, an urban sanitary district, a rural sanitary district, or any contributory place, or where a local area is included in more than one county, the part of the area included in each county.

Definitions.

A " contributory place " has the same meaning in this Act as in sect. 229 of the Public Health Act, 1875.²⁷

A " local authority " means in this Act, as respects an urban sanitary district, the urban sanitary authority; as respects a rural sanitary district, the rural sanitary authority, and in the case of any contributory place being a parish, the vestry or other authority in which the powers of the vestry may be vested by any Act of Parliament, and in the case of any other contributory place situated within the district of a rural sanitary authority, such rural sanitary authority.

The " local rate " means, as respects an urban or rural sanitary district or contributory place, the rate out of which expenses incurred in the execution of the Acts relating to public health are directed to be paid, and in the case of any contributory place the expenses incurred in the execution of this Act shall be deemed to be special expenses.

The expression " infectious diseases " in this Act has the same meaning as in the Infectious Disease (Notification) Act, 1889,²⁸ and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease, by order of the county council, or any committee to whom they have delegated their powers under this section*, in like manner as if such council or committee were a local authority acting under that Act.²⁹

*Sic.

Note.

The power to delegate, which is referred to in the last clause of the present section, is conferred by sect. 10 of the present Act, see subsects. (2) and (3), *ante*.

Delegation.

By sect. 6 of the Act of 1901,³⁰ " (1.) Notwithstanding anything in " the present section, " the rural district council shall, to the exclusion of any other authority, be the local authority in the case of any contributory place. But the parish council shall have the same right of appeal to the " Minister of Health under sect. 8 (3) of the present Act " as a local authority. (2.) Any liability which immediately before the passing of this Act attached to the local authority in respect of a contributory place, being a parish, shall be transferred to and discharged by the rural district council."

Parish council.

(23) 1 Edw. VII. c. 8, s. 2 (2).
(24) *Post*, Vol. II., p. 1951.
(25) *Ante*, pp. 631, 634, 646, 648.
(26) *Post*, Vol. II., p. 1797.

(27) *Ante*, p. 606.
(28) See s. 6, *ante*, p. 932.
(29) See s. 7, *ante*, p. 933.
(30) 1 Edw. VII. c. 8, s. 6.

THE PUBLIC HEALTH (PREVENTION AND TREATMENT OF DISEASE) ACT, 1913.

3 & 4 GEO. V. c. 23.

An Act to amend the Law relating to Public Health as respects the Prevention and Treatment of Disease.

[15th August, 1913.]

Exercise of powers by local authorities within areas of joint boards.

Sect. 1. Notwithstanding the provisions of sect. 281 of the Public Health Act, 1875,¹ the [Minister of Health] may by order authorise a local authority having jurisdiction in any part of a united district to exercise in relation to that part any powers which the joint board are also authorised to exercise, subject, however, to such conditions and restrictions as may be imposed by the order.²

Enforcement of epidemic diseases regulations by county councils.

Sect. 2. The [Minister of Health] shall have power to declare that one of the authorities to execute and enforce regulations made by the [Minister] under sect. 130 of the Public Health Act, 1875,³ with a view to the treatment of persons affected with cholera or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases, shall be the council of a county, and that section shall have effect accordingly as if a county council were an authority within the meaning of that section :

Provided that, except in case of emergency, the [Minister of Health] shall not require the council of a county to execute and enforce any such regulations without the consent of such council.

Treatment of tuberculosis.

Sect. 3. It shall be lawful for the council of any county or for any sanitary authority to make any such arrangements as may be sanctioned by the [Minister of Health] for the treatment of tuberculosis : Provided that the power conferred by this section shall be in addition to and not in derogation of any other power.

Note.

Sanatoria.

As to the provision of sanatoria for patients suffering from tuberculosis, see sect. 64 of the National Insurance Act, 1911,⁴ the Public Health (Tuberculosis) Act, 1921,⁵ and the Notes thereto, and the Orders and Memoranda of the Local Government Board and Minister of Health set out or referred to elsewhere.⁶

Expenses.

Sect. 4. Any expenses incurred under this Act shall, in the case of a sanitary authority be defrayed as part of the expenses incurred by them in the execution of the Public Health Acts, and in the case of a county council as expenses for general county purposes, or, if the [Minister of Health] by order so [directs], as expenses for special county purposes charged on such part of the county as may be provided by the order.

Short title.

Sect. 5. This Act may be cited as the Public Health (Prevention and Treatment of Disease) Act, 1913.

(1) *Ante*, p. 726.

(2) See also P. H. (Tuberculosis) Act, 1921, s. 5, *post*, p. 956.

(3) *Ante*, p. 248.

(4) *Post*, Vol. II., p. 2239.

(5) *Post*, p. 955.

(6) See *post*, Vol. II., Part V., under heading "DISEASES, Tuberculosis."

THE VENEREAL DISEASE ACT, 1917.

7 & 8 GEO. V. c. 21.

An Act to prevent the treatment of Venereal Disease otherwise than by duly qualified medical Practitioners, and to control the supply of Remedies therefor; and for other matters connected therewith.

[24th May, 1917.]

Sect. 1.—(1) In any area in which this section is in operation, a person shall not, unless he is a duly qualified medical practitioner, for reward either direct or indirect, treat any person for venereal disease or prescribe any remedy therefor, or give any advice in connection with the treatment thereof, whether the advice is given to the person to be treated or to any other person.

Prevention of the treatment of venereal disease otherwise than by duly qualified persons.

(2) This section shall operate in any area to which it is applied by order of the [Minister of Health] . . . [Scotland and Ireland] :

Provided that no order shall be made in respect of any area until a scheme for the gratuitous treatment of persons in that area suffering from venereal disease has been approved by the [Minister of Health] . . . [Scotland and Ireland], and is already in operation.¹

Note.

From the 1st October, 1920, the functions of the Ministry of Health as to venereal diseases and certain other matters were transferred to the Welsh Board of Health "so far as concerns Wales and Monmouthshire."²

Welsh Board of Health.

Sect. 2.—(1) A person shall not by any advertisement or any public notice or announcement treat or offer to treat any person for venereal disease, or prescribe or offer to prescribe any remedy therefor, or offer to give or give any advice in connection with the treatment thereof.

Restriction on advertisements &c.

(2) On and after the first day of November, 1917, a person shall not hold out or recommend to the public by any notice or advertisement, or by any written or printed papers or handbills, or by any label or words written or printed, affixed to or delivered with, any packet, box, bottle, phial, or other inclosure containing the same, any pills, capsules, powders, lozenges, tinctures, potions, cordials, electuaries, plaisters, unguents, salves, ointments, drops, lotions, oils, spirits, medicated herbs and waters, chemical and officinal preparations whatsoever, to be used or applied externally or internally as medicines or medicaments for the prevention, cure, or relief of any venereal disease :

Provided that nothing in this section shall apply to any advertisement, notification, announcement, recommendation, or holding out made or published by any local or public authority or made or published with the sanction of the [Minister of Health] . . . [Scotland and Ireland], or to any publication sent only to duly qualified medical practitioners or to wholesale or retail chemists for the purposes of their business.

Sect. 3. If any person acts in contravention of any of the provisions of this Act, he shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or on summary conviction to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for a term not exceeding six months.

Penalties.

Sect. 4. In this Act the expression "venereal disease" means syphilis, gonorrhœa, or soft chancre.

Definition.

Sect. 5. This Act may be cited as the Venereal Disease Act, 1917.

Short title.

(1) For Orders, Memoranda, etc., relating to Venereal Diseases, see *post*, Vol. II., Part V., under heading "DISEASES,

Venereal Disease."

(2) See M. H. Circular, Sept. 30, 1920, 18 L. G. R. (Orders) 397, 398.

THE ANTHRAX PREVENTION ACT, 1919.

9 & 10 GEO. V. c. 23.

An Act to control the importation of goods infected or likely to be infected with Anthrax, and to provide for the disinfection of any such goods.
[22nd July, 1919.]

Power to prohibit the importation of goods infected with anthrax.

Sect. 1.—(1) His Majesty may by Order in Council make provision for preventing the importation into the United Kingdom, either absolutely or except at any specified ports and subject to any specified conditions as to disinfection and otherwise, of goods infected, or likely to be infected, with anthrax (in this Act referred to as “infected goods”).

(2) An Order under this section may contain a declaration that goods of any specified class which are of any specified origin, or are exported from or through any specified country or place, are goods likely to be infected with anthrax, and any such declaration shall be conclusive for all purposes.

(3) Any Order made under this section may be revoked or varied by any subsequent Order.

(4) An Order in Council under this Act may apply, as respects any goods specified in the Order, any of the provisions (including penal provisions) of the Customs (Consolidation) Act, 1876,¹ or any Act amending or extending that Act, with respect to goods whereof the importation is prohibited under those Acts, with such modifications as appear necessary or expedient, and in particular with the substitution of Secretary of State for the Commissioners of Customs and Excise, and of persons appointed by the Secretary of State for officers of Customs and Excise.

(5) In this section the expression “specified” means specified in an Order made under this section.²

Note.

Notification.

As to notification of cases of anthrax in man, see the Note to sect. 7 of the Infectious Disease (Notification) Act, 1889.³

Provision as to disinfection of infected goods.

Sect. 2.—(1) A Secretary of State may provide, maintain, and carry on, or arrange for the provision, maintenance, or carrying on, at such ports or other places in the United Kingdom, as he thinks proper, the necessary works for the disinfection of infected goods, and may make rules providing for the payment by importers of infected goods of fees in respect of the disinfection thereof, and in respect of services rendered in connection with such disinfection, and for the recovery of such payments.

(2) Any expenses incurred by the Secretary of State in carrying this Act into effect, up to such an amount as the Treasury may approve, shall be defrayed out of moneys provided by Parliament.

Short title.

Sect. 3. This Act may be cited as the Anthrax Prevention Act, 1919.

(1) 39 & 40 Vict. c. 36. heading “DISEASES, Anthrax.”
(2) For Orders, etc., under the present Act, see *post*, Vol. II., Part V., under (3) *Ante*, p. 933.

THE PUBLIC HEALTH (TUBERCULOSIS) ACT, 1921.

11 & 12 GEO. V. c. 12.

An Act to make further provision with respect to arrangements by local authorities for the treatment of tuberculosis.

[12th May, 1921.]

Sect. 1.—(1) Where the council of any county or county borough has, before the passing of this Act, made arrangements for the treatment of persons suffering from tuberculosis (including persons insured under the National Health Insurance Acts, 1911 to 1920) at or in dispensaries, sanatoria, and other institutions in accordance with a scheme approved by the Local Government Board or the Minister of Health, that council shall, for the purposes of this Act, be deemed to have made adequate arrangements for the treatment of tuberculosis so long as such scheme, with such modifications, if any, as the Minister may on the application of the council from time to time approve, continues in operation.

Further provision with respect to arrangements for treatment.

In the application of this subsection to Wales an agreement made with the King Edward the Seventh Welsh National Memorial Association, and approved by the Welsh Insurance Commissioners or the Minister of Health, shall be treated as equivalent to a scheme approved by the Minister of Health, and an application made by that association with the approval of a council shall be deemed to be an application of the council.

(2) Where the council of any county or county borough fails to make adequate arrangements for the treatment of tuberculosis at or in dispensaries, sanatoria, and other institutions approved by the Minister, the Minister may, after giving the council an opportunity of being heard, make such arrangements as he may think necessary for the purpose of such treatment.

Any expenses incurred by the Minister in arranging for such treatment may be paid in the first instance by the Minister out of moneys provided by Parliament, and the amount of any expenses certified by the Minister to have been so incurred shall be paid to the Minister on demand by the council and shall be recoverable as a debt due to the Crown.

This subsection shall not apply in the case of any council which at the date of the passing of this Act is deemed to have made adequate arrangements as aforesaid and which fails to continue to make such arrangements by reason only of the withdrawal of, or diminution in the rate of, the contributions made from the Exchequer before the passing of this Act to the councils of counties and county boroughs in aid of the treatment of tuberculosis.¹

Sect. 2. Without prejudice and in addition to any other power, whether under this or any other Act, every council of a county or county borough shall have power to make such arrangements as they may think desirable for the after-care of persons who have suffered from tuberculosis (including persons for the time being insured under the National Insurance Act, 1911,² as amended or extended by any past or future enactment), and the provisions of this Act relating to committees and joint committees shall extend accordingly as though in those provisions the expression "treatment of tuberculosis" included such after-care.

After-care by councils of counties and county boroughs.

Sect. 3. Any approval by the Minister of Health of an institution for the treatment of tuberculosis may be given for such time and subject to such conditions as the Minister may think fit, and the Minister shall have power to withdraw any such approval.

Approval of institutions.

Sect. 4. The powers of a county or county borough council in relation to the treatment of tuberculosis (other than the power of raising a rate or of borrowing money) may be exercised through a committee of the council or through a sub-committee of any committee, and the council and, subject to any directions of the council, the committee may appoint as members of the committee or sub-committee, as the case may be, persons (including members of insurance committees) who are not members of the council, being persons specially qualified by training or experience in matters relating to the treatment of tuberculosis, but not less than

Power to act through committees.

(1) See Note to P. H. (Prevention and Treatment of Disease) Act, 1913, s. 3, *ante*,

p. 952.

(2) *Post*, Vol. II., p. 2282.

Sect. 4.Joint
committees.

two-thirds of the members of such committee or sub-committee shall consist of members of the council.

Sect. 5.—(1) For the purpose of facilitating co-operation between county councils and county borough councils in the exercise of the powers conferred upon them by any enactment to make arrangements for the treatment of tuberculosis, the Minister may by order, with the consent of the councils concerned, make such provision as appears to him necessary or expedient, by the constitution of joint committees or otherwise, for the joint exercise by such councils of all or any of their powers in relation thereto, and any such order may provide how, in what proportions, and out of what funds or rates, the expenses incurred by such councils are to be defrayed, and may contain such consequential, incidental, and supplemental provisions as may appear necessary for the purposes of the order.

(2) Every such joint committee shall be a body corporate by such name as the order constituting the committee may direct, and shall have perpetual succession and a common seal, and may hold land for the purpose of their powers and duties without licence in mortmain.

(3) Any joint committee constituted under any enactment repealed by this Act shall continue in existence and have all the powers which may be exercised by any joint committee constituted under this section, and any order constituting such joint committee shall continue in force and have effect accordingly.

Powers of
Metropolitan
Asylums
Board.

Sect. 6. The managers of the Metropolitan Asylums District may, with the approval of the Minister of Health, enter into agreements with the council of any county or county borough for the reception of persons suffering from tuberculosis in hospitals or sanatoria provided by the managers.

Further pro-
vision with
respect to
treatment of
seamen.

Sect. 7.—(1) The Minister may by order constitute an advisory committee for the purpose of assisting the council of any county or county borough in making arrangements for the treatment of any persons suffering from tuberculosis who are masters, seamen, or apprentices to the sea service or the sea-fishing service.

(2) An order under this section may provide—

(a) For the representation on the said committee of any society approved under the National Health Insurance Acts, 1911 to 1920, more than three-fourths of whose members are such masters, seamen and apprentices as aforesaid, and of the council of any county or county borough having a substantial number of such masters, seamen, and apprentices resident within their area, and may contain such other provisions as may appear necessary to the Minister for giving effect to the order; and

(b) If the governing body constituted under subsection (6) of section forty-eight of the National Insurance Act, 1911,³ as amended by section twenty-seven of the National Health Insurance Act, 1918,⁴ agree to contribute, out of the special fund referred to in the said subsection (6), towards the expenses of the said committee, for the appointment by the governing body aforesaid from among their own members of the representatives on the said committee of all such societies as aforesaid.

(3) An order made under this section may be revoked or varied by another order so made.

Expenses.

Sect. 8.—(1) Any expenses incurred under this Act by a county council shall be defrayed as expenses for general county purposes, or, if the Minister of Health by order so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

(2) Any expenses incurred under this Act by the council of a county borough shall be defrayed as part of the expenses of the council in the execution of the Public Health Acts, 1875 to 1908.

Short title,
repeal, and
application.

Sect. 9.—(1) This Act may be cited as the Public Health (Tuberculosis) Act, 1921.

(2) The enactments specified in the second column of the Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(3) This Act shall not apply to Scotland or Ireland.

Note.**Repeal.**

The Schedule to the present Act repealed sect. 64 (3) of the National Insurance Act, 1911,⁵ and sect. 16 of the Local Government (Emergency Provisions) Act, 1916.⁶

(3) 1 & 2 Geo. V. c. 55, s. 48 (6).
(4) 7 & 8 Geo. V. c. 62, s. 27.

(5) *Post*, Vol. II., p. 2239.
(6) 6 & 7 Geo. V. c. 12, s. 16.

PART II.—(Continued).

DIVISION II.

ACTS RELATING TO FOOD AND DRUGS.

THE SALE OF FOOD AND DRUGS ACT, 1875.

38 & 39 VICT. c. 63.

An Act [to repeal the *Adulteration of Food Acts*, and ¹] to make better provision for the Sale of Food and Drugs in a pure state.

[11th August, 1875.]

Note.

The collective title, "The Sale of Food and Drugs Acts, 1875-1907," includes, in addition to the present Act, the Sale of Food and Drugs Act Amendment Act, 1879,² the Sale of Food and Drugs Act, 1899,³ the Margarine Act, 1887,⁴ and the Butter and Margarine Act, 1907—see sect. 14 (1) of the last-mentioned Act.⁵ All these Acts are set out in the present Division of this work, together with the Public Health (Regulations as to Food) Act, 1907,⁶ and the Milk and Dairies Acts, 1915 and 1922.⁷

The provisions of the Public Health Act, 1875, relating to unsound food are sects. 116 to 119.⁸

The sale of horseflesh, including in that term "the flesh of asses and mules," for human food, is regulated by the Sale of Horseflesh, etc., Regulation Act, 1889, which is set out in the Note to sect. 116 of the Public Health Act, 1875.⁹

For the special provisions relating to bread, see the Note to sect. 116 of the Public Health Act, 1875.¹⁰ For those relating to tea, see sect. 30 of the present Act, and the Note thereto.¹¹

As to the measures to be used when selling fresh herrings, see the Cran Measures Act, 1908.¹²

Beer, for the purposes of the retail licence required by the Finance Act of 1910,¹³ is defined as including "ale, porter, spruce beer, black beer, and any other description of beer, and any other liquor which is made or sold as a description of beer or as a substitute for beer, and which on analysis contains more than 2 per cent of proof spirit." A retailer was summoned for selling without licence a liquid described by him as being "brewed from the best malt and hops," but in fact manufactured from liquid glucose and hops and fermented with yeast and containing 2 per cent. of proof spirit. It had the ordinary gravity of beer, which it resembled in colour and appearance. The conviction was affirmed.¹⁴

Sale of Food and Drugs Acts.

Unsound food.

Horseflesh.

Bread and tea.

Fresh herrings.

Beer.

(1) Repealed by S. L. R. (No. 2) Act, 1893 (see Note to s. 1), together with preamble, which recited that "it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended."

(2) *Post*, p. 994.

(3) *Post*, p. 1003.

(4) *Post*, p. 998.

(5) *Post*, p. 1021.

(6) *Post*, p. 1022.

(7) *Post*, pp. 1024, 1036.

(8) Set out and annotated *ante*, pp. 223 *et seq.*

(9) *Ante*, p. 226.

(10) *Ante*, p. 224.

(11) *Post*, p. 990.

(12) 8 Edw. VII. c. 17.

(13) 10 Edw. VII. c. 8, ss. 43, 50 (3), 52.

(14) *Fairhurst v. Price*, L. R. 1912, 1 K. B. 404; 106 L. T. 97; 76 J. P. 110.

**Adulteration
of seeds,
fertilisers,
and feeding
stuffs.**

The Adulteration of Seeds Acts, 1869 and 1878, ¹⁵ provide for the repression of the practice of adulterating seeds in fraud of the public and to the detriment of agriculture, and the Seeds Act, 1920, ¹⁶ provides for the sampling and testing of seeds.

The Fertilisers and Feeding Stuffs Act, 1906, ¹⁷ contains provisions with respect to the sale of agricultural fertilisers and food for cattle and poultry, and confers certain powers on county and county borough councils with respect to the analysis of samples. The Board of Agriculture and Fisheries made, under this Act, the Fertilisers and Feeding Stuffs (Limits of Error) Regulations, 1910. ¹⁸ With regard to the doctrine of *mens rea* in connection with prosecutions under this Act, ¹⁹ the meaning of "prejudice of the purchaser," ²⁰ the necessity for the consent of the Board (now Minister) of Agriculture and Fisheries to such prosecutions, ²¹ notices as to the percentages of oil and albuminoids, ²² and sending one of the samples to the vendor, ²³ see the cases cited below.

**Agricultural
poisons.**

Sect. 2 of the Poisons and Pharmacy Act, 1908, ²⁴ enables county councils, and councils of boroughs with a population of more than 10,000 according to the last published census for the time being, to grant licenses, subject to Orders in Council, ²⁵ for the sale or keeping open of shops for the sale of "poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, as sheep dips or weed killers which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco." The same section authorises Orders in Council adding substances to or removing substances from this list, and exempts persons so licensed from "so much of the Pharmacy Act, 1868, ²⁶ as makes it an offence for any person to sell or keep open shop for the sale of poisons, unless he is a duly registered pharmaceutical chemist or chemist and druggist and conforms to regulations made under sect. 1 of that Act," but not from any other provision of that Act, or of the Arsenic Act, 1851, ²⁷ relating to poisons. It also requires local authorities, before they grant such licences, to "take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of poisonous substances as aforesaid are satisfied."

**Poisonous
disinfectants.**

As to disinfectants which contain poison, see the Note to sect. 120 of the Public Health Act, 1875. ²⁸

**Dangerous
drugs.**

As to dangerous drugs, see the Acts and Orders, etc., mentioned below, ²⁹ and as to supply of opium to midwives, see the Note at the commencement of the Midwives Act, 1902. ³⁰

Food pests.

As to rats and mice, see the Rats and Mice (Destruction) Act, 1919. ³¹ As to other pests, see the Note to sect. 1 of the Ministry of Agriculture and Fisheries Act, 1919. ³² As to weeds, see the Note to sect. 8 of the last mentioned Act. ³³

(15) 32 & 33 Vict. c. 112; 41 & 42 Vict. c. 17.

(16) 10 & 11 Geo. V. c. 54.

(17) 6 Edw. VII. c. 27.

(18) 8 L. G. R. (Orders) 125.

(19) *Korten v. West Sussex County Council* (1903, K. B. D.), 72 L. J. K. B. 514; 88 L. T. 466; 67 J. P. 167; 1 L. G. R. 445; *Laird v. Dobell*, L. R. 1906, 1 K. B. 131; 75 L. J. K. B. 163; 93 L. T. 842; 70 J. P. 62; 4 L. G. R. 232; *Needham & Co. v. Worcester C.C.* (1909, K. B. D.), 73 J. P. 293; 7 L. G. R. 595.

(20) *Harvey & Co.'s Case*, *post*, p. 963 (20).

(21) *Hill v. Phoenix Veterinary Supplies, Ltd.*, L. R. 1911, 2 K. B. 217; 80 L. J. K. B. 669; 105 L. T. 73; 75 J. P. 321; 9 L. G. R. 731.

(22) *Lathom v. Spillers and Bakers, Ltd.*, L. R. 1913, 2 K. B. 355; 82 L. J. K. B. 833; 108 L. T. 996; 77 J. P. 277; 11 L. G. R. 539; *Worcester C.C. v. Notley*, L. R. 1914, 3 K. B. 330; 83 L. J. K. B. 1750; 111 L. T. 382; 78 J. P. 340; 12 L. G. R. 874; *Kyle v. Jewers* (1914), 84 L. J. K. B. 255; 112 L. T. 422; 79 J. P. 176; 13 L. G. R. 260; *Anderson, Ltd. v. Daniel*, L. R. 1924, 1 K. B. 138; 93 L. J. K. B. 97.

(23) *Vaughan v. Grindell*, L. R. 1921, 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416.

(24) 8 Edw. VII. c. 55, s. 2.

(25) See Orders of April 2, 1909, and Nov. 10, 1911, 7 L. G. R. (Orders) 96; 9 L. G. R. (Orders) 221.

(26) 31 & 32 Vict. c. 121, s. 1.

(27) 14 & 15 Vict. c. 13.

(28) *Ante*, pp. 238—240.

(29) 1920, 10 & 11 Geo. V. c. 46; and 1923, 13 & 14 Geo. V. c. 5. H. O. Orders, *re* cocaine, etc., of May 20, 1921, 19 L. G. R. (Orders) 314, of Oct. 2, 1922 (S. R. O. No. 1087), and of May 16, 1923 (S. R. O. No. 577), revoking Art. 1 of No. 1087; *re* raw opium, of May 20, 1921, 19 L. G. R. (Orders) 310, of March 28, 1922, 20 L. G. R. (Orders) 164, of Oct. 2, 1922 (S. R. O. No. 1086), and of March 10, 1923 (S. R. O. No. 311); *re* prescriptions, of March 10, 1923, 21 L. G. R. (Orders) 81; *re* approved institutions, of July 26, 1923 (unnumbered); and *re* foreign ships, of Sep. 10, 1923, 21 L. G. R. (Orders) 235. See also M. H. Circular on Act of 1920, 20 L. G. R. (Orders) 282; and M. H. Circular and Memo., *re* poor law institutes, *ibid.*, 176—178.

(30) *Post*, Vol. II., p. 2178.

(31) *Post*, Vol. II., p. 2339.

(32) *Post*, Vol. II., p. 2344. See also the Destructive Insects and Pests Order, 1922, made by the Minister of Agriculture and Fisheries on the 31st May, and set out in "Loc. Gov. 1922," at pp. 165—171; and the Colorado Beetle Order, 1922, made by the same Minister on the 15th December, 1922, and set out *ibid.*, at p. 172.

(33) *Post*, Vol. II., p. 2347.

As to hawking,³⁴ and adulterating tobacco,³⁵ and selling cigarettes to children,³⁶ see the Acts cited below. Tobacco.

The following local Acts of the London County Council contain special provisions for the protection of the public from various food dangers: London County Council (General Powers) Acts, 1904,³⁷ as to tuberculosis of the udder in cows; 1907,³⁸ as to milk supply; 1908, as to registration of dairymen,³⁹ storage of food in tenement houses,⁴⁰ and premises used for the sale, etc., of food;⁴¹ and 1909,⁴² as to the storage of food in tenement houses. London.

As to the Welsh Board of Health, see the Note elsewhere.^{42a}

Wales.

Sect. 1. [*Repeal of Statutes.*]

Note.

The present section was repealed by the Statute Law Revision (No. 1.) Act, 1883, but without reviving the Adulteration of Food Acts of 1860 and 1872,⁴³ which it repealed. Repeal.

The chief effects of the present Act were summed up by the Local Government Board thus: ⁴⁴ Summary of effects of Act.

“As regards the trading community.—It protects the seller—(1.) By permitting those practices in the established usage of trade with respect to the addition of harmless ingredients not intended fraudulently to increase the bulk or weight of the article, or to conceal its inferior quality, which clearly ought not to constitute an offence. (2.) By enabling him to protect himself in the case of a mixed article, by affixing a label to it. (3.) By giving him the right, when he has a written warranty, to plead the warranty as a defence. (4.) By providing that, if convicted, he may, in an action against the wholesale vendor for breach of contract, recover the costs of his conviction, if he proves that the article was sold to him as being of the same nature, substance, and quality as that demanded of him, that he purchased it not knowing it to be otherwise, and that he afterwards sold it in the same state. (5.) By requiring the purchaser, when he intends to have the article analysed, to divide the sample, and leave one part with the seller. (6.) By providing, in the case of tea, that it shall be examined by officers of the customs at the port of landing. (7.) By enabling the seller and his wife to be examined as witnesses on his behalf. (8) By authorising the justices, where the result of the analysis is questioned, to have the article referred for analysis to the [government laboratory ⁴⁵]

“As regards the public.—(1.) The former law only protected the public against adulterated or mixed articles; but the new Act protects the purchaser against the delivery of any article which differs in substance, nature, or quality from the one demanded. (2.) It punishes the seller who abstracts any part of an article so as to affect injuriously its quality. (3.) It prevents the sale of articles mixed with ingredients not in accordance with the demand of the purchaser without a label indicating that they are mixed. (4) It enables medical officers of health and police constables, in addition to the inspectors authorised by the former law, to obtain articles and submit them for analysis when directed to do so. (5.) It assists the local authority of a small district in obtaining the services of an efficient analyst by empowering them to engage the analyst of another authority; and it enables a purchaser, in a district where there is no analyst, to obtain analyses from the analyst of another district. (6.) It compels the trader to sell a sample for analysis on demand. (7.) And, lastly, it renders the law more intelligible, and therefore more practicable, accessible, and certain.

“It will be seen, therefore, that whilst some of the amendments which have been made afford to the trading community the reasonable protection to which they were justly entitled, others have rendered the law much more stringent and effectual in the interest of the public.”

Sect. 2. [*The term “food” shall include every article used for food or drink by man, other than drugs or water.*] Interpretation of words.

(34) Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 13.

(35) Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35).

(36) Children Act, 1908 (8 Edw. VII. c. 67), s. 39.

(37) 4 Edw. VII. c. ccxlv., s. 27, set out in 2 L. G. R. (Statutes) 70.

(38) 7 Edw. VII. c. clxxv., ss. 24-35, 81, set out in 5 L. G. R. (Statutes) 128-133, 136.

(39) 8 Edw. VII. c. cvii., s. 5, set out in 6 L. G. R. (Statutes) 183.

(40) *Ibid.*, s. 7, set out *ibid.*, 184.

(41) *Ibid.*, s. 8, set out *ibid.*, 185.

(42) 9 Edw. VII. c. cxxx., ss. 16-19, set out in 7 L. G. R. (Statutes) 109-111.

(42a) *Post*, p. 1023.

(43) 23 & 24 Vict. c. 84; 35 & 36 Vict. c. 74.

(44) Circular, Sep. 30, 1875.

(45) See *post*, p. 984.

Sect. 2.

The term "drug" shall include medicine for internal or external use :

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough :

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

Note.**Food.**

The above definition of "food" was repealed by the Sale of Food and Drugs Act, 1899,² and by that Act "for the purposes of the Sale of Food and Drugs Acts the expression 'food' shall include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and shall also include flavouring matters and condiments."³ As to baking powder, see the case cited below.⁴

Drug.

Chewing gum, which was sold for the purpose of chewing only, was held not to be either an article of food or a drug within the meaning of the present Act.⁵

Beeswax was held not to be a "drug" within the meaning of the Act, as it was not sold for "medicinal use."⁶

Soap which was sold as "arsenical soap" was held not to be a "drug," as it in fact contained no arsenic.⁷

County.

Under the Act of 1879,⁸ the term "county" includes every liberty having separate quarter sessions, except a liberty of a cinque port.

DESCRIPTION OF OFFENCES.

Prohibition of the mixing of injurious ingredients, and of selling the same.

Sect. 3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanour, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

Note.

Meaning of person.

With regard to the application of the term "person" to a body corporate, see the Note to sect. 6.

Coloured articles.

As to selling coloured tea,⁹ and peas,¹⁰ see the cases cited below. The colouring, etc., of milk is prohibited by sect. 4 of the Act of 1922.¹¹

Mixed articles.

Mixing alum with bread in such a manner that crude lumps were found was held to be indictable at common law.¹²

Imported tea.

As to the examination of mixed and exhausted tea imported from abroad, see sect. 30.¹³

Injurious to health.

The analyst's certificate need not state that the article is rendered injurious to health. This was so held on a special case which the court remitted to the justices with instructions to convict under the present section if they found that the article sold (preserved peas) was itself rendered injurious to health by the addition of sulphate of copper, but not if they merely found that the sulphate of copper, as distinguished from the peas, was injurious.¹⁴

Label.

The Divisional Court upheld the conviction, under the present section, of a grocer who had sold cream found to contain a sufficient quantity of boracic acid to render it injurious to the health of children or invalids, but not sufficient to render it injurious to healthy adults, although it was sold with a label bearing the words "Rich cream. This cream contains a small percentage of boric preservative to retard sourness. Perfectly delicious."¹⁵ The suggestion of Darling, J., in this case, that the conviction might not have stood if the article had been sold as

(2) See s. 27, and Sched., *post*.

(3) See s. 26, *post*, p. 1015.

(4) *James' Case*, *post*, p. 964 (35).

(5) *Bennett v. Tyler* (1900, Q. B. D.), 81 L. T. 787; 64 J. P. 119; 19 Cox C. C. 434.

(6) *Fowle v. Fowle* (1896, Q. B. D.), 75 L. T. 514; 60 J. P. 758; 18 Cox C. C. 462.

(7) See *Taplin's Case*, *post*, p. 970 (4).

(8) See s. 7, *post*, p. 997. As to cinque ports, see s. 32, *post*, p. 992.

(9) *Egerton's Case*, *post*, p. 990 (12).

(10) *Mapp's Case*, *post*, p. 969 (88).

(11) *Post*, p. 1038.

(12) *Rex v. Dixon* (1814), 4 Camp. 12; 3 M. & S. 11.

(13) *Post*, p. 990.

(14) *Hull v. Horsnell* (1904), 92 L. T. 81; 68 J. P. 591; 2 L. G. R. 1280; 21 T. L. R. 32.

(15) *Cullen v. McNair* (1908, K. B. D.), 99 L. T. 358; 72 J. P. 376; 6 L. G. R. 753. Further as to "labels," see *Bundy's Case*, *post*, p. 963 (22), and s. 8 and Note, *post*.

“preserved cream,” or with some fuller indication as to its nature, was afterward disapproved.¹⁶ A conviction under sect. 6 was quashed because of a notice to the purchaser of the presence of boron preservative, and Lord Alverstone, C.J., suggested that there might have been a conviction had the proceedings been taken under the present section.¹⁷

Absence of knowledge that there has been any mixing, etc., is made a defence by sect. 5 of the present Act.

Sect 3, n.

Absence of knowledge.

Sect. 4. No person shall, except for the purpose of compounding as hereinafter described,¹⁸ mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.¹⁹

Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.

Sect. 5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.²⁰

Exemption in case of proof of absence of knowledge.

Sect. 6. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say,

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

(1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof;

(2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;

(3.) Where the food or drug is compounded as in this Act mentioned; ¹

(4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Note.

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Meaning of Person.

Whether this term can be treated as including a corporation, when used in an Act of Parliament, depends on a consideration of the object of the statute, and of the enactments passed with a view to carrying that object into effect. Thus, it has been held that a joint stock company incorporated under the Companies Acts can be convicted of an offence under the present section.² It had previously been held, with reference to the Pharmacy Act, 1868,³ which prohibits any “person” from selling, or keeping open shop for retailing, dispensing, or compounding poisons, unless such person shall be a pharmaceutical chemist, or a chemist and druggist within the meaning of the Act, and be registered under the Act and con-

Corporations.

(16) *Haigh v. Aerated Bread Co.*, L. R. 1916, 1 K. B. 878; 85 L. J. K. B. 880; 114 L. T. 1000; 80 J. P. 284; 14 L. G. R. 665.

(17) *Williams v. Friend*, *post*, p. 963 (23).

(18) There is no such description.

(19) The present section does not require proof that anyone's health would have been injured. Further as to the compounding of drugs, see s. 7 and Note, *post*. As to absence of “knowledge,” see s. 5.

(20) Mere ignorance is no defence if reasonable diligence would have given knowledge. As to the defence afforded by “labels,” see *supra*, and s. 8 and Note, *post*.

(1) See *post*, p. 970 (5).

(2) *Pearks, Ltd. v. Ward*, L. R. 1902, 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51; 66 J. P. 774. Applied in *Rex v. Ascanio Puck & Co.*, *ante*, p. 230 (32).

(3) 31 & 32 Vict. c. 121, s. 1.

Sect. 6, n.

form to certain regulations, that this did not apply to a company registered and incorporated under the Companies Acts, but that the actual seller must be a qualified person.⁴ Where an assistant who sold adulterated butter was the servant of a one-man company, the conviction of that man was quashed.⁵ See also the Note to sect. 19 of the Interpretation Act, 1889.⁶

Sale.

Sale by
servant.

The servant who actually sells an adulterated article may himself be convicted.⁷ And where a summons charged a dairyman with selling adulterated milk and did not allege that the sale had been effected by the hand of a servant, it was held (Lord Johnston dissenting) that, as the sale had been so effected, the summons was bad.⁸

And so may the master, although the adulteration may have been effected by the servant contrary to the master's express orders; though the question whether there was connivance on the master's part is material for enabling the court to settle the amount of the penalty.⁹

This decision was distinguished in a case where the defendant was a director of a limited company which carried on a provision business at various premises. He was also the secretary and general manager of the company, and held nearly all its shares, and its business was carried on under his exclusive and unrestricted control. At one of the company's premises, in the defendant's absence, an assistant sold adulterated butter, and the justices convicted the defendant of an offence against the present section. It was held that, as the assistant was the company's servant and not the defendant's, the conviction must be quashed, and, "as (*per* Avory, J.) the respondent put the law in motion and persisted in the point after the evidence was given," with costs against the respondent though he did not appear.¹⁰

Where justices dismissed a summons under the present section, there having been an inadvertent sale by an assistant of a butter mixture which had been set aside by the proprietor of the shop for his own private use, the case was sent back for a conviction with an intimation that the penalty might be nominal.¹¹

An inspector bought a sample of adulterated milk from a little girl while she was carrying it to the house of the customer who had ordered it, and Darling and Salter, JJ. (Avory, J., dissenting) held that the justices had properly dismissed a summons under the present Act against the girl's father on the ground that there had been no sale to the inspector, his daughter having acted outside the scope of her employment in selling the sample, although under a statutory duty to do so.¹² But a servant of a co-operative society, whose orders were to sell only to members who had ordered milk beforehand, was held to have authority to sell to an inspector.¹³

Amendment
of summons.

Where justices had dismissed an adulterated milk summons on the ground that the carrier from whom the sample was taken had no authority to sell the milk, the court amended the summons so as to make the carrier's authority immaterial, and sent the case back for conviction of the vendor.¹⁴

Prejudice of the Purchaser.

Purchase by
inspector.

The Sale of Food and Drugs Act Amendment Act, 1879, ¹⁵ enacts that it shall be no defence to a prosecution under the Act for the defendant to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. This amendment was made because of the conflict which had existed between decisions

(4) *Pharmaceutical Soc. v. London and Provincial Supply Assoc.* (1880, H. L.), L. R. 5 A. C. 857; 49 L. J. Q. B. 736; 43 L. T. 389; 45 J. P. 20. Applied, on this point, in *Caldwell v. Bethell*, L. R. 1913, 1 K. B. 119; 82 L. J. K. B. 101; 107 L. T. 685; 77 J. P. 118.

(5) See *Booth's Case*, *infra* (10).

(6) *Post*, Vol. II., p. 1968. See also *Chuter's Case*, *post*, p. 1014 (16).

(7) *Hotchin v. Hindmarch*, *post*, p. 986 (19). And see M. & D. Act, 1922, s. 9 (2), *post*, p. 1041.

(8) *Wilson v. Fleming*, 1914 S. C. (J.) 20; 51 Sc. L. R. 72; 5 Glen's Loc. Gov. Case Law 62.

(9) *Brown v. Foot* (1892, Q. B. D.), 61 L. J. M. C. 110; 66 L. T. 649; 56 J. P. 581; 17 Cox C. C. 509. See also *Parker's Case*, *post*, p. 964 (34), and *Farley's Case*, *post*, p. 979 (12).

(10) *Booth v. Helliwell*, L. R. 1914, 3 K. B. 252; 83 L. J. K. B. 1548; 111 L. T. 542; 78 J. P. 223; 12 L. G. R. 940. Further as to costs against non-appearing respondents, see *ante*, p. 704.

(11) *Houghton v. Mundy* (1910, K. B. D.), 103 L. T. 60; 74 J. P. 377; 8 L. G. R. 838. Further as to this case, see *post*, p. 965 (44).

(12) *Whittaker v. Forshaw*, L. R. 1919, 2 K. B. 419; 88 L. J. K. B. 989; 121 L. T. 320; 83 J. P. 210; 17 L. G. R. 457; *Lindsay v. Dempster*, 1912 S. C. (J.) 110; 49 Sc. L. R. 999; 3 Glen's Loc. Gov. Case Law 62, applied; *Houghton v. Mundy*, *supra*, distinguished.

(13) *Elder v. Bishop Auckland Co-op. Soc.* (1917), 86 L. J. K. B. 1412; 117 L. T. 281; 81 J. P. 202; 15 L. G. R. 579.

(14) *Keenan v. Costelloe*, *post*, p. 968 (77).

(15) See s. 2, *post*, p. 994.

given in England and Scotland. The English court having held that the offence did not depend upon any pecuniary or personal prejudice to the purchaser, but that it was committed in the case of a sale to an inspector appointed under sect. 13, if an ordinary customer would have been prejudiced by such a sale to him.¹⁶ Some of the judges of the Scottish Court of Justiciary, on the other hand, appear to have been of opinion that the inspector could not in such a case be prejudiced, and that a sale to him for analysis could not be "to the prejudice of the purchaser."¹⁷

The Divisional Court has further held that even if the inspector has special knowledge of the article sold, the sale is to his prejudice, the test being whether the sale would have been to the prejudice of a purchaser who had not that special knowledge.¹⁸

Samples of milk supplied under contract to guardians of the poor were taken by an inspector while the milk was being delivered at the infirmary, and were found to be adulterated by extraneous water. It was contended that no offence had been committed under the present section because there had been no sale, and therefore no "purchaser," the milk not having been delivered to the purchaser when the samples were taken, and that proceedings should have been taken under sect. 3 of the Act of 1879, which provides for the taking of samples of milk in the course of delivery. The conviction was affirmed on the ground that sect. 3 only enlarged the boundaries of the evidence which might be given in support of a charge made under the present section.¹⁹

In a case under the Fertilisers and Feeding Stuffs Act, 1906,²⁰ it was held that a sale was to the prejudice of the purchaser in spite of a subsequent agreement by him to accept the goods at a reduced price.

Where the seller of an article brings to the purchaser's knowledge the fact that the article sold to him is not of the nature, substance, or quality, of the article he demands, the sale is not "to the prejudice of the purchaser," within the meaning of the present section, and consequently no offence is committed.²¹

On the same ground it was held that no offence under the section had been committed by a chemist, whose assistant, on being asked for "paregoric," supplied a different substance called and labelled "paregoric substitute," and who on the next day wrote to the purchaser stating that he did not stock paregoric, having no licence to sell poisons, and admitting that his assistant had been in fault in not saying so. It was also held that sect. 8 did not apply where paregoric had been asked for and something else had been supplied.²² Further as to labels, see the Note to sect. 3, *ante*, and sect. 8 and Note, *post*.

The proprietor of a dairy shop exhibited the following notice: "All cream sold at this establishment contains a small proportion of boron preservative (not exceeding one half of 1 per cent.) to keep it sweet and wholesome, which has been the recognised method of preservation for over twenty years." A purchaser asked for half a pint of cream, read the notice, and was supplied with cream containing .273 per cent. of boron trioxide, which is injurious to infants and invalids. The justices found that the notice was not sufficient to inform the purchaser that he was getting cream mixed with boric acid in the above proportion, and convicted. It was held that, as the purchaser was informed through the above notice that the cream was mixed, he had not been "prejudiced," and the conviction was accordingly quashed.²³ But a notice that whisky was "diluted" was held not to be sufficient, because it had been diluted to a greater extent than that allowed by Parliament, and had therefore ceased to be "whisky."²⁴

Sect. 8 provides a mode in which such notice may be given to the purchaser, but notwithstanding notice to the purchaser, the existence of a fraudulent intention may give rise to an offence under the present section.²⁵ Fraud is not a necessary element of the offence under the present section; but the justices may consider the absence of fraud in determining whether they will discharge the accused under

Sect. 6, n.

Delivery to purchaser.

Notice to purchaser.

Fraudulent intention.

(16) *Hoyle v. Hitchman* (1879), L. R. 4 Q. B. D. 233; 48 L. J. M. C. 97; 40 L. T. 252; 43 J. P. 430.

(17) *Davidson v. McLeod* (1878, Sc., J.), 42 J. P. 43.

(18) *Pearks, Ld. v. Ward*, *ante*, p. 961 (2).

(19) *Grant v. Sadler* (1912, K. B. D.), 3 Glen's Loc. Gov. Case Law 55. And see cases cited in Note to s. 3, *post*, pp. 995, 996.

(20) *Harvey & Co. v. Herefordshire C.C.*, L. R. 1920, 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 195. Further as to cases under this Act, see *ante*, p. 958.

(21) *Sandys v. Small* (1878), L. R. 3 Q. B. D. 449; 47 L. J. M. C. 115; 39 L. T. 118. See also *Uden v. Dunne*, 1923 Ir. K. B. 72.

(22) *Bundy v. Lewis* (1908, K. B. D.), 99 L. T. 833; 72 J. P. 489; 7 L. G. R. 55. But see *Knight's Case*, *post*, p. 965 (42).

(23) *Williams v. Friend*, L. R. 1912, 2 K. B. 471; 81 L. J. K. B. 756; 107 L. T. 93; 76 J. P. 301; 10 L. G. R. 494. Further as to this case, see *ante*, p. 961 (17).

(24) *Brander v. Kinnear*, *post*, p. 997 (33).

(25) See the Note to s. 8, *post*.

Sect. 6, n.

Fraudulent weighing.

sect. 1 of the Probation of Offenders Act, 1907,²⁶ which has been enacted in place of sect. 16 of the Summary Jurisdiction Act, 1879.²⁷

The Glasgow Corporation Act, 1907,²⁹ provides that persons who sell articles whose weight "does not correspond with the weight . . . which has been represented" by them may be punished summarily unless they prove "that the deficiency in weight . . . has arisen without any fraudulent intent." A boy presented a written order for $\frac{1}{4}$ lb of butter. The salesman silently handed him some butter weighing $8\frac{1}{2}$ drams under $\frac{1}{4}$ lb., and enclosed in a wrapper containing the words "This article is NOT sold by weight." The sum paid was the price of the quantity sold according to the then current wholesale rates. It was held (1) that the butter had been falsely represented as of the weight demanded, and (2) that the wrapper did not displace the representation, but (3) that the defendant had shown an absence of any "fraudulent intent." The conviction was accordingly quashed.³⁰ And when it was found as a fact that, though margarine had been weighed with gross carelessness, the deficiency had arisen without such intent, an appeal by the prosecutor was dismissed.³¹

As to false weights and scales, see the Note to sect. 21 of the Markets and Fairs Clauses Act, 1847.³²

Adulteration without vendor's knowledge.

A *mens rea* is necessary under sect. 26 of the Weights and Measures Act, 1878.^{32a}

An innocent vendor is liable to be convicted of an offence against the present section. Thus, a vendor of milk was held responsible for the act of his servant in adding water to the milk contrary to his master's orders;³³ and another who sent milk, warranted pure, by railway, was held responsible for the addition of water to it in the course of the railway journey by persons unknown to him, and without his knowledge, default, or negligence.³⁴

But see sect. 9 (3) of the Act of 1922.^{34a}

Article of Food.

Meaning of "food" and "drug."

With regard to the meaning of the terms "food" and "drug," see sect. 2 and Note.

The article must be itself an "article of food" at the time of the sale, and a conviction for selling adulterated baking powder was therefore quashed.³⁵

Chemical notes on adulterations.

Notes of some of the commoner forms of adulteration prepared by Mr. R. A. Robinson, the Chief Officer, Public Control Department of the Middlesex County Council, and relating to baking-powder and self-raising flour, beer, butter, cake,³⁶ cheese, chocolate, cocoa, coffee, cream, demerara sugar, drugs, egg powder, flour, ground almonds, jam and marmalade, lard, meat food substances, milk, mustard, non-alcoholic drinks, pepper, raisins, rice and pearl barley, sago, shredded suet, spirits, tinned foods, tinned vegetables, and vinegar, will be found in the work mentioned below.³⁷

Nature, Substance, and Quality.

Article demanded.

Where an inspector, instead of demanding "milk," demanded in effect merely "a sample from the milk churns," the court upheld the dismissal of a summons under the present section, on the ground that the inspector had been supplied with that which he demanded, although the milk was deficient in natural fat.³⁸

Where a purchaser asks for sardines in olive oil, it is an offence to supply sardines in cotton-seed oil, even though such oil is not injurious, for sardine oil is not to be regarded merely as a substance used in the preparation of the sardines for sale.³⁹

Nature of defect.

The Sale of Food and Drugs Act Amendment Act, 1879,⁴⁰ enacts that it shall not

(26) *Ante*, p. 657.

(27) 42 & 43 Vict. c. 49, s. 16. *Reg. v. Field*, *post*, p. 968 (79). See also, as to "trivial" offences, *post*, pp. 966 (59), 968 (83).

(29) 7 Edw. VII. c. cxlvi., s. 60.

(30) *Galbraith's Stores, Ltd. v. McIntyre*, 1912 S. C. (J.) 66; 49 Sc. L. R. 783; 3 Glen's Loc. Gov. Case Law 64. See also *Masterton's Case*, *post*, p. 991 (14).

(31) *Brander v. Buttercup Dairy Co.*, 1921 S. C. (J.) 19; 58 Sc. L. R. 36.

(32) *Post*, Vol. II., p. 1432.

(32a) 41 & 42 Vict. c. 49, s. 26. *Rex v. Lipton, Ltd.* (1924, Rotherham B. Q. S.), 88 J. P. Jo. 47.

(33) *Brown v. Foot*, *ante*, p. 962.

(34) *Parker v. Alder*, L. R. 1899, 1 Q. B. 20; 68 L. J. Q. B. 7; 79 L. T. 381; 62 J. P. 772; 19 Cox C. C. 191. Followed in

Andrews v. Luckin (1917), 87 L. J. K. B. 507; 117 L. T. 726; 82 J. P. 31; 16 L. G. R. 199. But see *Kearley's Case*, *post*, p. 965 (43).

(34a) *Post*, p. 1041.

(35) *James v. Jones*, L. R. 1894, 1 Q. B. 304; 63 L. J. M. C. 41; 58 J. P. 230; s.c. *Jones v. James*, 70 L. T. 351.

(36) As to boric acid in cake, see M. H. Circular, Mch. 20, 1923, 21 L. G. R. (Orders) 37.

(37) "Bell's Sale of Food and Drugs Acts," 1923 ed., at pp. 314—338.

(38) *Sandys v. Jackson* (1905, K. B. D.), 92 L. T. 646; 69 J. P. 171; 3 L. G. R. 285.

(39) *Winterbottom v. Allwood*, L. R. 1915, 2 K. B. 608; 84 L. J. K. B. 1225; 112 L. T. 590; 79 J. P. 161; 13 L. G. R. 551. See also *post*, p. 978 (24), as to this case.

(40) See s. 2, *post*.

be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance, or in quality, was not defective in all three respects.

It had been held by some of the judges in the Scottish courts, that the article must be different in all three respects from the article demanded, in order to warrant a conviction.⁴¹

The present section is not limited in its application to sales of adulterated articles, but applies also to cases in which the article sold is unadulterated but wholly different from that demanded by the purchaser, and therefore where a herbalist was asked for saffron and gave the purchaser saffin, which was not adulterated, it was nevertheless held that the herbalist had committed an offence within the section.⁴²

But evidence that the article sold in a particular case was inclosed by mistake in the wrong wrapper, and thereby described as "margarine" instead of "lard compound," was held to be admissible and material.⁴³

On the other hand, where a grocer's shopman, on being asked for half-a-pound of butter, by mistake served the customer with half-a-pound of mixed butter and margarine, which had been made up and wrapped in paper by the grocer himself for his own use, in the shopman's absence, and had been left on the counter, the court held that the shopman was acting within the scope of his authority, notwithstanding instructions given to him "to sell butter always from the dishes, to cut off from the bulk and weigh, and not to sell in ready-made packages," and that the master had offended against the present section.⁴⁴

Sugar equal in quality to the best West Indian cane sugar and made from canes grown in Mauritius was sold as "Demerara" sugar. The magistrate dismissed the summons on the ground that "Demerara sugar" had become a generic term referring rather to the process of colouring sugar with organic dye than to the place where the cane was grown. It was held that his decision could not be disturbed.⁴⁵

A drug was demanded by the name ("tincture of opium") known in the trade as that of a drug mixed in accordance with the British Pharmacopœia, but was neither demanded nor sold with reference to the Pharmacopœia, and was not in fact mixed in accordance with it. It was held on a special case that the magistrate ought to have convicted the vendor under the present section.⁴⁶ On the other hand, a custom in the trade to sell tapioca of a certain quality when sago was asked for, the two articles being of the same value, was held to afford a defence to proceedings under the present section.⁴⁷

The expression "quality" in the present section is not equivalent to "commercial description,"⁴⁸ or "kind,"⁴⁹ but "commercial quality." *Per* Lush, J.,⁵⁰ "If a commodity has various qualities, an expensive and good quality and a cheap inferior quality, if a person demanding the article pays the price which is known to be the price of the most expensive and the best quality, and the vendor palms off upon him an article of the cheapest and inferior quality, it seems to me it is perfectly competent to the justices, when complaint is made under" the present section, "to take into consideration the price that the purchaser paid and infer from that that when the cheaper article or the cheaper quality of that article was given to him, but he was paying the price known to be the price of the higher quality, he was getting something not of the quality demanded. And equally if a person is purchasing a mixture of two articles, if the price that he pays clearly indicates that he is demanding a mixture containing at least, say, 50 per cent. of the better article, and he in fact receives something which only contains 5 per cent. of it, I think it is perfectly competent for the magistrate to say he is getting something delivered to him not of the quality demanded."

A sale of skimmed milk proved to be deficient in butter fat, and not a normal whole milk, when "milk" was asked for, was not an offence against the pro-

Sect. 6, n.

Article of different kind.

Mistake.

Trade description.

Pharmacopœia.

Custom.

Meaning of quality.

Skimmed milk.

(41) *Davidson v. McLeod*, ante, p. 963 (17).

(42) *Knight v. Bowers* (1885), L. R. 14 Q. B. D. 845; 54 L. J. M. C. 108; 53 L. T. 234; 49 J. P. 614. But see *Bundy's Case*, ante, p. 963 (22).

(43) *Kearley v. Todd or Tonge or Tylor* (1891) 60 L. J. M. C. 159; 65 L. T. 261; 56 J. P. 72; 17 Cox C. C. 328.

(44) *Houghton v. Mundy*, ante, p. 962 (11).

(45) *Anderson v. Britcher* (1913, K. B. D.), 110 L. T. 335; 78 J. P. 65; 12 L. G. R. 10. See also cases on "false trade descriptions," ante, p. 234; and *Sandeman v. Gold*, L. R. 1924, 1 K. B. 107; 93 L. J. K. B. 53; 21

L. G. R. 792.

(46) *White v. Bywater* (1887), L. R. 19 Q. B. D. 582; 36 W. R. 280; 51 J. P. 821. See also *Dickin's Case*, post, p. 970 (6).

(47) *Sandys v. Rhodes* (1903, K. B. D.), 67 J. P. 352.

(48) *Per* Lord Reading, C.J., in *Anness v. Grivell*, L. R. 1915, 3 K. B. at p. 691; 85 L. J. K. B. 121; 113 L. T. 995; 79 J. P. 558; 13 L. G. R. 1215.

(49) *Per* Darling, J., *ibid.*, at p. 693.

(50) *Ibid.*, at pp. 694, 695. See also post, p. 1009 (26) as to this case, and cf. *Keenan's Case*, post, p. 968 (77).

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visions of the present section.⁵¹ But where it was proved that only 63 per cent. of fat could be extracted from milk by ordinary skimming, an offence was held to have been committed under the present section by selling as "skimmed milk," milk from which 97 per cent. of the fat had been extracted by means of a separator.⁵²

Hot milk.

Milk as from cow.

It is an offence to sell hot adulterated milk as "hot milk."⁵³

There have been numerous cases in which the defence has been raised that the milk sold was as it came from the cow. Thus, in 1902 a conviction was upheld by a majority of the judges in the Divisional Court for selling milk which was deficient in fat to the extent of 29.7 per cent., although the milk was sold as it came from the cow without having been tampered with, the deficiency having arisen from the lapse of time since the last previous milking of the cow.⁵⁴ But in 1905, in a case where the deficiency arose from the same cause, but was only 6.25 per cent., and the justices considered themselves bound by that case to convict, the conviction was quashed on the ground that the question whether the milk was of the nature substance and quality demanded was one of fact for the justices, and that they had indicated that but for the above decision they would have found this fact in favour of the defendant.⁵⁵

The last cited case was followed in Ireland and a conviction was quashed, though the milk was deficient in butter fat 8 per cent. as compared with the standard in the Sale of Milk (Ireland) Regulations, 1901, the justices having found (a) that the milk supplied was as demanded—a pint of new milk as produced by proper and honest milking of healthy and well-fed cattle; (b) that there had been no tampering with the milk and that it was sold in the same condition as it came from the cow and was of the nature substance and quality of new milk; and (c) that the defendant had neglected no precaution to procure that the produce of his cattle should be of the highest standard.⁵⁶ And in a Scottish case the dismissal of a summons, for selling milk which was deficient in the prescribed quantity of milk fat and solids, was upheld though the deficiency was due to a method of feeding which had been specially adopted in order to procure quantity irrespective of quality.⁵⁷

One of two consignments to a purchaser was not of the nature, etc., demanded, but the justices refused to convict as the milk had been sent as it came from the cows. They also stated in the special case: "At the time we delivered our judgment we did not refer specifically to the provisions of the Probation of Offenders Act, 1907,⁵⁸ or otherwise our determination would have been based upon the powers therein contained." It was held that the case must be remitted for a conviction, unless further evidence were called bearing upon the question whether the difference in the quantities of fat in the two consignments was consistent with ordinary milking.⁵⁹

These cases were considered in 1916 by the full Divisional Court,⁶⁰ in a case in which the poor quality of the milk was accounted for by the watery condition of the herbage on which the cows had been feeding and the absence of steps to counteract this, and the conviction was quashed.⁶¹ It is to be noticed that in his dissenting judgment, Bray, J., said that customers suffered equally whether the quality of the milk had been reduced in that way or by adding water; and that Scrutton, J., who also dissented, considered that the absence of alteration or abstraction was immaterial if the customer had not been given the quality demanded.

This case was followed where the cow had had a calf and the defendant had left milk in the cow for the calf and the milk in question was deficient, though the court unanimously suggested legislation to prevent farmers retaining the better quality and leaving the inferior to the public.⁶² It was even followed where

(51) *Lane v. Collins* (1884), L. R. 14 Q. B. D. 193; 54 L. J. M. C. 76; 52 L. T. 257; 49 J. P. 89.

(52) *Petchey v. Taylor*, *post*, p. 973 (39).

(53) *Herrington v. Slater* (1920), 90 L. J. K. B. 265; 124 L. T. 272; 85 J. P. 83; 18 L. G. R. 840. *Lane's Case*, *supra* (51) distinguished.

(54) *Smithies v. Bridge*, L. R. 1902, 2 K. B. 13; 71 L. J. K. B. 555; 87 L. T. 167; 66 J. P. 740.

(55) *Wolfenden v. McCulloch* (1905), 69 J. P. 228; 3 L. G. R. 561.

(56) *O'Driscoll v. Dolan* (1910), 45 Ir. L. T. 144; 2 Glen's Loc. Gov. Case Law 96.

(57) *Scott v. Jack*, 1912 S. C. (J.) 87; 49

Sc. L. R. 989; 3 Glen's Loc. Gov. Case Law 52.

(58) See s. 1, *ante*, p. 657, and cases there cited. See also *Banks' Case*, *post*, p. 968 (83).

(59) *Marshall v. Skett* (1912, K. B. D.), 108 L. T. 1001; 77 J. P. 173; 11 L. G. R. 259.

(60) *Darling, Lawrence, and Ivory, JJ., Bray and Scrutton, JJ., dissenting.*

(61) *Hunt v. Richardson*, L. R. 1916, 2 K. B. 446; 85 L. J. K. B. 1360; 115 L. T. 114; 80 J. P. 305; 14 L. G. R. 854. Followed in *Few's Case*, *post*, p. 968 (78).

(62) *Grigg v. Smith* (1917) 87 L. J. K. B. 488; 117 L. T. 477; 82 J. P. 2; 15 L. G. R. 769. As to such legislation, see opposite marginal note "Tuberculous milk," *post*, p. 967.

the stipendiary magistrate had found that the milk was of "unmerchantable quality" by reason of the exceptionally poor pasture and the absence of any supplementary meal or foodstuff.⁶³

This defence has, however, been successfully circumvented in the following cases: It was held not to have been established merely by the evidence of a chemist that milk of the quality shown by the analysis might quite well have come straight from the cow, because the presumption set up by the Regulations of 1901 must be rebutted by definite evidence that nothing has been added to the milk or abstracted from it.⁶⁴ It also failed where the justices were not satisfied that the evidence of non-interference covered the whole period between milking and sale.⁶⁵ It may be displaced by evidence of the defective nature of milk taken after that on which the milk in question was taken, provided (1) that the milk subsequently taken was taken from the same cow (or from the same herd, if the first milk had been mixed); (2) that such milk was taken from the same milking (morning or evening); (3) that the milking was done in the same way (*e.g.*, that the cow was drained) and by equally experienced persons; and (4) that such milk was better than the first milk.⁶⁶ The period that had elapsed in that case was one day, but it was afterwards held that, if these conditions are all fulfilled, the subsequent milking need not be on the day after, and three days after was held not too late.⁶⁷ Where the deficiency was proved to have been due to the failure of the defendant's servant to carry out his instructions to mix the contents of three cans, and to the fact that the cans had been standing so long that the cream had risen to the top and the sample had been taken from the tap at the bottom, proof that the milk had not been tampered with was held to be no defence.⁶⁸

Having regard to these cases, local authorities were at one time advised not to take proceedings unless they had made several tests and these had shown "repeated default."⁶⁹

Sect. 5 of the Milk and Dairies Act, 1915,⁷⁰ when in force, will prevent the sale of tuberculous milk though it is sold as it comes from the cow, if the vendor either "knew or could by the exercise of reasonable care have ascertained that the cow was suffering from that disease."

Where milk was sold as it came from the cow, except that it contained, according to the analyst's certificate, "foreign ingredients consisting of a considerable quantity of dirty debris, partly organic, which is likely to affect the sample detrimentally as an article of food," the dismissal of the summons was upheld because the analyst admitted under cross-examination that "the quantity of debris in the sample was so small that it was impossible to weigh or measure it in terms which would be comprehensible to the ordinary lay individual."⁷¹

Having regard to the defence afforded by sub-sect. (4) of the present section, a vendor of caper tea, in which 3.5 per cent. of mineral matter was present owing to the method of production, was held to be protected.⁷²

In proceedings for the sale of lardine (a substitute for lard) not of the nature, substance, and quality demanded, the analyst stated that the sample contained 25 per cent. of water, and that out of thirty-three other samples of lard substitutes recently analysed by him only five contained water. The justices dismissed the summons on the ground that, there being no statutory standard for lardine, they were not justified in holding that it may not contain any water at all or in fixing any standard of adulteration. The case was remitted for the justices to determine whether the sample in question had or had not been "adulterated," Lord Alverstone, C.J., saying that the justices "ought to have asked themselves whether 25 per cent. of water was adulteration or not."⁷³

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Milk as from
cow—*cont.*Tuberculous
milk.

Dirty milk.

Extraneous
matter.Absence of
standard.

(63) *Williams v. Rees* (1917), 87 L. J. K. B. 639; 118 L. T. 356; 82 J. P. 97; 16 L. G. R. 159.

(64) *Kings v. Merris*, L. R. 1920, 3 K. B. 566; 90 L. J. K. B. 161; 124 L. T. 150; 85 J. P. 68; 18 L. G. R. 775.

(65) *Bowen v. Jones* (1917), 86 L. J. K. B. 802; 117 L. T. 125; 81 J. P. 178; 15 L. G. R. 517.

(66) *Wilkinson v. Clark*, L. R. 1916, 2 K. B. 636; 85 L. J. K. B. 1641; 115 L. T. 385; 80 J. P. 334; 14 L. G. R. 849.

(67) *Smith v. Phillpott*, L. R. 1920, 1 K. B. 222; 89 L. J. K. B. 296; 122 L. T. 273; 84 J. P. 5; 17 L. G. R. 781.

(68) *Penrice v. Brander*, 1921 S. C. (J.) 63; 58 Sc. L. R. 307.

(69) See M. H. Circular, July 17, 1922, 20 L. G. R. (Orders) 147, afterwards withdrawn, see M. H. Circular, May 16, 1923, 21 L. G. R. (Orders) 78.

(70) *Post*, p. 1026.

(71) *Kenny v. Cox* (1920), 89 L. J. K. B. 1258; 124 L. T. 221; 85 J. P. 70; 18 L. G. R. 844.

(72) *Shortt v. Robinson* (1899), 68 L. J. Q. B. 352; 80 L. T. 261; 63 J. P. 295. See also *Warnock's Case*, *post*, p. 968 (80).

(73) *Rudd v. Skelton Co-op. Soc.* (1911, K. B. D.), 104 L. T. 919; 75 J. P. 326; 22 Cox C. C. 469. See also *Roberts' Case*, *post*, p. 998 (10). But see *Wisden's Case*, *post*, p. 969 (91).

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Relevance of price charged.

Where it was established that for twenty years Indian refined meal had been sold in Ireland for human food, and that users preferred it to the more nutritious and expensive unrefined meal, which did not keep so long and was used for cattle food, it was held that no offence had been committed under the present section though, unknown to the purchaser, the substance was deficient in natural oil 62 per cent., there being no standard other than the established practice of the manufacturers, and the price paid being that ordinarily taken for the meal in question.⁷⁴ *Per* Gibson, J., by way of comparison, "wholemeal bread is a more valuable food than bakers' white bread, but fashion and taste have established the latter."

In a Scottish case,⁷⁵ the sale of an inferior quality of cream at a low price was held no offence. But in England the fact that a pint of milk was sold for a penny was held to be no defence, the milk being sold as new milk, and in fact being skimmed.⁷⁶

A contracted to sell milk to B at a price to be fixed according to the richness in fats of the milk delivered. An inspector took some samples from C, the carrier employed to convey the milk to B, and found it watered. It was held that, as the milk about to be delivered was not pure milk, but milk and water, B was in law "prejudiced," though under the terms of the contract he would not have had to pay a full price.⁷⁷

But breach of a contract to sell milk "containing not less than 3.5 per cent. by weight of milk fat" was held not to be an offence under the present section, as the milk was as it had come from the cow.⁷⁸

Justices' personal knowledge.

The justices are not bound to discard their own special knowledge of the subject matter of a complaint under the present section, though they would be wrong in refusing to hear evidence in contradiction of the analyst's certificate.⁷⁹

Extraneous Matter.

Added water.

The Court of Justiciary in Scotland quashed a conviction on the ground that, as the only charge was that of selling butter-milk with a certain quantity of added water, and it had been proved that the addition of some water was necessary in the process of manufacture, the case fell under the exception in sub-sect. (4).⁸⁰ But the Divisional Court upheld a conviction under the present section for selling margarine which, according to the evidence of the analyst, contained 5 per cent. more water than the maximum amount which margarine should contain.⁸¹ Where justices omitted to state whether they believed that water had been unavoidably mixed with butter in the course of its preparation and to make it fit for carriage, the case was sent back for them to find these facts definitely.⁸²

Where an analyst certified that 10 per cent. of water had been added to certain milk, but that the milk was exceptionally good, the court held that if it was exceptionally good after the addition, the justices might have considered the offence too trifling to convict, but not otherwise.⁸³

Blended butter.

Selling as "butter," butter to which milk had been added was held to constitute an offence under the present section.⁸⁴ This case was distinguished in one in which the same firm sold only such "blended butter" at a particular shop, in which a notice to that effect was posted, and the purchaser asked for a half-pound of "shilling butter."⁸⁵ The addition to butter of "salt or other preservative," and "colouring matter," does not prevent it being "butter," see sect. 3 of the Margarine Act, 1887.⁸⁶ Further as to butter, see that Act and the Butter and Margarine Act, 1907.⁸⁷

(74) *Hughes v. Traynor*, 1916 Ir. K. B. 275.

(75) *Morton v. Green* (1881), 8 S. C. (J.) (4th series) 36. But see *Keenan v. Costelloe*, *infra* (77).

(76) *Heywood v. Whitehead* (1898), 76 L. T. 781; 18 Cox C. C. 615.

(77) *Keenan v. Costelloe* (1910, K. B. D., I.), 44 Ir. L. T. 218; 1 Glen's Loc. Gov. Case Law 39. Cf. *Grivell's Case*, *ante*, p. 965 (48), and see also *Fecitt's Case*, *post*, p. 995 (12).

(78) *Few v. Robinson*, L. R. 1921, 3 K. B. 504; 91 L. J. K. B. 42; 126 L. T. 94; 85 J. P. 257; 19 L. G. R. 708. But see *Belfast Guardians v. Jones*, 1916 Ir. K. B. 269.

(79) *Reg. v. Field* (1895) 64 L. J. M. C. 158.

(80) *Warnock v. Johnstone* (1881), 8 S. C.

(J.) (4th series) 55. See also *Shortt's Case*, *ante*, p. 967 (72).

(81) *Burton & Sons v. Mattinson* (1902), 86 L. T. 770; 66 J. P. 628.

(82) *Bosomworth v. Bridge* (1892), 36 Sol. J. 594. See also *Goulder's Case*, *post*, p. 969 (93).

(83) *Banks v. Wooler* (1900), 81 L. T. 785; 64 J. P. 245.

(84) *Pearks, Ltd. v. Knight*, L. R. 1901, 2 K. B. 825; 70 L. J. K. B. 1002; 85 L. T. 379; 65 J. P. 822; 20 Cox C. C. 46.

(85) *Pearks, Ltd. v. Houghton*, L. R. 1902, 1 K. B. 889; 71 L. J. K. B. 385; 86 L. T. 325; 66 J. P. 422. See also *post*, p. 972 (22) (25), as to this case.

(86) *Post*, p. 998.

(87) *Post*, p. 1016.

The court held that the magistrates were justified in dismissing a summons under the present section for selling preserved peas, coloured by sulphate of copper in a quantity found by them insufficient to render the peas injurious to health, there being evidence before them that preserved peas were habitually sold with the addition of such colouring matter.⁸⁸

As to the dilution of spirits, see the Note to the repealed sect. 6 of the Act of 1879.⁸⁹

Where the justices had found that salt added to certain beer was not injurious to health, that it had been added in the preparation of the beer as an article of commerce, and that it was not used fraudulently, the court sent the special case stated by them back for them to find whether the quantity of salt added was such as to affect "the nature, quality, or substance" of the beer, and whether it was such as to prejudice the consumer.⁹⁰

A conviction for selling, as "pure orange marmalade," marmalade containing 13 per cent. of starch glucose, was quashed on the ground that there was no standard for marmalade, and that starch glucose was not injurious, and was frequently used in marmalade, and that the sale was therefore not contrary to the present section.⁹¹

The Court of Justiciary in Scotland, on the other hand, held, with reference to the present section, that where there was no statutory standard for the article sold, the court must itself fix a standard based upon the evidence before it.⁹²

As to the recovery of penalties, see sect. 20 and Note.

Vendor's Knowledge.

An offence may be committed under the present section, although the vendor does not know that the article is adulterated, the word "knowingly" being intentionally omitted from the section.⁹³ As to the necessity for *mens rea* under other provisions of these Acts, see the case cited below.⁹⁴

Authority to Prosecute.

An inspector purchased some watered whisky and duly laid information for selling this to the prejudice of the purchaser. He entered the witness box and said, in answer to a question by the chairman of the justices as to his name: "Alexander Ross, an inspector under the Food and Drugs Act." He then gave his evidence and was not cross-examined as to his appointment as inspector. No further evidence was called for the prosecution. The defendant then contended that the inspector's appointment had not been proved, and that this was essential and could not be done after the close of the case for the prosecution. The justices dismissed the summons, an application for an adjournment for the production of the appointment being opposed. It was held that presumptive evidence of the inspector's appointment was afforded by the above answer to the chairman, and that, as this had not been challenged by cross-examination, there was evidence upon which the justices could convict, but *semble* (*per* Channell and Ivory, JJ.), even if there had been no such presumptive evidence, this was immaterial, as proof of appointment was unnecessary. The case was accordingly remitted to be heard and determined.⁹⁵ See also the Note to sect. 13.

In the case last cited, a decision that an inspector may not act outside his district was distinguished.⁹⁶

Further as to such action, see sect. 8 (3) (4) of the Act of 1915.^{96a}

Sunday Trading.

The Sunday Observance Act, 1677, ⁹⁷ provides that "no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly

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Colouring
matter.

Dilution of
spirits.
Salt.

Glucose.

Standard.

Penalties.

Proof of
appointment.

Action outside
district.

Sale of milk
on Sunday.

(88) *Friend v. Mapp* (1904), 68 J. P. 589; 2 L. G. R. 1317; see also *Hull v. Horsnell*, ante, p. 960 (14). See also *Summers v. Grist* (1896, S. London Q. S.), 60 J. P. 346.

(89) *Post*, p. 996.

(90) *Thorney v. Shoot*, 1893 Loc. Gov. Chron. 642.

(91) *Smith v. Wisden* (1901), 85 L. T. 760; 66 J. P. 150. See also *Wilson v. McCutcheon* (1902), 40 Sc. L. R. 31; 4 Adam. 34.

(92) *Wilson and M'Phee v. Wilson* (1903, Sc. J.), 68 J. P. 175. See also *Rudd's Case*, ante, p. 967 (73).

(93) *Betts v. Armstead* (1888), L. R. 20 Q. B. D. 771; 57 L. J. M. C. 100; 58 L. T. 811; 52 J. P. 471; 16 Cox C. C. 418. *Goulden v. Rook*; *Bent v. Ormerod*, L. R. 1901, 2

K. B. 290; 70 L. J. K. B. 747; 84 L. T. 719; 65 J. P. 646.

(94) *Per* Gibson, J., in *Taylor's Case*, post, p. 1010 (38).

(95) *Ross v. Helm* (1912), 77 J. P. 13; 11 L. G. R. 36. See also as to this case, and others on the same subject, ante, pp. 230, 231; and *Hale's Case*, post, p. 976 (19). As to the meaning of "party aggrieved," see ante, pp. 661, 662.

(96) *McNair v. Cave*, post, p. 996 (22). See also *Reg. v. Smith*, post, p. 975 (13).

(96a) *Post*, p. 1027.

(97) 29 Car. II. c. 7, ss. 1, 3. For other decisions on Sunday Observance Acts, see ante, pp. 197 (25), 223 (3), xiv. (for p. 534).

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Sale of milk
on Sunday—
continued.

labour, business or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted)"; and that "no person or persons whatsoever shall publicly cry, shew forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels whatsoever upon the Lord's Day, or any part thereof"; but there is a proviso that "nothing in this Act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks shops or victualling houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon." Justices held that, as adulterated milk had been sold at 10 a.m. on a Sunday, no offence under the present section had been committed because the sale was invalid as between vendor and purchaser, but the case was sent back to be dealt with.⁹⁸ *Per* Bray, J.: "The transaction had a clear operation, for it passed the property from the milk seller to the appellant himself, so there was a sale to the prejudice of the purchaser. It has been argued that the appellant, being a party to the proceedings, could not rely on the unlawful act to which he was privy. But the appellant was not a party to the proceedings. It was the Crown who prosecuted and instituted the proceedings, and the Crown cannot be affected by any act of the appellant." *Per* Lawrence, J.: "The vendor of this milk cannot take advantage of his own wrong. The Sale of Food and Drugs Acts would become illusory if it were held that because of the infringement of the Sunday Observance Act they were to have no operation; and that a milk seller could sell adulterated milk on Sundays with impunity."

Provision for
the sale of com-
pounded articles
of food and com-
pound drugs.

Sect. 7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Note.

**Compounded
drug.**

On an appeal by special case against the refusal of justices to convict a person for selling as "arsenical soap," soap which contained no arsenic, it was held that the summons should have been taken out under the present section and not under sect. 6, because "arsenical soap" was not a simple but a compounded drug. Wright, J., said that it was no defence that the article, being in fact free from arsenic, was not a drug at all.⁴

But where justices dismissed a summons under sect. 6 against a person alleged to have sold camphorated oil deficient in camphor, on the ground that as the drug was compounded the summons ought to have been taken out under the present section, the court allowed an appeal against their decision, Channell, J., suggesting that sub-sect. 3, of sect. 6 had been left in the Act by an oversight, and had no operation, as the Act does not in the present section or elsewhere define "compounded drug" or refer to the manner of compounding a drug.⁵

And in a subsequent case where a person, having asked for "mercury ointment," was supplied with an ointment containing a less proportion of mercury than that mentioned in the British Pharmacopœia, it was held that he was rightly convicted under sect. 6, although the British Pharmacopœia was not mentioned at the sale, and although the drug was "compounded."⁶

It is, however, open to the defendant to show by evidence that there is a commercial standard for a drug different from that prescribed by the British Pharmacopœia.⁷

See also sects. 4 and 5 of the present Act as to compounded drugs.

Protection from
offences by
giving of label.

Sect. 8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a

(98) *Elder v. Kelly*, L. R. 1919, 2 K. B. 179; 88 L. J. K. B. 1253; 121 L. T. 94; 83 J. P. 166; 17 L. G. R. 413; 26 Cox C. C. 406.

(4) *Houghton v. Taplin* (1897), 13 T. L. R. 386; Loc. Gov. Chron. 521.

(5) *Beardsley v. Walton & Co.*, L. R. 1900, 2 Q. B. 1; 69 L. J. Q. B. 344; 82

L. T. 119; 64 J. P. 436.

(6) *Dickins v. Randerson*, L. R. 1901, 1 Q. B. 437; 70 L. J. K. B. 344; 84 L. T. 204; 65 J. P. 262. See also *White's Case*, ante, p. 965 (46).

(7) *Boots, Ltd. v. Cowling* (1903), 88 L. T. 539; 67 J. P. 195; 1 L. G. R. 884; 20 Cox C. C. 420.

notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed. **Sect. 8.**

Note.

The present section was held to have no application to a case in which paregoric was demanded, and "paregoric substitute," a different article, was supplied.⁸

Although the present section provides a mode of giving notice to the purchaser which is a sufficient protection to the vendor, it is not intended that whenever the mode prescribed is not adopted there shall necessarily be an offence against sect. 6.⁹

Where a placard as to "butterine" was usually placed in the defendant's window, but on the day of the sale in question had been removed while the window was being cleaned, he was convicted; and on appeal to quarter sessions the conviction was affirmed, without costs.¹⁰ And where a notice was posted in the bar and in the kitchen of a public-house that "all spirits sold were diluted," and the purchaser, without entering either of those rooms, went into another public room in which there was no such notice and there called for whisky, which was found to be diluted with 16 per cent. of added water, it was held that the magistrates, who had dismissed a summons under sect. 6, ought to have inquired before deciding whether the purchaser knew that the practice at the house was to sell only diluted spirits.¹¹

But placing a notice in a conspicuous place, in the room on a licensed victualler's premises in which rum was sold, that "all spirits sold at this establishment are diluted in accordance with the new excise regulations," was held not to afford by itself a sufficient protection to the seller where the rum was diluted below the extent permitted by the Act of 1879.¹²

A farmer told the inspector that a certain can contained new milk, but on the inspector getting his bottles for taking samples, and demanding a pint, he said that it was old milk, and supplied a pint for one penny. It was held that the vendor could not be convicted for selling milk not of the quality demanded, as the inspector at the time knew that it was old milk, and the milk sold was what was demanded.¹³

A conviction was quashed on the ground of a variance between the information and the evidence, the former alleging a sale to the prejudice of the purchaser of "an article of food, to wit, coffee," which was not of the nature, substance, and quality of the article demanded; while the evidence showed that the vendor, on "coffee" being demanded, said that he had none, whereupon the purchaser inquired what was in certain tins, and being told that they contained a mixture of coffee and chicory (which also appeared from labels on the tins) said that he would take some of them, and purchased some accordingly.¹⁴

The defendant being short of milk bought some from another dairyman. An inspector asked him for some sweet milk and, though the defendant wanted to supply him from his own milk, insisted on being supplied from the other. The defendant warned him that he did not know whether this was sweet or not. It was not. The acquittal was affirmed.¹⁵

The label is not to be deemed to be distinctly and legibly written or printed if the notice of mixture is obscured by other matter on the label; but this is not to hinder the use of registered trade marks, or of labels continuously used since 1892.¹⁶

The use of words at the end of the present section, "to the effect that the same is mixed," makes it unnecessary to state the exact nature or extent of the mixture. Under sect. 3 of the repealed Act of 1872,¹⁷ when the words were "declaring such admixture," it was held that a label on a canister, "Warranted free from injurious admixture, but not sold as pure mustard," was sufficient.¹⁸

Supply of different article.

Notice of mixture.

Label.

(8) *Bundy v. Lewis*, ante, p. 963 (22).

(9) *Sandys v. Small*, ante, p. 963 (21); *Palmer v. Tyler* (1897), 61 J. P. 389.

(10) *Wadd v. Brayly* (1887, Leicester Q. S.), 51 J. P. 423.

(11) *Morris v. Johnson* (1890), 54 J. P. 612.

(12) See Note to repealed s. 6, post, p. 996; and *Morris v. Askew* (1893), 57 J. P. 724 (short note); *Times*, Nov. 13.

(13) *Kirk v. Coates* (1885), L. R. 16 Q. B. D. 49; 55 L. J. M. C. 182; 54 L. T.

178; 50 J. P. 148. See also *Dearden's Case*, post, p. 973 (36).

(14) *Higgins v. Hall* (1886), 51 J. P. 293.

(15) *Frew v. Gunning* (1901, Sc. J.), 38 Sc. L. R. 555; 3 Fraser 51; 3 Adam 339.

(16) See Act of 1899, s. 12, post.

(17) 35 & 36 Vict. c. 74, s. 3.

(18) *Pope v. Tearle* (1874), L. R. 9 C. P. 499; 43 L. J. M. C. 129; 30 L. T. 789; 37 J. P. 485. But see the *Star Tea Co. Case*, post, p. 973 (28).

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Label—cont.

The mere giving of notice of the mixture to the purchaser may not protect the vendor where the mixture is made fraudulently. Thus, R went into L's shop and asked for half a pound of coffee, for which he was charged ninepence, being the price of pure coffee; when the coffee was put up in a parcel and lying on the counter, and after payment, R said he bought it for analysis, whereupon L pointed out on a label outside the parcel the words, "this is a mixture of coffee and chicory." On analysis the coffee was only 60 per cent., and the justices found that the chicory was used fraudulently to increase the bulk, and convicted L. It was held that the justices on such a finding of fact as to fraud were right.¹⁹ In another case, a customer went into a shop and asked for a quarter of a pound of coffee. While it was being weighed out, the dealer pointed out that the coffee was mixed with chicory, and the label on the outside so stated. The price paid was one shilling and fourpence per pound, and on analysis it contained only 15 per cent. of pure coffee. The dealer sold it exactly as it came from the manufacturer; and it was held that the magistrate was bound, notwithstanding the label, to find whether the chicory was used fraudulently to increase the bulk, and that if he did so find he ought to convict.²⁰

But where magistrates considered that a mixture, known as "French coffee" and in common commercial use, had had its bulk fraudulently increased, because it contained 60 per cent. of chicory, and that the wording of the label "mixed with chicory" might induce a purchaser to think that he was buying a mixture with a stronger proportion of coffee, and convicted the defendant, the court quashed the conviction on the ground that there was no evidence of fraud.²¹

And where the court came to the conclusion that "blended butter" was not sold to the prejudice of the purchaser, by reason of a notice which was found by the justices to have been visible to every one going into the shop, a further finding that an excess of water found in the butter had been added fraudulently to increase its bulk and weight, was held to be immaterial.²²

But a vendor was held to have been rightly convicted where the purchaser had asked for cheese, pointing at the same time to an article compounded of skimmed milk and foreign fat, and labelled "Valleyfield finest oleine cheese" (the words "finest oleine" being in smaller type than the other words), and had received some of it without a label, and without his attention having been called to the label on the article on the counter.²³

A label on the tin containing the article sold (cocoa) was held to be sufficient, although the tin was delivered to the purchaser wrapped in opaque paper.²⁴ But Lord Alverstone, C.J., distinguished this in a case in which butter was delivered to the purchaser with a statement printed on an inner wrapper and covered by a plain paper wrapper, on the ground that it was assumed to be a matter of common knowledge that tins had labels on them, but that the purchaser of a pound of butter could not be taken to have notice that there was another label inside the outside wrapper.²⁵ In another case relating to the "blended butter" of the same firm, decided shortly afterwards, in which the justices had dismissed a summons against agents of the firm on the ground that, although the purchaser asked for best fresh butter, and was supplied with that which was not pure butter, the vendors were protected by the notice hung up in the shop, and by the article being wrapped in a printed notice disclosing the fact that such article was a mixture, the court upheld their decision, as it did not appear that the notice was so put round the article that it could not be seen, or that it was covered with another paper.²⁶

The words "not guaranteed 3 per cent." embossed on a can were held not to protect a seller of milk with 2.63 per cent. of fat when the purchaser asked for "sweet milk."²⁷

Per Lord Alverstone, C.J. : "The question of the sufficiency of the notice is one to be decided on the particular facts of each case;" and a conviction for selling coffee mixed with chicory, when coffee was demanded, was therefore upheld in a case in which the justices had found as a fact that no notice was given to the purchaser of the nature of the article supplied prior to the sale to him, and that

(19) *Liddiard v. Reece* (1878), 44 J. P. 233.

(20) *Horder v. Meddings* (1880), 44 J. P. 234. But see *Pearks, Ld. v. Houghton*, *infra* (22).

(21) *Otter v. Edgley* (1893), 57 J. P. 457.

(22) *Pearks, Ld. v. Houghton*, L. R. 1902, K. B. 889; 71 L. J. K. B. 385; 86 L. T. 325; 50 W. R. 605; 66 J. P. 442.

(23) *Collett v. Walker* (1895), 59 J. P. 600.

(24) *Jones v. Jones* (1894), 58 J. P. 653.

(25) *Pearks, Ld. v. Houghton*, *supra*.

(26) *Hayes v. Rule* (1902), 87 L. T. 133; 66 J. P. 661; 20 Cox C. C. 342; 18 T. L. R. 535.

(27) *Souter v. Lean* (1903, Sc. J.), 41 Sc. L. R. 192; 6 Fraser 20; 4 Adam 280.

a printed statement on the top and another on the side of the wrapper containing the words "coffee mixture" and "sold as a mixture of coffee and chicory" were not brought to his notice until the mixture was supplied.²⁸

A purchaser asked for cream. The vendor, in a position unintentionally concealed from the purchaser, poured, from a can labelled "preserved cream containing boric acid not exceeding 0.5 per cent.," into a small jar similarly labelled, cream containing 0.214 per cent. of boric acid, and then, in a similar position, placed an opaque paper bag over the jar, and then handed it to the purchaser. It was held (Rowlatt, J., doubting) that the magistrate had properly declined to treat the label as a good defence.²⁹ *Per* Avory, J. : ³⁰ "There must be brought to the mind of the purchaser the fact that there is a label on the article . . . If the fact that there was a label had been brought to his mind, I agree that the seller would not be bound to go further and prove that the person receiving the article actually read the label." *Per* Shearman, J. : ³¹ "Such a decision is in line with the scheme of the Act, which is designed to ensure that the buyer shall get what he asks for and that if the seller wishes to supply something different he must inform the purchaser of his intention before the goods are delivered."

But there is no duty upon the vendor to call the attention of the purchaser to the label, and wrapping up several purchases in one paper parcel, so that the label on a tin of coffee stating that it was a mixture of coffee and chicory escapes the purchaser's notice, does not prevent the vendor relying upon the label as a defence under the present section.³² See also the cases cited in the Note to sect. 6 of the Margarine Act, 1887. ³³

As to "false labels," see sect. 27 of the present Act.

Sect. 9. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

Note.

A conviction under the present section was upheld in a case where milk was sold from a large vessel, and in consequence of the milk not being stirred, the first customers had had the cream, while those who purchased later had a deficiency of 33 per cent. of fatty matter. And it was laid down that the words "so altered" had reference to a physical alteration, irrespective of the intent with which the alteration was made.³⁴

A person who mixes the milk of those of his cows that give milk of an inferior quality with that of his other cows, does not "abstract" from the milk within the meaning of the present section.³⁵ And a person who adds water to milk does not "abstract" the fat,³⁶ but see now sect. 4 of the Act of 1922.^{36a}

As to what raises the presumption that abstraction has taken place in the case of milk, see the Regulations cited in the Note to sect. 4 of the Act of 1899.³⁷

The words "this tin contains skimmed milk" in small type on the label of a tin of condensed milk, constituted a sufficient disclosure within the meaning of the present section of the fact that the milk before condensation was skimmed; ³⁸ but the description of milk from which 97 per cent. of the fat had been abstracted by means of a separator as "skimmed milk" was not a sufficient disclosure of the alteration, it appearing that not more than 63 per cent. would be abstracted by skimming in the ordinary sense.³⁹ But a notice that the vendors were unable to guarantee the milk sold by them as new, pure, or with all its cream, and that they did not sell it as such, was held to be a sufficient "disclosure of the alteration"

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Label—cont.

False label.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

Alteration of article.

Disclosure of alteration.

(28) *Star Tea Co. v. Neale* (1909, K. B. D.), 73 J. P. 511; 8 L. G. R. 5.

(29) *Batchelour v. Gee*, L. R. 1914, 3 K. B. 242; 83 L. J. K. B. 1714; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; *Jones v. Jones*, ante, p. 972 (24), not followed; *Pearks, Ltd. v. Houghton*, ante, p. 972 (22), followed.

(30) L. R. 1914, 3 K. B. at pp. 246, 247.

(31) *Ibid.* at p. 251.

(32) *Clifford v. Batley* (1914, Darling, Banks, Lush, and Atkin, JJ., Avory, J., dissenting), L. R. 1915, 1 K. B. 531; 84 L. J. K. B. 615; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505. *Jones v. Jones*, ante, p. 972 (24), followed; *Batchelour v. Gee*, supra (29), not followed.

(33) *Post*, p. 999.

(34) *Dyke v. Gower*, L. R. 1892, 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. 760; 56 J. P. 168; 17 Cox C. C. 421; followed in *Morris' Case*, post, p. 974 (42).

(35) *Morgan v. Auger* (1902), Loc. Gov. Chron. 409.

(36) *Dearden v. Whiteley* (1916), 85 L. J. K. B. 1420; 114 L. T. 702; 80 J. P. 215; 14 L. G. R. 502.

(36a) *Post*, p. 1038.

(37) *Post*, p. 1006.

(38) *Jones v. Davies* (1893), 69 L. T. 497; 57 J. P. 808; followed in *Platt v. Tyler* (1894), 58 J. P. 71.

(39) *Petchey v. Taylor* (1898), 78 L. T. 501; 62 J. P. 360; 19 Cox C. C. 38.

Sect. 9, n.**Burden of proof.****Special contract.****Vendor's knowledge.**

(abstraction of cream) within the present section. It was further held not to be necessary to prove *mens rea* on the part of the vendor.⁴⁰

In the case last cited,⁴⁰ Lord Russell, C.J., said: "Possibly the *onus* lies upon the defendants to show that they have made a sufficient disclosure," later adding "it may well be that the burden of proving non-disclosure lies upon the prosecution as part of the definition of the offence." As to "mixtures," see sect. 24.

A contract as to quality does not afford a defence to proceedings under the present section.⁴¹

A retail dealer had sold milk from which nearly all the fat had been abstracted; and it was held that he ought to have been convicted under the latter part of the present section, although he had no knowledge of the alteration of the milk.⁴²

APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

Appointment of analysts.

Sect. 10. In the city of London and the liberties thereof the [common council¹] of the city of London and the liberties thereof, and in all other parts of the metropolis the [metropolitan borough councils²] acting in execution of the Act for the better local management of the metropolis, the [council³] of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the [Minister of Health⁴], shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the [Minister of Health⁴], who may require satisfactory proof of competency to be supplied to [him], and may give [his] approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place. . . .^{4a}

Note.**Duty of local authority.**

As to the duty of local authorities to appoint analysts and otherwise put in force their powers under the Sale of Food and Drugs Acts as occasion may arise, and as to the powers of the Ministers of Health and Agriculture to execute the Acts on their default, see sect. 3 of the Act of 1899,⁵ sect. 13 of the Act of 1915,⁶ and sect. 11 of the Act of 1922.⁷

Appointment of analysts.

In addition to the transfer referred to in the footnotes to the present section, the appointment of analysts in the case of every borough which had a population of less than ten thousand, according to the census of 1881, was transferred to the county council by the Local Government Act, 1888.⁸

The Local Government Board stated that there is no legal authority for the appointment of an assistant analyst, but that they had in some cases approved the appointment of an additional analyst to act during the illness or unavoidable absence of the analyst.

Competency.

As to proof of competency, see sect. 3 (5) of the Act of 1899, and the Note thereto.⁹

Town council of a borough may engage the analyst of another borough or of the county.

Sect. 11. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated,

(40) *Spiers and Pond v. Bennett*, L. R. 1896, 2 Q. B. 65; 65 L. J. M. C. 144; 74 L. T. 697; 60 J. P. 437.

(41) See *Fecitt's Case*, *post*, p. 995 (12).

(42) *Pain v. Boughtwood* (1890), L. R. 24 Q. B. D. 353; 59 L. J. M. C. 45; 62 L. T. 284; 54 J. P. 469; followed in *Morris v. Corbett* (1892), 56 J. P. 649, where a servant, being short of milk, purchased some from elsewhere and mixed it with his master's. See also *Brown v. Foot*, *ante*, p. 962 (9).

(1) Transferred from Commissioners of Sewers by City of London Sewers Act, 1897,

see *ante*, p. 5 (8).

(2) Transferred from vestries and district boards by London Government Act, 1899, s. 4.

(3) Transferred from quarter sessions by L. G. Act, 1888, s. 3 (x.), *post*, Vol. II., p. 1889.

As to fees and costs, see s. 3 (ix.), *ibid*.

(4) Or Welsh Bd. of H., see *post*, p. 1023.

(4a) Scotland and Ireland only.

(5) *Post*, p. 1005.

(6) *Post*, p. 1029.

(7) *Post*, p. 1041.

(8) See ss. 38, 39, *post*, Vol. II., pp. 1922, 1923.

(9) *Post*, p. 1005.

shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

Sect. 12. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

Note.

As to the procedure to be adopted by private purchasers, see the cases cited below.⁸

Where the county council are the authority to appoint the public analysts, the fees to be taken by the analysts are to be fixed by the council.⁹

Sects. 12 to 28 are applied by the Margarine Act, 1887,¹⁰ to the purchase and analysis of margarine or imitation butter.

Sect. 13. Any medical officer of health, [sanitary inspector], or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place, to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Note.

The Minister of Health and the Minister of Agriculture and Fisheries may direct officers of their own to take samples for analysis.¹¹ See also the powers of the Commissioners of Customs under the Act of 1899,¹² and sect. 30 of the present Act. Otherwise, inspectors and analysts can only proceed under the Act for the districts for which they are appointed. Where therefore certain milk was neither sold nor delivered within their respective districts, the inspector was not entitled to take a sample, nor the analyst to give his certificate.¹³

With regard to taking samples of articles in course of delivery, see sects. 3 and 4 of the Act of 1879,¹⁴ extended to other articles than milk by sect. 14 of the Act of 1899.¹⁵ When a sample is so taken, it is not necessary to comply with sect. 14 of the present Act.

An inspector appointed under the Act may employ a deputy to purchase articles for the purpose of analysis, and may properly institute proceedings under the Act against the seller of such articles if the result of the analysis discloses an offence against the Act, and though an ordinary purchaser may have been originally the person prejudiced. The deputy, moreover, need not himself deliver the sample to the analyst, but may hand it over to another person for the purpose of delivery.¹⁶

A purchase effected through a servant and not personally by the master is sufficient to enable proceedings to be taken by the master.¹⁷

S went with D to a shop where butter was sold, and sent into the shop D, who bought a pound of butter for a shilling. D came out and gave it to S, who within two minutes went inside and gave notice to the shopkeeper that he had bought it for analysis, and he then and there divided it into parts, etc. S laid the informa-

Sect. 11.

Power to purchaser of an article of food to have it analysed.

Private purchasers.

Analysts' fees.

Margarine.

Officer named to obtain a sample of food or drug to submit to analyst.

Analysis for Government departments.

Articles in course of delivery.

Purchase by deputy.

(8) *Post*, p. 976 (7).

(9) See L. G. Act, 1888, s. 3 (ix.), *post*, Vol. II., p. 1889.

(10) See s. 12, *post*, p. 1002.

(11) See Act of 1899, s. 2, *post*, p. 1004; Act of 1907, s. 2 (1), *post*, p. 1016; and Regulations of 1912, Art. VII., *post*, Part V., under heading "FOOD, Milk."

(12) See s. 1 (3), *post*, p. 1003.

(13) *Reg. v. Smith*, L. R. 1896, 1 Q. B. 596; 65 L. J. M. C. 104; 74 L. T. 348; 60 J. P. 372.

(14) *Post*, pp. 994, 996,

(15) *Post*, p. 1010.

(16) *Horder v. Scott* (1880), L. R. 5 Q. B. D. 552; 49 L. J. M. C. 78; 42 L. T. 660; 44 J. P. 520; followed in *Tyler's Case*, *post*, p. 994 (9), under the Act of 1879. See also *Macaulay v. Mackirdy* (1893, Sc. J.), 30 Sc. L. R. 607; 20 *Rettie* 58; 3 *White* 464; and *Massey v. Kelso* (1902, Sc. J.), 39 Sc. L. R. 645; 4 *Fraser* 73.

(17) *Garforth v. Esam* (1892), 56 J. P. 521. But see *Masterton's Case*, *post*, p. 991 (14).

Sect 13. n.

tion for selling butter not of the nature, etc., of butter. It was held that the purchaser of the article was S and not D, and that S properly gave the notice and laid the information.¹⁸

An officer who procures a sample under the present section and then prosecutes the vendor under sect. 6, need not, as a condition precedent to the prosecution, prove that he acted under the direction of the local authority.¹⁹

The local authority need not be one that is entitled to appoint analysts.²⁰

As to the method of taking samples, see the directions referred to below,²¹ and for special provisions as to the taking of samples of milk,²² and medicines prescribed by panel doctors,²³ see the Regulations referred to below.

For other powers of inspectors, see the Acts of 1879,²⁴ 1887,²⁵ 1907,²⁶ and 1915.²⁷

Provision for dealing with the sample when purchased.

Sect. 14. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall [*offer to*] divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, [*proceed accordingly, and shall*] deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

Note.

Amendment.

Milk deliveries.

Butter.

Private purchasers.

Refusal to sell.

Food Prices Order.

Notice to vendor.

The words in italics were repealed by the Act of 1899.³

Samples of milk in the course of delivery to the purchaser may be obtained by certain officers in pursuance of the Act of 1879,⁴ and where a sample is so taken it is not necessary to comply with the present section.⁵

The present section does not apply to proceedings under sects. 2 and 3 of the Butter and Margarine Act, 1907.⁶

Apparently the provisions of the present section do not apply to a case where the adulterated article was purchased by a private person for use as a food.⁷

Compliance with them is not a condition precedent to proceedings under sect. 17 for refusal to sell.⁸

Compliance was held to be a condition precedent to proceedings for contravention of the war time order as to spirits.⁹

The notification required by the present section is a condition precedent to a prosecution under the Act, even if the seller admits at the time that the article is adulterated,¹⁰ and a statement that the article has been purchased "for the purpose of analysis" without adding "by the public analyst," is insufficient.¹¹ But a statement that the article was to be "examined by the county analyst" was held sufficient, and in the same case it was said that no words are necessary at all if the seller in fact knows that the samples are being taken for an "official analysis."¹²

In a case in which the purchaser of an article notified his intention of having it analysed, and offered to divide it, and the vendor refused the offer, it was con-

(18) *Stace v. Smith* (1880), 45 J. P. 141.

(19) *Hale v. Cole* (1891), 55 J. P. 376. See also *Ross' Case*, ante, p. 969 (95); and *Connor's Case*, post, p. 979 (6).

(20) *Worthington v. Kyme* (1905), 93 L. T. 546; 69 J. P. 390; 3 L. G. R. 1098; 21 Cox C. C. 37.

(21) L. G. Bd. Circular, Feb. 26, 1894 (set out in "Bell's Sale of Food and Drugs Acts," 1922 ed., at p. 259; B. of Ag. Circulars, Dec. 28, 1901, July 13, 1903 (*ibid.*, at pp. 264-268).

(22) Milk and Cream Regulations, 1912, Art. VII., post, Vol. II., Part V., under heading "FOOD."

(23) Medical Benefit Regulations, 1920 (S. R. O. No. 301), Sched. III., 1 (9).

(24) See s. 3, post, p. 994.

(25) See ss. 8, 10, post, p. 1001.

(26) See s. 2 (2), post, p. 1017.

(27) See s. 8, post, p. 1027.

(3) See ss. 13, 27, and Sched., post, pp. 1010, 1015.

(4) See s. 3, post, p. 994.

(5) See *Rouch's Case*, post, p. 995 (10).

(6) *Monro v. Central Creamery Co.*, post, p. 1017 (11).

(7) See *Hotchin's Case*, post, p. 986 (19), and ante, p. 962 (7); *Buckler's Case*, post, p. 999 (25); and *Enniskillen Guardians v. Hilliard* (1884), 14 L. R. Ir. 214; in which *Parsons v. Birmingham Dairy Co.* (1882), L. R. 9 Q. B. D. 172; 51 L. J. M. C. 111; 46 J. P. 727; and *Harris' Case*, post, p. 994 (7) were not followed. But see *Rex (Barry) v. Mahony*, 1909, Ir. K. B. 490.

(8) See *Clarkin's Case*, post, p. 979 (8).

(9) *Auger v. Brown* (1919, K. B. D.), 89 L. J. K. B. 192; 122 L. T. 293; 84 J. P. 7; 17 L. G. R. 765.

(10) See *Smart's Case*, post, p. 1000 (6).

(11) *Barnes v. Chipp* (1878), L. R. 3 Ex. D. 176; 47 L. J. M. C. 85; 38 L. T. 570; 26 W. R. 635.

(12) *Wheeler v. Webb* (1887), 51 J. P. 661.

tended that the purchaser ought, in the words of the statute, to have offered to divide the article into three parts. But the court held that the time had not come to offer to divide it into three parts, as the vendor had refused the offer to divide it.¹² This decision, however, was given before the repeal of the words "offer to."

The word "forthwith" in the present section is not satisfied by a notification two days afterwards.¹³ But the object of the purchase was held to have been notified "forthwith" where an inspector under the Act sent a constable into an inn to buy gin, and two minutes after it was brought out went into the inn with the constable and told the innkeeper that it was bought for analysis.¹⁴

A consignment of twenty-two gallons of milk was delivered in three barrels, two of which contained eight gallons and one contained six. The two eight-gallon barrels and four gallons from the six-gallon barrel were poured into one dish, and the remaining two gallons into another dish. The inspector took samples from each dish, and the sample from the twenty gallons contained 3.05 of milk fats, while that from the two gallons only contained 2.8. It was held that the latter was not a fair sample.¹⁵

But the contrary was held in a later case. A consignment of forty-two gallons of milk was delivered in six barrels, five of which contained eight and one contained two gallons. Four of the eight-gallon barrels were poured separately into a ten-gallon dish, the largest available, and a sample was taken each time from the dish. The fifth eight-gallon barrel and the two-gallon barrel were poured into the dish together, and a sample taken from the mixture. Each of the five samples so taken was divided properly, but they were never mixed together. On analysis the samples were found to contain respectively the following percentages in milk fats: 3.15, 2.27, 2.54, 3.00, and 2.65. The analyst took the average and certified that the samples were 28 per cent. below standard. It was contended that, as the samples had not been mixed before division, the conviction was bad. It was held that the method adopted was fair and proper, having regard to the size of the consignment.¹⁶

A notice under the present section was given to two persons who were not in the shop at the time of the sale. It was contended that, as the notice must be given "to the seller or his agent *selling the article*," and the actual seller was not in the shop when the notice was given, the conviction should be quashed. But it was held that, as the notice had been given to "an agent" of the seller, it had in law been given to the seller himself.¹⁷ A railway porter at the station to which milk had been sent, was, however, held not to be the seller's "agent" for this purpose.¹⁸

Where a sample of milk was taken without previously stirring the contents of the vessel, the summons was held to have been rightly dismissed on that ground and also on the ground that the offence was "trivial."¹⁹

Handing two, out of six bottles of oil which had been purchased, to the vendor, giving two to the analyst, and retaining two, is not dividing the article into three parts as directed by the present section.²⁰ This case was distinguished in one in which the purchaser having asked for cream of tartar, was supplied with four similar packets, and then mixed the contents of the packets together before dividing them into three parts for analysis.²¹

The three portions, into which the article is divided, need not be exactly equal; but each must be sufficient to enable an independent analysis of it to be made.²²

This division must be into four parts when the sample is taken by a Government Department under sect. 2 of the Act of 1899.

Sect. 14, n.

Mixing before division.

Notice to vendor's agent.

Stirring before sampling.

Division of article.

(12) *Chappell v. Emson* (1883), 48 J. P. 200.

(13) *Parsons v. Birmingham Dairy Co.* ante, p. 976 (7).

(14) *Somerset v. Miller* (1890), 54 J. P. 614.

(15) *Crawford v. Harding*, 1907 S. C. (J.) 11; 5 Adam 185.

(16) *Lamont v. Rodger* (1910, Sc. J.), 48 Sc. L. R. 60; 1 Glen's Loc. Gov. Case Law 40. But see *Telford v. Fyfe*, 1908, S. C. (J.) 83, where there was no such mixing.

(17) *Davies v. Burrell*, L. R. 1912, 2 K. B. 243; 81 L. J. K. B. 736; 107 L. T. 91; 76 J. P. 285; 10 L. G. R. 645.

(18) In *Rouch's Case*, post, p. 995 (10).

(19) *Preston v. Redfern* (1912, K. B. D.),

107 L. T. 410; 76 J. P. 359; 10 L. G. R. 717. See also *Rex v. Lascelles* (1912, Burnley Police Ct.), 3 Glen's Loc. Gov. Case Law 54. As to the necessity for stirring milk before selling it, see *Dyke's Case*, ante, p. 973 (34). As to "trivial" offences, see ante, p. 657.

(20) *Mason v. Cowdray*, L. R. 1900, 2 Q. B. 419; 69 L. J. Q. B. 667; 82 L. T. 802; 64 J. P. 662.

(21) *Smith v. Savage*, L. R. 1905, 2 K. B. 88; 74 L. J. K. B. 576; 69 J. P. 245; 3 L. G. R. 582.

(22) *Lowery v. Hallard*, L. R. 1906, 1 K. B. 393; 75 L. J. K. B. 249; 93 L. T. 844; 70 J. P. 57; 4 L. G. R. 189.

Sect. 14, n.
Preservation
of article.

If a sample of food, taken for the purpose of analysis, is properly divided into three parts, and the part retained by the purchaser is properly sealed up and fastened, the fact that the part retained has before the hearing so changed in nature owing to natural causes as to have become incapable of analysis is no bar to a conviction.²³ And when the purchaser seals up the parts of an article purchased for analysis, he need not do so in such a way as to make them imperishable and capable of analysis at the date of the service or the hearing of the summons, though (*per* Lush, J.) he should take reasonable care that analysis is possible when wanted.²⁴

Marking
of sample.

Putting a wrong date on a sample is no bar to a conviction if it can be identified.²⁵

Production
of retained
sample.

The sample retained by the purchaser must be produced at the hearing, see sect. 21 and Note.

Provision for
sending article
to the analyst
through the
post-office.

Sect. 15. [*Provision when sample is not divided.*²⁶]

Sect. 16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post-office as a [registered parcel ²⁷], subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Note.

Proof of
postage.

As to proof of postage, see the case cited below.²⁸

As to the transmission of samples to the Commissioners of Customs, see the Note to sect. 22 of the present Act.

Postal
regulations.

The Post Office Guide for 1923 contains the following instructions as to sending samples through the post: "Deleterious liquids or substances, though otherwise prohibited from transmission by post, may be sent for medical examination or analysis to a recognised medical laboratory or institute, whether or not belonging to a public health authority, or to a qualified medical practitioner or veterinary surgeon within the United Kingdom by letter post, and on no account by parcel post, under the following conditions: Any such liquid or substance must be enclosed in a receptacle, hermetically sealed or otherwise securely closed, which receptacle must itself be placed in a strong wooden, leather, or metal case in such a way that it cannot shift about, and with a sufficient quantity of some absorbent material (such as saw-dust or cotton-wool) so packed about the receptacle as absolutely to prevent any possible leakage from the package in the event of damage to the receptacle. The package so made up must be conspicuously marked "Fragile with care," and bear the words "Pathological Specimen." Any package of the kind found in the parcel post, or found in the letter post not packed and marked as directed, will at once be stopped and destroyed with all its wrappings and enclosures. Further, any person who sends by post a deleterious liquid or substance for medical examination or analysis otherwise than as provided by these regulations is liable to prosecution. If receptacles are supplied by a laboratory or institute, they should be submitted to the Secretary, General Post Office, in order to ascertain whether they are regarded as complying with the regulations."

Person refusing
to sell any
article to any
officer liable
to penalty.

Sect. 17. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

(23) *Suckling v. Parker*, L. R. 1906, 1 K. B. 527; 75 L. J. K. B. 302; 94 L. T. 554; 70 J. P. 209; 4 L. G. R. 531.

(24) *Winterbottom v. Allwood*, ante, p. 964 (39). See also *Chalmer's Case*, post, p. 984 (40).

(25) *Howe v. Knowles*, 1909 S. C. (J.) 61; 46 Sc. L. R. 881.

(26) Repealed by Act of 1899, s. 27, Sched.

(27) Substituted for "registered letter" first by Post Office Act, 1891 (54 & 55 Vict. c. 46), s. 11, and then by S. F. D. Act, 1899 (62 & 63 Vict. c. 51), s. 15, which Act (see s. 27 and Sched.) repealed s. 11 of Act of 1891.

(28) *Austin's Case*, post, p. 981 (28).

Note.

By sect. 5 of the Act of 1879,² "any street or open place of public resort shall be held to come within the meaning of" the present section.

As to the meaning of "place of public resort," see the Note to sect. 81 of the Public Health Act of 1907.³

The addition of water to milk by a servant sent out to sell the milk in the streets with the intention of increasing the bulk and appropriating the surplus price, was held to be wilful damage to the master's property, so as to justify a conviction, under the Malicious Damage Act, 1861,⁴ of the servant who added the water.⁵

A common informer may take proceedings under the present section,⁶ but the offer to purchase must have been made by an official.

A conviction under the present section was upheld where an inspector of constabulary, duly authorised by the local authority, but not in uniform and not having a certified copy of his authority in his possession, or giving the vendor, a publican, any evidence of such authority, after being supplied with some rum, which was drawn from a certain bottle, demanded half a pint of rum from the same bottle. Whereupon the publican offered him half a pint of rum from another vessel, but refused to supply it from the bottle.⁷ *Seemle, per Kennedy, J.*, it would have been otherwise if the publican had asked to see the inspector's authority and it had not been produced.

So also was one where an inspector never said he was an inspector or that he wanted the whisky for analysis, it being held that compliance with sect. 14 was not necessary.⁸

Where a milkman on his rounds refused to sell to an inspector milk from the "cran" or tap of the can from which the customers were being supplied, but was willing to sell from the top of the can to which the cream had risen, it was held that there was no "obstruction" of the officer within sect. 16 of the Act of 1899, but that there was a "refusal to sell" within the present section.⁹

A farmer, who was selling butter wholesale at a market at which it was the custom to sell butter by the firkin and not to break bulk, refused to sell an inspector a pound for analysis, and it was held that the present section applied to wholesalers.¹⁰

But, by sect. 18 of the Act of 1899,¹¹ "notwithstanding anything in" the present section "where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained."

A constable, authorised to procure samples, purchased and paid for an article, and when he had divided it into the three parts, the shop manager seized it and threw it away and refused to supply more. This was held to be a "refusal to sell" for which the proprietor of the shop was responsible.¹² On the other hand an inspector demanded from a milkman and tendered payment for a pint of "new milk" to be taken from a particular can which in fact contained skimmed milk and bore no label describing its contents. The milkman, instead of serving him upset the contents of the can and said that he was not going to let the inspector have skimmed milk for new; and on being prosecuted under the present section for refusing to sell "a certain article of food, to wit, milk," alleged that he was about to deliver the contents of the can to certain persons who were his regular customers for skimmed milk. It was held by the Divisional Court that there was no evidence to justify a conviction, the milkman never having offered to sell the contents of the can as "new milk."¹³

An inspector entered a restaurant and asked for some milk out of a bowl placed on the counter and labelled "Pure milk." An attendant refused his request on the ground that he was instructed only to sell this milk mixed with tea, coffee, etc. The magistrate dismissed the summons, holding that there had been no

Sect. 17, n.

Sales in streets.

Malicious damage.

Common informer.

Refusal to sell.

Exposure for sale.

(2) 42 & 43 Vict. c. 30, s. 5.

(3) *Ante*, p. 919.

(4) 24 & 25 Vict. c. 97, s. 52.

(5) *Roper v. Knott*, L. R. 1898, 1 Q. B. 868; 67 L. J. Q. B. 574; 78 L. T. 594; 62 J. P. 375; overruling *Hall v. Richardson* (1889), 54 J. P. 345.(6) *Connor v. Butler*, 1902 Ir. K. B. 569.(7) *Payne v. Hack* (1894), 58 J. P. 165.(8) *Ciarkin v. McCartan* (1888), 22 Ir. L. T.(9) *Soutar v. Kerr*, 1907 S. C. (J.) 49; 44 Sc. L. R. 462; 14 Sc. L. T. 875; 5 Adam 260.(10) *McHugh v. McGrath*, 1894 Ir. K. B. 78; 27 Ir. L. T. 102.

(11) 62 & 63 Vict. c. 51, s. 18.

(12) *Farley v. Higginbotham* (1898), 42 Sol. J. 309; Loc. Gov. Chron. 260.(13) *French v. Card* (1909, K. B. D.), 101 L. T. 428; 73 J. P. 389; 7 L. G. R. 890. See also *Taylor's Case*, *post*, p. 1010 (38).

Sect. 17, n.

exposure for sale. It was held that the case must be sent back for conviction.¹⁴ See also the cases relating to "exposure for sale" cited in the Note to sect. 117 of the Public Health Act, 1875.¹⁵

Obstruction of officers.

Wilfully obstructing, bribing, or attempting to bribe an inspector or other officer in relation to his duties under the Acts, renders the offender liable to a penalty not exceeding £20 for a first offence, and increased penalties for subsequent offences.¹⁶

See also sect. 14 of the Milk and Dairies (Consolidation) Act, 1915,^{16a} and sect. 2 (2) of the Sale of Tea Act, 1922.^{16b}

Further as to the obstruction of officers, see sect. 306 of the Public Health Act, 1875, and the Note thereto.¹⁷

Form of certificate.

Sect. 18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Note.**Regulations.**

Under sect. 4 (1) of the Act of 1899, an analyst, in making his certificate, is to have regard to the regulations of the Board of Agriculture as to the percentages of fat, etc.; see the Note to that section.¹⁸

Certificate for prosecution.

Where the case is not one of adulteration, the certificate need not set out the constituent parts of the article analysed, but only the result of the analysis; nor in such case is the part of the form headed "observations" to be filled in, though in the case of a prosecution for selling milk with part of the fat abstracted, the insertion of the observation "the abstraction of fat is a fraud and may possibly be injurious to health" was held not to invalidate the certificate.¹⁹

A conviction for selling rum adulterated with water was quashed because the analyst's certificate, which was put in evidence under sect. 21, did not state the proportion of water mixed with the rum, but only that the sample contained an excess of water over and above what is allowed by Act of Parliament, and that the analyst estimated the excess of water at 13 per cent. of the entire sample.²⁰

An analyst's certificate with respect to the adulteration of milk by water, only stated that the sample contained 5 per cent. of added water to the prejudice of the customer. This was held to be insufficient, because water is naturally present in milk, and as the certificate did not set out the facts of the analysis, it did not give the information which the magistrate was entitled to have.²¹ But a certificate which, after stating the percentage of added water, gave the analyst's reason for his opinion, namely, that the sample of milk contained 7.97 per cent. of solids other than fat, whereas genuine milk contained at least 8.5 per cent., was held sufficient.²²

The certificate ought to contain in it sufficient materials to enable the justices to form a judgment on those materials whether the offence has been committed; and a certificate that a sample of beer "contains arsenic," or "contains a serious quantity of arsenic," is not sufficient.²³ On the other hand, a certificate that a sample of brandy had been reduced from 25 to 27.6 degrees under proof, was held sufficient.²⁴

The form of certificate in the schedule provides for the insertion of the weight of the sample; but it is only obligatory that the weight should be inserted in cases in which such weight is material to the accuracy of the analysis.²⁵

The last note to the form of certificate given in the schedule, requires the analyst to report specially, in the case of an article liable to decomposition, whether any change has taken place in the condition of the article that would interfere with the analysis; and if he does not comply with this requirement the certificate is bad.²⁶ It was held not sufficient for this purpose to say: "The sample was fresh when delivered, securely sealed, and marked A. 48."²⁷

(14) *McNair v. Terroni* (1914, K. B. D.), L. R. 1915, 1 K. B. 526; 84 L. J. K. B. 357; 112 L. T. 503; 79 J. P. 219; 13 L. G. R. 377.

(15) *Ante*, p. 229.

(16) See S. F. D. Act, 1899, s. 16, *post*, p. 1010.

(16a) *Post*, p. 1029.

(16b) *Post*, p. 991 (18).

(17) *Ante*, p. 750.

(18) *Post*, p. 1006.

(19) *Bakewell v. Davis*, L. R. 1894, 1 Q. B. 296; 63 L. J. M. C. 93; 69 L. T. 832; 58 J. P. 228. Followed, with reluctance, in *Jenkins' Case*, *post*, p. 1007 (14).

(20) *Newby v. Sims*, L. R. 1894, 1 Q. B. 478; 63 L. J. M. C. 228; 70 L. T. 105; 58 J. P. 263.

(21) *Fortune v. Hanson*, L. R. 1896, 1 Q. B. 202; 65 L. J. M. C. 71; 74 L. T. 145; 60 J. P. 88.

(22) *Bridge v. Howard*, L. R. 1897, 1 Q. B. 80; 65 L. J. M. C. 229; 75 L. T. 300; 60 J. P. 790; see also *Bayley v. Cook*, 92 L. T. 170; 69 J. P. 139; 3 L. G. R. 304.

(23) *Lee v. Bent*; *Barlow v. Noblett*, L. R. 1901, 2 K. B. 290; 70 L. J. K. B. 747; 84 L. T. 719; 65 J. P. 646.

(24) *Findley v. Haas* (1903), 83 L. T. 465; 67 J. P. 198; 1 L. G. R. 377.

(25) *Sneath v. Taylor*, L. R. 1901, 2 K. B. 376; 70 L. J. K. B. 872; 65 J. P. 548.

(26) *Hudson v. Bridge* (1903), 88 L. T. 550; 67 J. P. 186; 1 L. G. R. 400; *re* vinegar of squills; *Hunter v. Wintrup* (1904, Sc. J.), 42 Sc. L. R. 277; 7 Fraser 22; 4 Adam 471, *re* butter.

(27) *Peart v. Barstow* (1880, Mx. Q. S.), 44 J. P. 699.

A workhouse master gave evidence that he cut off half a pound of butter from the appellant's consignment, made it up into a parcel addressed to the analyst for the workhouse, and gave it to an inmate to post. He produced the analyst's certificate, which stated as follows: "I, the undersigned, public analyst for the county of Meath, do hereby certify that I received from you on the 25th January a sample of butter for analysis which when measured weighed six fluid ounces, and was marked 'butter.' I have analysed the same and declare the result of my analysis to be as follows: I am of opinion that the said sample, which had undergone no change in its constitution that would interfere with its analysis, was composed almost entirely of fats foreign to butter." The justices convicted. It was contended by the appellant (1) that the identity of the sample analysed with the sample sent had not been proved, the inmate who posted it not having been called, and (2) that the certificate was deficient, as it did not state the percentages of butter and foreign fats. The appeal was dismissed.²⁸

For other points relating to analyst's certificates, see the Notes to sect. 21 and the Schedule to the present Act,²⁹ and sect. 4 of the Act of 1899.³⁰

Production by the defendant of a public analyst's certificate is sufficient evidence of the facts stated in such certificate unless the prosecutor requires the analyst to be called.³¹

Sect. 18, n.
Certificate for prosecution—
continued.

Certificate for defence.

Sect. 19. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the [Minister of Health], at such time and in such form as the [Minister] shall direct, a certified copy of such quarterly report.

Quarterly report of the analyst.

Note.

In pursuance of the present section the Local Government Board required the certified copies of reports to be forwarded to them in the month of January in every year.³² A form for these reports can now be obtained from the Ministry of Health. As to reports from Wales and Monmouthshire, see the Note elsewhere.^{32a}

Form of report.

PROCEEDINGS AGAINST OFFENDERS.

Sect. 20. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Proceedings against offenders.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the [Summary Jurisdiction Act, 1848]. . .

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Note.

The omitted portion of the present section was repealed by the Summary Jurisdiction Act, 1884.¹

Repeal.

The penalties imposed by the present Act for offences thereunder are: Sects. 3 (mixing, etc., food so as to make it injurious to health), and 4 (mixing, etc., drugs, so as to make them less potent), first offence £50, second offence imprisonment for not more than six months with hard labour; sects. 6 (prejudice of purchaser), 7 (compound food or drug not as demanded), and 9 (abstraction from food), £20; and sect. 17 (refusal to sell to inspector), £10. Forfeiture is provided for by sect. 30, as to imported tea. By sect. 28, nothing in the Act is to affect the remedy by indictment.

Penalties.

(28) *Austin v. Dunshaughlin Guardians* (1911, K. B. D., I.), 45 Ir. L. T. 213; 131 L. T. Jo. 190; 2 Glen's Loc. Gov. Case Law 98.

(29) *Post*, pp. 983, 993.

(30) *Post*, p. 1006.

(31) See Act of 1899, s. 22 (1), *post*, p. 1014.

(32) See L. G. Bd. Circular, Jan. 1, 1879, M. H. Memo., Jan., 1921 (Bell's S. F. D. Acts, 1923 ed., pp. 297-302), and Circular, Dec. 20, 1921 (19 L. G. R. (Orders) 402).

(32a) *Post*, p. 1023.

(1) 47 & 48 Vict. c. 43, s. 4.

Sect. 20, n.
Penalties —
continued.

The fine imposed by the Act of 1899 for selling milk in the street from a can not properly marked is £10.¹

For the penalties under the Margarine Act, 1887,² the Butter and Margarine Act, 1907,³ the Milk and Dairies (Consolidation) Act, 1915,⁴ and the Milk and Dairies (Amendment) Act, 1922,^{4a} see the sections mentioned in the footnotes.

The penalties imposed by the present Act may be increased under sect. 17 of the Act of 1899.⁵

Attention was drawn to the inadequacy of the penalties imposed by justices, by the Home Office in 1902, and again by the Local Government Board and the Home Office in 1912.⁶

By sect. 50 (2) of the Licensing (Consolidation) Act, 1910,⁷ "the clerk of the licensing justices shall enter in the register of licences, in such form as may be prescribed by the Secretary of State, notice of any conviction of the holder of a justices' licence for an offence committed by him as such (including any offence against the provisions of any Act for the time being in force relating to the adulteration of drink), and the clerk of the court before whom the holder of a justices' licence is so convicted (if he is not the clerk to the licensing justices) shall forthwith send notice of the conviction to the clerk of the licensing justices."

As to the application of penalties, see sect. 26 of the present Act, and the case cited below.⁸

Limitation
of time.

The time for "instituting" the prosecution is limited to twenty-eight days from the time of purchase, when the article is purchased for test purposes.⁹

Form of
summons.

The summons must state particulars of the offence alleged, and the name of the prosecutor, and may not be made returnable in less than fourteen days from the service; and a copy of the analyst's certificate must be served with it.¹⁰ It must be signed by the justice to whom the complaint is made, and one which was signed on a subsequent day by a different justice was held to be void.¹¹

Service of
summons.

A summons was framed under sect. 6, but the evidence showed that there had been a seizure of milk during transit under sect. 3 of the Act of 1879.¹² The defendant did not apply for an adjournment, and the magistrates found that he was not misled. In these circumstances the court upheld the conviction under the former section on the ground that the variance might, if required, have been set right under the Summary Jurisdiction Act, 1848.¹³

But a summons for selling "one half pound of butter which was not of the nature, substance, and quality demanded, and was not genuine as it contained less than 10 per cent. of butter fat, and was margarine," was held properly dismissed on the ground that the complaint was ambiguous and self-contradictory.¹⁴ Further as to invalid summonses, see the Note to sect. 251 of the Public Health Act, 1875.¹⁵

A summons against a limited company ought to be served on them at their registered office. A conviction of a company was quashed on the ground that the summons had been served at a branch office.¹⁶

Venue.

The present section does not limit the general rule that county justices may deal in petty sessions with offences committed anywhere in their county, and it was accordingly held that justices sitting at Stratford in the Beacontree petty sessional division could deal with a charge in respect of selling adulterated milk though it was "delivered to the purchaser" in the Epping division;¹⁷ and in another case which was argued at the same time,¹⁸ it was held that the justices of one petty sessional division were wrong in refusing to hear a similar charge because the summons had been issued by a justice of another division.

As to the venue in warranty cases, see sect. 20 (5) of the Act of 1899.¹⁹

(1) See s. 9, *post*, p. 1009.
 (2) See s. 4, *post*, p. 998.
 (3) See s. 11, *post*, p. 1020.
 (4) See s. 18, *post*, p. 1030.
 (4a) See s. 9, *post*, p. 1041.
 (5) *Post*, p. 1010.
 (6) See Circulars set out in "Bell's Sale of Food and Drugs Acts," 1923 ed., at pp. 285—287.
 (7) 10 Edw. VII. and 1 Geo. V., c. 24, s. 50 (2), repealing and replacing Licensing Act, 1874, 37 & 38 Vict. c. 49, s. 14.
 (8) *Titterton's Case*, *post*, p. 1002 (27).
 (9) See Act of 1899, s. 19 (1), *post*, p. 1010.
 (10) *Ibid.*, s. 19 (2).
 (11) *Dixon v. Wells* (1890), L. R. 25 Q. B. D. 249; 59 L. J. M. C. 116; 62 L. T.

812; 54 J. P. 725.
 (12) *Post*, p. 994.
 (13) 11 & 12 Vict. c. 43, s. 1; *Hiatt v. Ward* (1894), 70 L. T. 374; 58 J. P. 461; 10 T. L. R. 284.
 (14) *Nimmo v. Lees*, 1910 S. C. (J.) 75; 47 Sc. L. R. 681; 1 Glen's Loc. Gov. Case Law 41.
 (15) *Ante*, pp. 654—656.
 (16) *Pearks, Ltd. v. Richardson*, L. R. 1902, 1 K. B. 91; 71 L. J. K. B. 18; 85 L. T. 616; 66 J. P. 119.
 (17) *Rex (Middleton) v. Beacontree JJ.*, L. R. 1915, 3 K. B. 388; 84 L. J. K. B. 2230; 113 L. T. 727; 79 J. P. 461; 13 L. G. R. 1094.
 (18) *Rex (Horswell) v. Wright*, *ibid.*
 (19) *Post*, p. 1013. See also *Smith's Case*, *post*, p. 989 (57).

Sect. 21. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

Note.

A similar provision is made by the Act of 1899²⁰ with respect to an analysis obtained by the defendant from a public analyst.

In a whisky prosecution the court was held entitled to prefer the statement as to strength made on the label on the bottle to the evidence of the defendant's analyst.²¹

As to the validity of analysts' certificates, see the Note to sect. 18. See also sect. 19 (2) of the Act of 1899,²² as to service of a copy of the analyst's certificate on the defendant; Sched. III. (4) of the Act of 1915,²³ as to service on milk purveyors; and sect. 13 of the Act of 1922.²⁴

The justices may consider facts within their own knowledge in determining whether the article has been adulterated.²⁵ In the case in which this was held the justices had dismissed a summons for selling "caper tea" adulterated with mineral matter, on the ground that such tea, unlike ordinary tea, was grown under conditions which afforded unusual chances of the introduction of sand and small stones.

Where a magistrate dismissed a summons on his own opinion in opposition to the analyst's certificate, thinking that it was possible that the milk in question in the case was poor but genuine milk, from which some of the richness had been abstracted in the process of gradually ladling it out for sale, without any water having been added, it was held that he ought to have convicted, there being no evidence to contradict the certificate.²⁶ And where justices dismissed a summons for selling vinegar to the prejudice of the purchaser on the ground that there was no standard for this and that the analyst had no right to add as an "observation" that normal vinegar contained at least 4 per cent. of acetic acid and that the sample was deficient in this 27.2 per cent., the case was sent back for a conviction, the defendant having called no evidence to dispute this observation.²⁷ But where the certificate stated that 6 per cent. of water had been added to certain milk, it was held not to be conclusive, the defendant being entitled to give evidence to contradict it, and the question being one of fact for the justices.²⁸ And an analysis of margarine, made on the footing that it had been sold as butter, was held not to be evidence of what margarine, when sold as margarine, ought to contain.²⁹

It is doubtful whether a defect in an analyst's certificate can be cured by oral evidence.³⁰

The certificate is not evidence against the wholesaler in proceedings against him for giving a false warranty.³¹

A person who pleads guilty to a charge under the present Act, and gives false evidence in mitigation of sentence, may be convicted of perjury.³²

Where a defendant called for the retained sample, and the bottle containing it had been accidentally broken, it was held that there could be no conviction.³³

Sect. 22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of [Customs and Excise], who shall thereupon direct the

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Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.

Analysis for defendant.

Analysis for prosecution.

Perjury.

Third sample.

Power to justices to have articles of food and drug analysed.

(20) See s. 22, *post*, p. 1014.

(21) *M'Ninch v. Auld*, 1921 S. C. (J.) 14; 58 Sc. L. R. 99.

(22) *Post*, p. 1014.

(23) *Post*, p. 1034.

(24) *Post*, p. 1042.

(25) *Shortt v. Robinson*, *ante*, p. 967 (72).

(26) *Harrison v. Richards* (1881), 45 J. P. 552; followed in *Elder v. Dryden* (1908, K. B. D.), 99 L. T. 20; 72 J. P. 355; 6 L. G. R. 786.

(27) *Robinson v. Newman* (1917), 86 L. J. K. B. 814; 117 L. T. 96; 81 J. P. 187; 15

L. G. R. 475.

(28) *Hewitt v. Taylor*, L. R. 1896, 1 Q. B. 287; 65 L. J. M. C. 68; 74 L. T. 51; 60 J. P. 311; see also *Fyfe's Case*, *post*, p. 984 (39).

(29) See *Leeming's Case*, *post*, p. 998 (16).

(30) See *Hudson's Case*, *ante*, p. 980 (26).

(31) See *Tyler's Case*, *post*, p. 1000 (29).

(32) *Rex v. Wheeler* (C. C. A.), L. R. 1917, 1 K. B. 283; 86 L. J. K. B. 40; 116 L. T. 161; 81 J. P. 75.

(33) *Hutchison v. Stevenson* (1902), 39 Sc. L. R. 789; 4 Fraser (J.) 69; 3 Adam 651; but see *Chalmer's Case*, *post*, p. 984 (40).

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[Government analysts] at [Clement's Inn Passage, Strand] to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant, as the justices may by order direct.

Note.**Analysis by Customs Commissioners.**

The justices may now send the article to the commissioners for analysis without a request being made by either party; and if such a request is made they are bound to send it.³⁴

By Art. XVIII. of the Excise Transfer Order, 1919,³⁵ "Where, under the Sale of Food and Drugs Acts, 1875 to 1907, the justices before whom any complaint may be made or the court before whom any appeal may be heard are required or empowered to send any article of food or drug to the Commissioners of Inland Revenue for analysis, the article shall be sent for the same purposes to the Commissioners of Customs and Excise and shall be dealt with by them in conformity with those Acts." The officer dealing with these matters is now called the Principal General Chemist, see sect. 23 of the Finance Act, 1921.³⁶

Regulations for transmission of articles.

The Commissioners of Inland Revenue issued the following regulations to be observed in transmitting articles to them for analysis:—

1. The sample retained by the purchaser, as stated in sects. 14 and 15 of the Act, should be carefully sealed up and secured either in paper or in a box, as the case may be.

2. The seal used should bear a motto or device not in common use, to enable its identity to be sworn to.

3. If sent through the post the instructions issued by the Postmaster-General³⁷ for the transmission of such samples should be carefully carried out, and the parcel should be addressed to . . .³⁸ and in addition to the nature of the contents being stated on the front of the packet, as enjoined by the Postmaster-General, the name of the place whence sent should be stated. If despatched by railway or other conveyance, the address above given, with the name of the place from which forwarded, will be sufficient.

4. At the time the parcel is despatched by post or otherwise, a letter should be sent by post to the Principal [Government Chemist at the Government Laboratory³⁸], apprising him of the transmission of the sample for analysis, and stating the nature of the alleged adulteration, and such other particulars as may be considered necessary to facilitate the examination of the sample.

Finality of certificate.

Where the local analyst certified a 15 per cent. abstraction of fat, the defendant's analyst certified nil, and the Government analyst certified a 26 per cent. abstraction, a refusal to convict was upheld.³⁹

Deterioration of sample.

At the trial of a charge of selling adulterated milk, the defendant said that the sample delivered to her had gone bad and requested that the third sample be analysed by the Government analyst under the present section. The request was granted, but the report was that this sample also was too decomposed. It was held that, as the defendant had not chosen to have her sample analysed while analysis was possible, the evidence of the local analyst's certificate was conclusive.⁴⁰

Appeal to quarter sessions.

Sect. 23. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace; . . .

Note.**Right of appeal.**

There is no right of appeal to quarter sessions against a conviction under sect. 1 of the Act of 1899.⁴¹

Recognisances.

Part of the present section was repealed by the Summary Jurisdiction Act, 1884,⁴² and the provisions of the Summary Jurisdiction Acts with regard to recognisances to try appeals will apply. The latter part of the section, relating to Ireland, is also omitted.

Inferences of fact.

On an appeal from quarter sessions, the court can draw from the facts stated in the case any inference which ought to have been drawn below.⁴³

(34) See Act of 1899, s. 21, *post*, p. 1014.

(35) S. R. O. (No. 197), 1909, pp. 239—245.

(36) 11 & 12 Geo. V. c. 32, s. 23.

(37) See *ante*, p. 978.

(38) For new address, see present section as altered.

(39) *Fyfe v. Hamilton* (1894), 1 Adam 484. See also *Todd v. Cochran* (1901), 38 Sc. L. R. 801; 3 Adam 357.

(40) *Chalmers v. McMeeking*, 1921 S. C. (J.) 54; 58 Sc. L. R. 227. See also *Winterbottom's Case*, *ante*, p. 978 (24).

(41) See the *Otto Monsted Co. Case*, *post*, p. 1004 (11).

(42) 47 & 48 Vict. c. 43, s. 4, Sched.

(43) *Dairy Supply Co. v. Houghton*, *ante*, p. 719 (50). Further as to this case, see *post*, p. 1014 (15).

Sect. 24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.³

Sect. 25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

Note.

Further provisions with reference to the defence of purchase with written warranty are made by the Act of 1899.⁴

The defence is not available in answer to a prosecution for importing adulterated or impoverished butter in contravention of sect. 1 (1) (b) of that Act.⁵

At 6 A.M. on the 5th September the defendant received a consignment of milk from a dairy company under a written warranty. At 6.30 A.M. on the same day an inspector took samples while the defendant was delivering the milk in the streets. Later on the same day the defendant sent to the company notice that samples had been taken and part of the sample which had been handed to him. On the 27th September he received a summons returnable on the 17th October. Within seven days of his receiving the summons he sent the inspector a copy of his agreement with the company containing the terms of the warranty, and the inspector accepted this as notice to him of the defence of warranty. On the 17th October the summons was adjourned *sine die* to enable the defendant to have his retained portion of the inspector's sample analysed at Somerset House. On the 26th October the defendant sent the company formal notice that he intended to rely on their warranty as a defence. On the 11th November and subsequent dates the summons was heard and the defendant was convicted, the company not being represented. The magistrate decided that the defence of warranty could not be raised, as the notice to the warrantors (which is required by sect. 20 (1) of the Act of 1899 as well as notice to the purchaser) had not been given within a "reasonable time" after service of the summons. It was held that such notices need not be given at any particular time, so long as they have been given when the hearing takes place. The case was accordingly remitted for the defence of warranty to be dealt with on its merits.⁶

As to the notice of this defence which must be given to the purchaser under sect. 20 of the Act of 1899, see the Note to that section.⁷

An invoice, describing as "lard" a substance adulterated with 15 per cent. of water, and given to the purchaser, who sold the substance again in the same condition as when he bought it, was held not to be a written warranty within the present section so as to discharge him.⁸

So also the words "warranted pure star brand," printed on a bladder of lard, did not amount to a warranty that the bladder contained "pure lard."⁹

The absence of the word "warranted" is not, however, material,¹⁰ and an invoice containing the words "guaranteed pure," followed by the initials of the person who had sold certain butter to the vendor, the invoice also containing his full name, was held sufficient to justify the justices in finding that there was a written warranty.¹¹ And so were agreements by which the wholesale dealers agreed to sell "pure milk, without accepting any responsibility after delivery,"¹² and "pure new milk."¹³

Sect. 24.

In any prosecution defendant to prove that he is protected by exception or provision,

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty; no costs except on issues proved against him.

Warranty.

Notice to warrantor.

Notice to purchaser.

Sufficiency of warranty.

(3) See *Bennett's Case*, ante, p. 974 (40); *Pugh's Case*, post, p. 988 (44).

(4) See s. 20, post, p. 1012.

(5) See *Kelly's Case*, post, p. 1004 (10).

(6) *Marcus v. Crook*, L. R. 1914, 3 K. B. 173; 83 L. J. K. B. 1376; 111 L. T. 461; 78 J. P. 430; 12 L. G. R. 923.

(7) Post, p. 1012.

(8) *Rook v. Hopley* (1878), L. R. 3 Ex. D. 209; 47 L. J. M. C. 118; 38 L. T. 649; 26 W. R. 663.

(9) *Elder v. Smithson* (1893), 57 J. P. 809.

(10) *Laidlaw v. Wilson*, post, p. 986 (20).

(11) *Hawkins v. Williams* (1895), 59 J. P. 533.

(12) *Wilson v. Playle* (1903), 67 J. P. 263; 1 L. G. R. 870. Followed in *Plowright v. Burrell*, L. R. 1913, 2 K. B. 362; 82 L. J. K. B. 571; 108 L. T. 1006; 77 J. P. 245; 11 L. G. R. 457.

(13) See *Lewis' Case*, post, p. 987 (29).

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Sufficiency of
warranty—
continued.

The words "the said . . . Limited purchase all milk sold by them under a warranty of its purity from the farmers, and agree to put the same on rail thoroughly well cooled over a refrigerator and guarantee it as such up to the time of delivery at the above address" were held to be a sufficient "warranty" of purity, and not merely a "guarantee that the milk should arrive properly cooled."¹⁴

The "written warranty" must, however, be one of which the defendant is entitled to avail himself. Thus, a warranty which was given in writing by the farmer who supplied milk to the person from whom the defendant purchased it was held by the Divisional Court to afford no defence to a prosecution under the Act. There had been a verbal arrangement between the defendant and his vendor that the milk should be obtained by the latter from a farmer under warranty, and it was in fact so obtained, the churn containing the milk having the farmer's warranty on a label attached to it when it was delivered to the defendant; but the written agreement between the same parties had declared that it did not imply any warranty.¹⁵ In the case last cited, Channell, J., expressed the opinion that if the benefit of the farmer's warranty to the middleman had been assigned to the defendant in writing, it would have afforded him a defence, and, in a subsequent case,¹⁶ a contract by the vendor to supply milk "in the same condition as received from and as warranted by the farmer, namely, pure, new, and unskimmed milk," was held to pass on the protection afforded by the farmer's warranty, and the words "warranted pure new and unskimmed milk" on a label placed by the farmer on the churn containing the milk in question were held to connect the warranty with the particular consignment of milk.

Connection
with article
sold.

A written contract whereby a person agreed to sell to the defendant eighty-six gallons of good and pure milk (each and every day) for six months, the said milk to be delivered twice daily, was held not to constitute a written warranty within the meaning of the section, in respect of the specific article sold by the defendant, there being nothing to connect this particular can of milk sold with the general contract.¹⁷ On the other hand, where a contract to supply pure milk warranted the quality of the milk, and each can of milk delivered to the defendant had on it a label with the words "warranted genuine new milk, with all its cream on," the contract and labels were held to constitute a warranty within the meaning of the Act, and the previous case was distinguished.¹⁸ But shortly afterwards the court upheld a conviction by justices who had found that there was nothing to show that milk supplied by R. T. in cans labelled "— gallons of warranted genuine new milk, with all its cream on, from R. T.," was sold by R. T. under a general agreement to supply the vendors for six months with "genuine good new milk of the best quality, with all its cream on."¹⁹ In a subsequent case, however, the general contract stated that a large quantity of "Kilvert's pure lard" had been sold for delivery at a subsequent date, and the invoice accompanying the portion in question when it was delivered described it as "Kilvert's pure bladdered lard." Here the absence of the word "warranted" was held not to be material, and the general contract and invoice were held to constitute a warranty and to ear-mark the particular article sold as part of that which was warranted pure.²⁰

A person who bought vinegar, delivered in a cask labelled "Vinegar, warranted unadulterated. Grimble & Co., Limited, Cumberland Market, London," and with an invoice for "Grimble's Vinegar," was held to be protected by the present section.²¹

Ground ginger was supplied with a label having on it the words "warranted genuine pure ground ginger"; but there was nothing to show that the label was that of the person alleged to have warranted the ginger, and the invoice only described the article as "ground ginger." The justices held that there was no warranty within the statute and were upheld by the court.²²

Quinine wine was ordered with other goods. In the invoice sent with the goods was an item: "1 dozen Wine H. B. H. [the maker's initials], 28s." On the

(14) *Jackling v. Carter* (1912, K. B. D.), 107 L. T. 24; 78 J. P. 292; 10 L. G. R. 632.

(15) *Hargreaves v. Spackman* (1907, K. B. D.), 98 L. T. 41; 72 J. P. 52; 6 L. G. R. 145.

(16) *Rees v. Davis* (1908, K. B. D.), 72 J. P. 375; 6 L. G. R. 1038; 24 T. L. R. 735.

(17) *Harris v. May* (1883), L. R. 12 Q. B. D. 97; 53 L. J. M. C. 39; 48 J. P. 261.

(18) *Farmers' Co. v. Stevenson* (1890), 60

L. J. M. C. 70; 63 L. T. 776; 55 J. P. 407; 17 Cox C. C. 201.

(19) *Hotchin v. Hindmarch*, L. R. 1891, 2 Q. B. 181; 60 L. J. M. C. 146; 65 L. T. 149; 55 J. P. 775.

(20) *Laidlaw v. Wilson*, L. R. 1894, 1 Q. B. 74; 63 L. J. M. C. 35; 58 J. P. 58.

(21) *Lindsay v. Rook* (1894), 63 L. J. M. C. 231; 58 J. P. 735.

(22) *Iorns v. Van Tromp* (1885), 64 L. J. M. C. 171; 72 L. T. 499; 59 J. P. 246.

capsule of the bottle were the words: "Made according to the British Pharmacopœia. Our orange quinine wine contains no salicylic acid . . . but is pure orange wine. . ." It was held that, as the original contract could have been performed without thus labelling the bottles, the present section afforded no defence.²³

This case was distinguished in Scotland. A warranty in an invoice stating: "The above milk warranted pure and despatched to [retailer] as it is milked from the cow" was held not to mean "pure when despatched" but "pure as delivered," and, as in the course of dealing over a period of years this warranty had in fact been sent with each daily consignment, it was held that the proper inference to draw was that the warranty was part of the original contract.²⁴

Where there was a general agreement to supply the defendant with "pure new milk" weekly in such quantities as should be arranged, but there was nothing in writing accompanying the delivery of the particular milk in question showing that such delivery was made under that agreement, the court held that the defendant could not rely on the warranty and ought to have been convicted.²⁵ But it is not necessary that there should be anything in writing to connect the particular sale with the warranty. The connection may be shown by other evidence. Thus, where justices found as a fact that certain milk had been supplied under a general contract containing a warranty, and had dismissed a summons accordingly, the court declined to follow the last cited case, and dismissed an appeal against the justices' decision.²⁶ A contract, however, to supply "new milk," coupled with a warranty on the churn, was held not to be enough.²⁷

A contract to give a written warranty with the particular article need not itself be in writing, and a label on a milk can with the words "warranted pure new milk, with all its cream" upon it, with evidence that the can was delivered in pursuance of such a contract, was held sufficient.²⁸

Both before and after the expiration of a written contract to supply "warranted pure new milk," the milk was supplied in churns, each labelled "pure new milk." In proceedings against the retailer, after the expiration of the contract, it was held that by reason of the labels "there was a daily sale, and on each sale a written warranty" within the present section.²⁹

Several of the above cited decisions were reviewed in a case where the warranty relied on consisted of the following letter: "I guarantee that the milk supplied by me to Mr. S. is perfectly pure, and with all its cream as the cow gives it." The opinion was expressed by the justices that this letter was intended by the writer and by S. to cover the delivery of the milk in question, which was purchased from S. more than four months afterwards and contained 16 per cent. of added water; but the Divisional Court (Ridley, J., dissenting) held that S. ought to have been convicted, as there was no evidence to connect the milk in question with the warranty.³⁰ *Per* Lord Alverstone, C.J., "In my view a long series of cases has established the necessity for a written connection between the warranty and the particular parcel of goods; the decision which purports to overrule the first case in that series cannot, in my opinion, be regarded as satisfactory."³¹ . . . The warranty referred to in sect. 25 does not, in my opinion, point merely to a general right of action, but to a specific contract applicable to the goods in question."³² This was subsequently explained by his Lordship not to mean "that that special contract could only be proved by a written paper attached to each can of milk,"³³ and the following clause, contained in a contract for the purchase of "the whole of the milk required for the purchaser's dairy" for a specified period and until the expiration of one week's notice on either side, was held to be sufficiently connected by the contract itself with a consignment of milk delivered during the continuance of such contract, which contained the words: "all milk to be delivered by the vendors at the purchaser's address in a sweet, pure, and saleable condition,

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Connection
with article
sold—cont.

(23) *Jeynes v. Hindle*, L. R. 1921, 2 K. B. 581; 90 L. J. K. B. 603; 124 L. T. 670; 85 J. P. 121; 19 L. G. R. 231.

(24) *Chalmers v. Morton*, 1922 S. C. (J.) 65; 59 Sc. L. R. 500.

(25) *Robertson v. Harris*, L. R. 1900, 2 Q. B. 117; 69 L. J. Q. B. 526; 82 L. T. 536; 64 J. P. 565.

(26) *Elliot v. Pilcher*, L. R. 1901, 2 K. B. 817; 85 L. T. 50; 65 J. P. 743.

(27) *Dewey v. Faulkner*, L. R. 1923, 1 K. B. 315; 92 L. J. K. B. 318; 128 L. T. 602; 87 J. P. 45; 21 L. G. R. 96.

(28) *Irving and Bacon v. Callow Park Dairy Co.* (1902), 87 L. T. 70; 66 J. P. 804.

(29) *Lewis v. Weatheritt* (1906), 100 L. T. 367; 73 J. P. 164; 7 L. G. R. 502. See *per* Lord Alverstone, C.J., 7 L. G. R., at p. 507.

(30) *Watts v. Stevens*, L. R. 1906, 2 K. B. 323; 75 L. J. K. B. 828; 95 L. T. 200; 70 J. P. 418; 4 L. G. R. 821.

(31) L. R. 1906, 2 K. B. at p. 333.

(32) *Ibid.*, at p. 334.

(33) L. R. 1907, 2 K. B. at p. 85.

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and warranted by them pure with all its cream as received from the cow, but no responsibility will be taken by the vendors after delivery."³⁴

And in a subsequent case,³⁵ where the warranty consisted of a letter, written eleven months before the sale in question, in the following terms: "I hereby guarantee and warrant that all milk supplied by me to you is of the nature, quality and substance demanded by law; and I give this warranty for the purpose of the Sale of Food and Drugs Act, 1899," Lord Alverstone, C.J., while admitting that the case came very near the line, said that the letter might be read as meaning "I guarantee and warrant from this date that, as long as I supply you with milk, that milk shall be within this warranty."³⁶

This was followed in a case in which the wholesale milk dealers were prosecuted for giving a false warranty, the original warranty being treated as having become false when a consignment of adulterated milk was delivered.³⁷

Alteration of warranted article.

The addition of a certain quantity of boric acid as a preservative to milk purchased under a warranty prevented the person who purchased it and sold it again as altered from relying on the warranty.³⁸ And a magistrate's finding that the vendor of certain milk had no reason to believe that the milk had been tampered with since it was purchased with a written warranty, was held to be insufficient, and he was directed to find whether the milk was sold in the same state as it was in when it came to the vendor's hands.³⁹

Belief in truth of warranty.

Where justices overruled a retailer's defence of warranty on the ground that he was "aware" that the article was not of the quality demanded and "had reason to believe" that it was not of that quality, and the Divisional Court found no evidence justifying such a finding, an appeal was allowed.⁴⁰ Further as to the defence of reasonable belief in the truth of the warranty, see sect. 20 of the Act of 1899 and Note.⁴¹

Limitation of time.

As to the time within which proceedings in respect of warranties must be taken, see the same Note.⁴²

Burden of proof.

The purchaser of milk with a proper warranty and under a contract for delivery of the milk at a railway station is not under the onus of proving that the milk had not been tampered with before it was delivered to him by the railway company's servants at the station,⁴³ unless there has been a considerable interval between delivery at and removal from the station.⁴⁴ In the first case the interval was forty-five minutes, and in the second it was three hours.

Actions for damages.

Milk bought by the plaintiff from the defendants was delivered in churns as it came from the cow and labelled "pure milk with all its cream." The plaintiff was convicted of selling watered milk, and lost customers in consequence. The jury found (1) that the milk which formed the subject of the prosecution was supplied by the defendants, (2) that such milk was not pure milk with all its cream, (3) that it was not reasonably fit for retailing, and (4) that it was not of merchantable quality, but also (5) that the water had not been added before it was delivered to the plaintiff. They awarded £25 damages, and judgment was given for the plaintiff.⁴⁵

Tea.

The provisions of the present section and sect. 20 of the Act of 1899 are applied to proceedings for offences under the Sale of Tea Act, 1922, in an adapted form set out in the Schedule to that Act, which has been quoted in full in the Note to sect. 30 of the present Act.⁴⁶

Sale by description.

By the Sale of Goods Act, 1893, there is an implied condition on the sale of goods "by description" by a person dealing in goods of that description, that the goods shall be of merchantable quality, subject to a proviso that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.⁴⁷ In an action for breach of warranty

(34) *Evans v. Weatheritt*, L. R. 1907, 2 K. B. 80; 76 L. J. K. B. 628; 96 L. T. 641; 71 J. P. 228; 5 L. G. R. 608.

(35) *Draper v. Newnham* (1910), 102 L. T. 280; 74 J. P. 124; 8 L. G. R. 144.

(36) 8 L. G. R. at p. 147.

(37) *Thomas, Ltd. v. Houghton* (K. B. D.), L. R. 1911, 2 K. B. 959; 81 L. J. K. B. 21; 105 L. T. 825; 75 J. P. 523; 9 L. G. R. 1142.

(38) *Hennen v. Long* (1904, K. B. D.), 68 J. P. 237; 2 L. G. R. 437.

(39) *Jones v. Bertram* (1894), 58 J. P. 478.

(40) *Blaydon Co-op. Soc. v. Young* (1916), 86 L. J. K. B. 417; 115 L. T. 827; 80 J. P. 451; 14 L. G. R. 1149.

(41) *Post*, p. 1014.

(42) *Post*, p. 1013.

(43) *Sanders v. Sadler* (1906, K. B. D.), 95 L. T. 872; 71 J. P. 3; 5 L. G. R. 240.

(44) *Pugh v. Williams* (1917), 86 L. J. K. B. 1407; 117 L. T. 191; 81 J. P. 159; 15 L. G. R. 573. See also *Elder v. Bishop Auckland Co-op. Soc.*, ante, p. 962 (13).

(45) *Bebb v. Salisbury Dairies* (1912, Horridge, J.), 3 Glen's Loc. Gov. Case Law 58. See also the cases cited in the Note to P. H. Act, 1875, s. 117, ante, p. 233 (8).

(46) *Post*, p. 991 (24).

(47) 56 & 57 Vict. c. 71, s. 14.

under that enactment, by a person who went to a tied beerhouse kept by the defendant, for the purpose of obtaining the beer of the brewers supplying that house, and was supplied with beer containing arsenic, it was held that the sale of the beer was "by description," and that as an examination by the buyer would not have revealed the defect, the defendant was liable.⁴⁸ Under the same section there is also an implied warranty of the condition or fitness of the article where the buyer shows that he relies on the seller's skill or judgment; and this was held by the Court of Appeal to be applicable when vendors of milk held themselves out as having special skill and knowledge in the matter of disease germs in relation to milk, and sold milk contaminated with the germs of typhoid fever.⁴⁹

Sect. 25, n.

Reliance on vendor's skill and knowledge.

Sect. 26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner,⁵⁰ . . . [Ireland].

Application of penalties.

Sect. 27. . . . Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds : . . . ⁵¹ And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Punishment [for forging certificate or warranty;] for wilful mis-application of warranty; [for false warranty;] or false label.

Note.

The first clause of the present section related to forgery of certificates and warranties and was repealed by the Forgery Act, 1913,⁵² which provides that "forgery of any document, which is not made felony under this or any other statute for the time being in force, if committed with intent to defraud, shall be a misdemeanour and punishable with imprisonment with or without hard labour for any term not exceeding two years."⁵³

Forgery.

For a case of perjury under the present Act, see that cited below.⁵⁴ The penalties for second and subsequent offences are increased by the Act of 1899, and in some cases imprisonment may be substituted.⁵⁵

Perjury.
Penalties.

In a prosecution under the present section for giving a false warranty in writing to a purchaser, it was held necessary to prove guilty knowledge on the part of the defendant.⁵⁶

A metropolitan police magistrate, within whose district a sample of milk had been procured while the milk was in course of delivery to a purchaser, had no jurisdiction to determine a complaint that the milk had been sold to the vendors under a false warranty, the warranty not having been given, nor the sale or delivery by the defendant having been made within his district.⁵⁷

Further as to warranties, see sect. 20 of the Act of 1899, and the Note thereto. As to the time within which proceedings for giving a false warranty must be commenced, see the Note to sect. 19 of the Act of 1899.⁵⁸

Warranties.
Limitation of time.

Sect. 28. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Proceedings by indictment and contracts not to be affected.

(48) *Wren v. Holt*, L. R. 1903, 1 K. B. 610; 72 L. J. K. B. 340; 67 J. P. 191.
(49) *Frost v. Aylesbury Dairy Co.*, L. R. 1905, 1 K. B. 608; 74 L. J. K. B. 386; 92 L. T. 527. See also footnote (45), ante, p. 988.
(50) See also Act of 1887, s. 11, and Note, post, p. 1002.
(51) This clause related to false warranties and was repealed by Act of 1899, s. 27, and Sched. See now s. 20 of that Act, post, p. 1012.
(52) 3 & 4 Geo. V., c. 27, s. 20, Sched.

(53) *Ibid.*, s. 4 (1).
(54) *Wheeler's Case*, ante, p. 983 (32).
(55) See s. 17, post, p. 1010.
(56) *Derbyshire v. Houliston*, L. R. 1897, 1 Q. B. 772; 66 L. J. Q. B. 569; 76 L. T. 624; 61 J. P. 374. See also *Oatley's Case*, post, p. 1014 (14).
(57) *Reg. v. Smith*, L. R. 1896, 1 Q. B. 596; 65 L. J. M. C. 104; 47 L. T. 348; 60 J. P. 372. But see the *Beacontree Case*, ante, p. 982 (17).
(58) *Post*, p. 1011.

Sect. 28.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him under such conviction, and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.⁵⁹

EXPENSES OF EXECUTING THE ACT.

Expenses of
executing Act.

Sect. 29. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the [Common Council⁵] in the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the [Metropolis Management Act, 1855], and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate: . . . [Ireland].

Note.

Expenses in
boroughs.

Boroughs with separate courts of quarter sessions were expressly exempted from contributing to the expenses incurred under the Act in the remainder of the county;⁶ and where a borough had a separate police establishment, the county justices were to pay to the town council the amount which the county had received from the parishes in the borough by way of county rate for the purposes of this Act.⁷ But this is now subject to the provisions of the Local Government Act, 1888,⁸ under which only the councils of the county boroughs, the larger quarter sessions boroughs, and the larger boroughs with separate police establishments, continue to carry out the present Act independently of the county council.

SPECIAL PROVISION AS TO TEA.

Tea to be
examined by
the Customs on
importation.

Sect. 30. . . .⁹ All tea imported as merchandise into and landed at any port in Great Britain [or Ireland] shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea,¹⁰ the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships' stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

Note.

Tea frauds.

Under the repealed Adulteration of Food Act, 1872,¹¹ a conviction for selling green tea, which had in China been painted or faced with gypsum and prussian blue to colour it, was upheld.¹²

A hawker who sold certain packages which he stated to contain good tea, but three-fourths of the contents of which was not tea, but a mixture of substances unfit for drinking and deleterious to health, was convicted of obtaining money by false pretences; and the conviction was upheld by the Court for Crown Cases Reserved.¹³

Weighing
tea.

In two cases tried together in Scotland, tea was sold in packets weighing $\frac{1}{2}$ lb.,

(59) For indictments see Note to s. 30, *infra*, *Dixon's Case*, *ante*, p. 960 (12), and *Foster's Case*, *infra* (13). For actions, see *Bebb's Case*, *ante*, p. 988 (45), and *Frost's Case*, *ante*, p. 989 (49).

(5) See *ante*, p. 5 (8).

(6) By S. F. D. Act, 1879, s. 8, now repealed, see *post*, p. 997.

(7) See S. F. D. Act, 1879, s. 9, *post*, p. 997.

(8) See ss. 38, 39, *post*, Vol. II. p. 1922, 1923.

(9) Repealed by S. L. R. (No. 2) Act, 1893.

(10) See definition in s. 31, *infra*.

(11) 35 & 36 Vict. c. 74, s. 2.

(12) *Roberts v. Egerton* (1874), L. R. 9 Q. B. 494; 43 L. J. M. C. 135; 30 L. T. 633; 22 W. R. 797.

(13) *Reg. v. Foster* (1877), L. R. 2 Q. B. D. 301; 46 L. J. M. C. 128; 36 L. T. 34; 41 J. P. 295.

the wrapper weighing $5\frac{1}{2}$ drams. In the first case,¹⁴ the words on the wrapper were: "This packet is guaranteed gross weight," which was understood in the district to mean that the weight mentioned included the weight of the wrapper. In the second case,¹⁵ the words were: "Full weight of tea, including wrapper." It was held, in both cases, (1) that, as the Burgh Police (Scotland) Act, 1892,¹⁶ imposed the penalty only on persons who both sold and also incorrectly weighed goods, a complaint which only charged the vendor with selling foods under weight was bad; (2) that, as a power of entry was given to specified officials only, those officials could not delegate that power, and a sale to a messenger sent by one of those officials could not support the charge; and (3) that, having regard to the above words on the wrapper and to the custom in the grocery trade to weigh tea with its receptacle, there was no "fraudulent intent," and the convictions were accordingly quashed.

Sect. 1 of the Sale of Tea Act, 1922,¹⁷ "an Act to provide for the better protection of the public in relation to the sale of tea," enacts as follows: "1.—(1) A person shall not, either by himself or by any servant or agent, sell by retail any tea, whether contained in a package or not, otherwise than by net weight, and in ounces or pounds or in multiples of ounces or pounds. (2) A person shall not, either by himself or by any servant or agent, sell or have in his possession for sale by retail any tea packed ready for sale unless the package bears thereon or on a wrapper band or label affixed thereto a true statement of the net weight of the tea contained in the package. (3) If any person acts in contravention of this section, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence five pounds, in the case of a second offence fifty pounds, and in the case of a third or subsequent offence one hundred pounds. (4) This section shall not apply to any sale of less than two ounces of tea, which does not purport to be a sale of two ounces or more, or to any package which contains less than two ounces of tea, and which does not purport to contain two ounces or more."

By sect. 2 of the same Act,¹⁸ "(1) Where any person has in his possession for sale by retail any tea packed ready for sale, he shall, if so requested by any person duly authorised in that behalf by the local authority, weigh the contents of any package in the presence of that person, or permit that person himself to weigh the contents. (2) If any person refuses to comply with a request made under this section, or in any other manner obstructs any person duly authorised as aforesaid in the execution of his powers and duties under this section, he shall be liable on summary conviction to a fine not exceeding five pounds."

By sect. 3,¹⁹ "(1) For the purposes of this Act, the local authority shall be the local authority for the purposes of the Weights and Measures Acts, 1878 to 1919, and the expenses of a local authority under this Act shall be defrayed in the same manner as the expenses of a local authority under those Acts. (2) It shall be lawful for a local authority to execute and enforce the provisions of this Act and, except in Scotland, to take proceedings for any offence against this Act."

By sect. 4,²⁰ "The provisions of sect. 25 of the Sale of Food and Drugs Act, 1875,²¹ and of sect. 20 of the Sale of Food and Drugs Act, 1899,²² as set out with the appropriate modifications in the Schedule to this Act, are hereby incorporated with this Act and shall apply to proceedings for offences against this Act as they apply to proceedings for offences against the Sale of Food and Drugs Acts, 1875 to 1907."

By sect. 5,²³ "Nothing in this Act shall affect any right of proceeding against a person under any other enactment or at common law."

The Schedule,²⁴ which is headed "Provisions of Sale of Food and Drugs Acts applied," is as follows:—

"(1) If in any proceedings under this Act in respect of any package of tea the defendant proves that he purchased the tea in the package in which he sold it or had it in his possession for the purposes of sale and with a written warranty of the net weight of the tea contained in the package, and that he had no reason

Sect. 30, n.

Conditions to be observed on sale of tea.

Power of inspector to weigh packages.

Execution of Act by local authorities.

Defence of warranty.

Saving.

Application of Sale of Food and Drugs Acts.

(14) *Masterton v. Soutar*, 1912 S. C. (J.) 74; 49 Sc. L. R. 797; 3 Glen's Loc. Gov. Case Law 63. See also the *Galbraith's Stores Case*, ante, p. 964 (30).

(15) *Collier v. Soutar*, *ibid.*

(16) 55 & 56 Vict. c. 55, s. 430.

(17) 12 & 13 Geo. V., c. 29, s. 1. Short title given by s. 6, which also provides that the Act is to come into operation on Sept. 1,

1922.

(18) *Ibid.*, s. 2.

(19) *Ibid.*, s. 3.

(20) *Ibid.*, s. 4.

(21) *Ante*, p. 985.

(22) *Post*, p. 1012.

(23) 12 & 13 Geo. V., c. 29, s. 5.

(24) *Ibid.*, Sched.

Sect. 30, n.
Sale of Tea
Act, 1922—
continued.

to believe, at the time when he sold it or had it in his possession for the purposes of sale, that the package did not comply with the provisions of this Act, he shall be entitled to be discharged from the prosecution.

(2) for the purposes of the foregoing provision, a statement on any package or any wrapper, band or label affixed thereto or delivered therewith shall be deemed to be a warranty.

(3) A warranty shall not be available as a defence to any proceedings under this Act unless the defendant has, within seven days after service of the summons, sent to the prosecutor a copy of such warranty with a written notice stating that he intends to rely on the warranty, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person.

(4) The person by whom such warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(5) A warranty given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under this Act, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

(6) Where the defendant is a servant of the person to whom a warranty was given, he shall, subject to the provisions hereof, be entitled to rely on the defence hereby allowed in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the package of tea did not comply with the provisions of this Act.

(7) Where the defendant in a prosecution under this Act has been discharged under the provisions of this schedule, any proceedings for giving the warranty relied on by the defendant in such prosecution may be taken as well before a court having jurisdiction in the place where the contravention of this Act took place, as before a court having jurisdiction in the place where the warranty was given.

(8) Every person who, in respect of any tea sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be liable on summary conviction, for a first offence, to a fine not exceeding twenty pounds, for a second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true."

Coffee, hops,
&c.

Certain powers were conferred by Revenue Acts on the Inland Revenue Commissioners with regard to tea and coffee,²⁵ hops,²⁶ and beer.²⁷

Interpretation
of Act.

Sect. 31. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Provision for
the liberty of a
cinque port.

Sect. 32. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.²⁸

Sects. 33 and 34. [*Scotland and Ireland*].

Sect. 35. [*Commencement of the Act.*²⁹]

Title of the Act.

Sect. 36. This Act may be cited as "The Sale of Food and Drugs Act, 1875."

(25) 1718, 5 Geo. I. c. 11, s. 23; 1724, 11 Geo. I., c. 30, ss. 5, 9, 39; 1730, 4 Geo. II., c. 14, s. 11; 1776, 17 Geo. III., c. 29, ss. 1—6, 9; 1882, 45 & 46 Vict. c. 41, ss. 5, 6.

(26) 1733, 7 Geo. II. c. 19, s. 2.

(27) 1885, 48 & 49 Vict. c. 51, s. 8.

(28) See S. F. D. Act, 1879, s. 7, *post*, p. 997.

(29) Repealed by S. L. R. (No. 2) Act, 1893. The date was Oct. 1, 1875.

Sched.

SCHEDULE.

Form of Certificate.

To (1)

I, the undersigned, public analyst for the , do hereby certify that I received on the day of , from (2) , a sample of for analysis (which then weighed (3)), and have analysed the same, and declare the result of my analysis to be as follows :

I am of opinion that the same is a sample of genuine or .

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations (4).

As witness my hand this day of .

A. B.,
at .

Note.

The figures in the form refer to the following directions contained at the foot of the form, namely :—“(1) Here insert the name of the person submitting the article for analysis. (2) Here insert the name of the person delivering the sample. (3) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled. (4) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health. In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.”

Directions.

For comments on “ observations ” added by analysts under this heading, see the cases cited below.¹

Observations.

The certificates of Government analysts under sect. 22 of the present Act, or sect. 1 of the Act of 1899, need not be in the above form.²

Government certificates.

The validity of local analysts' certificates was discussed in the cases cited in the Note to sect. 18,³ the section which prescribes the above form, and in those mentioned below.⁴

Contents of certificates.

For draft certificates in cases of milk, whisky, and tincture of iodine, see the work mentioned below.⁵

Special certificates.

(1) *Bakewell's Case*, ante, p. 980 (19);
Robinson's Case, ante, p. 983 (27); and
Gordon's Case, post, p. 1007 (12).

(2) See *Foot's Case*, post, p. 1004 (6).

(3) *Ante*, p. 980.

(4) *Hull's Case*, ante, p. 960 (14); *Bayley's Case*, post, p. 1007 (11).

(5) “*Bell's Sale of Food and Drugs Acts*,” 1923 ed., at p. 109.

THE SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

42 & 43 VICT. c. 30.

An Act to amend the Sale of Food and Drugs Act, 1875.

[21st July, 1879.]

WHEREAS conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act : Be it enacted . . .

Short title.

Sect. 1. This Act may be cited for all purposes as “ The Sale of Food and Drugs Act Amendment Act, 1879.”

In sale of adulterated articles no defence to allege purchase for analysis.

Sect. 2. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

Note.

Sale of Food and Drugs Acts.

The principal Act (see recital, *supra*) is the Sale of Food and Drugs Act, 1875. As to the Sale of Food and Drugs Acts generally, see the Note at the commencement of the principal Act.¹

Prejudice of purchaser.

With regard to the meaning of selling “ to the prejudice of the purchaser,” see the Note to sect. 6 of the principal Act.²

Officer, inspector or constable may obtain a sample of milk at the place of delivery to submit to analyst.

Sect. 3. Any medical officer of health, [sanitary inspector³], or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk ; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under sect. 13 of the principal Act.

Note.

Milk and cream.

Further as to the taking of samples of milk and cream in course of delivery, see Art. VII. of the Regulations of 1912.⁴

Other articles.

See also sect. 8 of the Act of 1915.^{4a}

Purchase for analysis.

As to the application of the present section to other articles of food, see sect. 14 of the Act of 1899.⁵

The officers mentioned in the present section are the same as those who are authorised to procure samples of food or drugs for analysis by the principal Act.⁶

A private person has no power to proceed under it,⁷ and the analyst should state in his certificate from whom he received the sample analysed ;⁸ but the sample may be taken by any proper agent of the person authorised to “ procure ” ; and the court overruled a contention that an assistant inspector, who actually took the sample, ought to have taken the further proceedings in the matter, and not the inspector of weights and measures under whose instructions it was taken.⁹ In this case A. T. Lawrence, J., expressed a doubt whether sect. 14 of the principal Act, requiring part of the sample to be given to the vendor, etc., was applicable to the present Act.

It had previously been held not to be necessary, when a sample of milk in course of delivery is taken in pursuance of the present section, for the officer to notify to

(1) *Ante*, p. 957.
(2) *Ante*, p. 962.
(3) See P. H. (Officers) Act, 1921, s. 3 (1), *ante*, p. 530.
(4) *Post*, Vol. II., Part V., under heading “ FOOD, Milk.”
(4a) *Post*, p. 1027.
(5) *Post*, p. 1010.
(6) See s. 13, *ante*, p. 975.
(7) *Harris v. Williams* (1889), 6 T. L. R. 47. But see *ante*, p. 976 (7).
(8) *Ibid.*, per Wills, J., at p. 48, col. ii.
(9) *Tyler v. Dairy Supply Co.* (1908, K. B. D.), 72 J. P. 132; 6 L. G. R. 422; following *Horder v. Scott*, *ante*, p. 975 (16). But see *Masterton’s Case*, *ante*, p. 991 (14).

the vendor his intention of having the sample analysed, or to deliver to the seller or his agent a portion of the sample in accordance with sect. 14.¹⁰

Where justices dismissed a summons under the present section on the ground that the carrier from whom the sample was purchased had no authority to sell, the court amended the summons so as to make this immaterial and sent the case back for a conviction.¹¹

Milk was supplied to poor law guardians daily under a contract which specified the quantity of cream to be supplied in the milk. An inspector procured samples from each of five cans in which the milk was being delivered. In proceedings under sect. 9 of the principal Act in respect of two of the samples, it was held that it was right to take samples from different cans, and to lay two separate informations, and that the defendant was not entitled to give evidence as to the milk in the three cans in respect of which proceedings were not taken, and that the contract above mentioned did not affect the vendor's liability.¹² This case was afterwards disapproved in Scotland.¹³

Where a consignment consisted of three churns and a sample was taken from each and sent separately to the analyst who reported that each sample was adulterated and certified that the average of dirt in the whole consignment was 3.9 per 100,000 parts of milk, and one information was laid, an appeal against a refusal to convict was allowed.^{13a}

Where an inspector of one district took a sample of milk in course of delivery, and an inspector of the adjoining district took another sample after the vendor had crossed the boundary, it was held that he was liable to penalties for two separate offences.¹⁴

An inspector taking a sample for the purposes of the Act is not bound to submit the whole of the sample for analysis, but may divide it, and send a part only to be analysed.¹⁵ He must, however, ask for "milk" and not for "samples from the churn,"¹⁶ and, if the article is milk, margarine, or margarine cheese, the formalities prescribed by sect. 10 of the Act of 1899 must be followed.¹⁷

Samples taken from the purchaser's cans, into which the milk had just been placed in the inspector's presence, were held to have been taken "in course of delivery."¹⁸

But a sample of milk was held by the majority of a Divisional Court not to have been so taken in the following circumstances. An inspector of weights and measures saw the vendor pour milk from his can into the purchaser's jug in the street outside the purchaser's house, and receive payment for it. About three minutes afterwards, the purchaser having gone into the house and shut the door, the inspector knocked and obtained a sample of the milk, which was found as a fact to have been in the same condition as when purchased. He also took a second sample from the vendor's can. The samples, when analysed, were found to be of identical composition and to contain 30 per cent. of added water. Pickford and Lush, JJ., held that the delivery of the milk was completed before the first sample was procured, and upheld the dismissal of a summons against the vendor. Lord Alverstone, C.J., differed, thinking that, as the inspector had witnessed the whole transaction, and the milk had not been tampered with, it was putting too narrow a construction on the words "in course of delivery" to say that the sample could not be taken because the property in the milk had already passed by delivery to the purchaser.¹⁹

Where, however, a contract provided that milk was to be delivered at a railway station and that its arrival there was to constitute delivery, and a churn was on arrival seized by the police and twenty minutes afterwards sampled by the inspector, it was held that the court could not disturb a finding of the justices that the sample was taken "in course of delivery" and at the place of delivery.²⁰

Where a farmer, in pursuance of a contract by which he undertook to supply milk

Sect. 3, n.

Purchase for analysis—
continued.Meaning of
"in course of
delivery."Place of
delivery.

(10) *Rouch v. Hall* (1880), L. R. 6 Q. B. D. 17; 50 L. J. M. C. 6; 44 L. T. 183; 45 J. P. 220.

(11) *Keenan v. Costelloe*, ante, p. 968 (77).

(12) *Fecitt v. Walsh*, L. R. 1891, 2 Q. B. 304; 60 L. J. M. C. 143; 65 L. T. 82; 55 J. P. 726.

(13) In *Telford's Case*, ante, p. 977 (16).

(13a) *Wildridge v. Ashton*, L. R. 1924, 1 K. B. 92; 93 L. J. K. B. 30; 87 J. P. 197; 21 L. G. R. 702.

(14) *Brady v. Conty* (1917), 51 Ir. L. T. 176.

(15) *Rolfe v. Thompson*, L. R. 1892, 2 Q. B.

196; 61 L. J. M. C. 184; 67 L. T. 295; 56 J. P. 425.

(16) See *Sandys' Case*, ante, p. 964 (38).

(17) See that section, post, p. 1009.

(18) *Semple v. Dunbar* (1904, Sc. J.), 41 Sc. L. R. 858; 6 Fraser 65; 4 Adam 399.

(19) *Helliwell v. Haskins* (1911), 105 L. T. 438; 75 J. P. 435; 9 L. G. R. 1060. But see *Grant's Case*, ante, p. 963 (19).

(20) *Cox v. Evans*, L. R. 1917, 1 K. B. 275; 86 L. J. K. B. 539; 115 L. T. 779; 81 J. P. 53; 14 L. G. R. 1178.

Sect. 3, n.

to be delivered at any station that the purchaser might require, the purchaser paying the railway rate, sent milk by rail to Hull, it was held that Hull was the place of delivery within the meaning of the present section.²¹

Meaning of "in pursuance of contract."

An inspector is not authorised to take a sample of milk at the place of delivery where such place is not within the district for which he is appointed.²²

Milk churns.

While the defendant, who was hawking milk from door to door, was pouring milk into a customer's jug, an inspector demanded a sample. His refusal was held to be an offence against sect. 4, as the milk was being delivered "in pursuance of a contract" within the meaning of the present section.²³

In their Circular to makers of railway milk churns,²⁴ the Board of Agriculture and Fisheries recommended (1) that the churn should have the tare weight stamped on the outside, (2) that the lid should be constructed so as to facilitate sealing, and (3) that the churn should be constructed so as to prevent the removal of milk or the addition of water, or the blowing or washing in of dirt.

Short delivery.

The proper sealing of the churn may afford a defence to proceedings.^{24a}

Where there was an agreement to sell by imperial measure, and that measure was used, short delivery was held not to be an offence against the Milk Order, 1920.²⁵

Penalty for refusal to give milk for analysis.

Sect. 4. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.²⁶

Sect. 5. [Extension of Act as to sale in streets, etc.²⁷]

Sect. 6. [Reduction allowed to the extent of 25 degrees under proof for brandy, whisky, or rum and 35 degrees for gin.]

Note.**Repeal.**

The present section was repealed by sect. 10 of the Licensing Act, 1921,²⁸ which enacts as follows: "In determining whether an offence has been committed under the enactments relating to the sale of food and drugs by selling to the prejudice of the purchaser whisky, brandy, rum, or gin not adulterated otherwise than by any admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than thirty-five degrees under proof, and sect. 6 of the Sale of Food and Drugs Act, 1879, is hereby repealed."

Before the present Act came into force it had been held under the principal Act that whether gin, containing 43 per cent. of water and sold at a low price, was what a purchaser buying "gin" without further description would reasonably expect to receive, was a question of fact for the magistrate, and his conviction was accordingly upheld.²⁹ This followed a case in which it was proved that a licensed victualler sold as gin a liquid 44 per cent. under proof, and composed of 26 per cent. of alcohol, 70 per cent. of water, and 4 per cent. of sugar, and evidence was given that gin was sold by retailers from proof to 20 per cent. under proof, but the analyst said that he should call this "gin whose alcoholic strength was exceedingly low"; it was held that the justices were justified in finding that the liquid was not of the quality of gin, and that the excess of water was a fraudulent increase of the measure of the article within sect. 6 of the principal Act.³⁰

Reduction of spirits.

Under the present Act, it was held that where a person sold gin which was more than thirty-five degrees under proof, but, at the time of sale, brought to the

(21) *Filshie v. Evington*, L. R. 1892, 2 Q. B. 200; 66 L. T. 199; 56 J. P. 312. See also *Parker's Case*, ante, p. 964 (34); *Grant's Case*, ante, p. 963 (19); *Cox's Case*, ante, p. 995 (20); and *Lush v. Wilson* (1890, Reading Q. S.), 54 J. P. 73.

(22) *McNair v. Cave*, L. R. 1903, 1 K. B. 24; 72 L. J. K. B. 26; 87 L. T. 680; 67 J. P. 50; 1 L. G. R. 28. Distinguished in *Ross v. Helm*, ante, p. 969 (95). See also *Fearon's Case*, ante, p. 923 (5). But see M. & D. Act, 1915, s. 8 (3), post, p. 1027.

(23) *Phelan v. Rorke* (1883), 17 Ir. L. T. 649.

(24) Dated Feb. 27, 1907, and set out in "Bell's Sale of Food and Drugs Acts," 1923 ed., at p. 279.

(24a) See M. & D. Act, 1922, s. 9 (3), post, p. 1041.

(25) *Welford's Surrey Dairies, Ltd. v. Newton* (1920, K. B. D.), 90 L. J. K. B. 364; 124 L. T. 343; 85 J. P. 59; 18 L. G. R. 849.

(26) Sect. 3 and the present section are applied to other articles of food, see footnote (5), ante, p. 994. For further provisions as to obstruction, see S. F. D. Act, 1875, s. 17, ante, p. 978, and S. F. D. Act, 1899, s. 16, post, p. 1010, and M. & D. Act, 1915, s. 14, post, p. 1029. For a case under the present section, see *Phelan's Case*, supra (23).

(27) See S. F. D. Act, 1875, s. 17, and Note, ante, pp. 978, 979 (2).

(28) 11 & 12 Geo. V. c. 42, s. 10.

(29) *Webb v. Knight* (1877), L. R. 2 Q. B. D. 530; 46 L. J. M. C. 264; 36 L. T. 791; 41 J. P. 726.

(30) *Pashler v. Stevenitt or Stevenill* (1876), 35 L. T. 862; 41 J. P. 136.

purchaser's knowledge a printed notice hanging up in the room to the effect that all spirits were sold "as diluted spirits, no alcoholic strength guaranteed," although the appellant had not a good defence under the present section, he was not by that section deprived of any defence which he would have had under the principal Act, and that, the sale not having been to the prejudice of the purchaser, no offence had been committed.³¹ Sect. 6, n.

On the other hand, a notice that "all spirits sold in this establishment in order to comply with the Food and Drugs Act will not be of any guaranteed strength," not being sufficient to bring to the mind of the purchaser the fact that the spirits sold were diluted below the prescribed standard, did not protect an innkeeper from conviction for selling rum to the prejudice of the purchaser.³² And a notice that "all spirits sold in this establishment are diluted. No strength guaranteed" was also held of no avail, because, since the passing of the above Act of 1921, whisky watered down below 35 degrees under proof ceased to be "whisky."³³

Sect. 7. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act.³⁴ Extension of meaning of "county."

Sect. 8. [*Quarter sessions boroughs not to contribute to county analyst.*³⁵]

Sect. 9. The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the [county council³⁶] the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force. Provision for boroughs with separate police.

Note.

A deduction will be made from the sums payable by the county council to certain town councils under the present section, where the receipts of the county council under the Weights and Measures Acts exceed the expenditure.³⁷ Recoupment of borough.

Further as to expenses in boroughs, see the Note to sect. 29 of the principal Act.³⁸

Sect. 10. [*Special provision as to time for proceedings.*³⁹]

(31) *Gage v. Elsey* (1883), L. R. 10 Q. B. D. 518; 52 L. J. M. C. 44; 48 L. T. 226; 47 J. P. 391; see also *Palmer v. Tyler* (1897), 61 J. P. 389; and cases cited, *ante*, p. 971 (11) (12).

(32) *Dawes v. Wilkinson*, L. R. 1907, 1 K. B. 278; 76 L. J. K. B. 182; 96 L. T. 26; 71 J. P. 23; 5 L. G. R. 1.

(33) *Brander v. Kinnear* (1923, Sc. J.), 60 Sc. L. R. 390.

(34) See S. F. D. Act, 1875, s. 32, *ante*, p. 992.

(35) Repealed by S. L. R. Act, 1894, being

superseded by L. G. Act, 1888, ss. 31—39, *post*, Vol. II., p. 1918, as to expenses of quarter sessions boroughs.

(36) Transferred from county justices by L. G. Act, 1888, s. 3, *post*, Vol. II., p. 1889.

(37) See W. & M. Act, 1893 (56 & 57 Vict. c. 19), s. 1.

(38) *Ante*, p. 990.

(39) Repealed by S. F. D. Act, 1899, s. 27, *post*, p. 1015. See now s. 19 of that Act, *post*, p. 1010. As to effect of this repeal on a conviction, see *Batt's Case*, *post*, Vol. II., p. 1971 (5).

THE MARGARINE ACT, 1887.

50 & 51 VICT. c. 29.

An Act for the better Prevention of the Fraudulent Sale of Margarine.
[23rd August, 1887.]

[Whereas it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances :¹]

Short title. **Sect. 1.** This Act may be cited as “ The Margarine Act, 1887.”
Commencement **Sect. 2.** [*This Act shall come into operation on the 1st day of January, 1888.*¹]
of Act. **Sect. 3.** The word “ butter ” shall mean the substance usually known as butter,
Definition. made exclusively from milk or cream, or both, with or without salt or other
 preservatives, and with or without the addition of colouring matter.
 The word “ margarine ” shall mean [any article of food, whether mixed with
 butter or not, which resembles butter and is not milk blended butter,²] and no
 such substance shall be lawfully sold, except under the name of margarine, and
 under the conditions set forth in this Act.

Note.

Margarine. The present Act is extended to “ margarine-cheese ” by sect. 5 of the Act of
 1899,³ the expression being defined in sect. 25 of that Act.⁴
 The definition of the term “ margarine,” as including compounds in imitation of
 butter, did not prevent a person from being convicted under sect. 6 of the Sale of
 Food and Drugs Act, 1875, for selling margarine containing an excess of water
 beyond the maximum amount which margarine should contain.⁵
 Under the repealed definition the term had been held to include compounds pre-
 pared in imitation of butter, such as “ nut cream butter,” which were entirely
 of a vegetable nature and contained no animal fat, though such compounds were
 not manufactured when the Act was passed;⁶ but not milk-blended butter.⁷
Fancy names. Butter to which boracic acid has been added as a preservative may nevertheless
 be “ pure ” butter within a warranty given by a wholesaler to a retailer.⁸
Standard. As to the use of “ fancy names,” see sects. 8 and 10 of the Act of 1907.⁹
 As there is no statutory standard for margarine, the justices must fix one for
 themselves on the evidence before them.¹⁰

Penalty. **Sect. 4.** Every person dealing in margarine, whether wholesale or retail,
 whether a manufacturer, importer, or as a consignor or consignee, or as commis-
 sion agent or otherwise, who is found guilty of an offence under this Act, shall be
 liable on summary conviction for the first offence to a fine not exceeding £20, and
 for the second offence to a fine not exceeding £50, and for the third or any subse-
 quent offence to a fine not exceeding £100.¹¹
Exemption from **Sect. 5.** Where an employer is charged with an offence against this Act he shall
penalty. be entitled, upon information duly laid by him, to have any other person whom
 he charges as the actual offender brought before the court at the time appointed
 for hearing the charge, and if, after the commission of the offence has been
 proved, the employer proves to the satisfaction of the court that he had used due
 diligence to enforce the execution of this Act, and that the said other person had
 committed the offence in question without his knowledge, consent, or connivance,

(1) Repealed by S. L. R. Act, 1908.
(2) “ Substituted,” by B. & M. Act, 1907,
“ for the purposes of the S. F. D. Acts and
this Act,” for “ all substances, whether
compounds or otherwise, prepared in imita-
tion of butter, and whether mixed with
butter or not,” see s. 13, *post*, p. 1021.
(3) *Post*, p. 1007.
(4) *Post*, p. 1014.
(5) *Burton & Sons v. Mattinson* (1902), 86
L. T. 770; 66 J. P. 628.
(6) *Wilkinson v. Alton* (1908, K. B. D.), 99
L. T. 119; 72 J. P. 252; 6 L. G. R. 544.
(7) *Bayley v. Pearks, Ltd.* (1902), 87 L. T.
67; 66 J. P. 790. Further as to such butter,
see the Act of 1907, *post*, p. 1016.
(8) *Roose v. Perry & Co.* (1900, Q. B. D.),
44 Sol. J. 503.
(9) *Post*, pp. 1019, 1020.
(10) *Roberts v. Leeming* (1905), 69 J. P. 417.
See also *Rudd’s Case*, *ante*, p. 967 (73); and
Robinson’s Case, *ante*, p. 983 (27), where the
analyst gave a standard for vinegar.
(11) See also S. F. D. Act, 1899, s. 5, *re*
extension to “ margarine-cheese”; s. 8, *re*
percentage of butter fat; and s. 17, *re* im-
prisonment, *post*, pp. 1007, 1009, 1010.

the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty. **Sect. 5.**

Sect. 6. Every person dealing in margarine in the manner described in the preceding section ¹² shall conform to the following regulations: **Marking of cases.**

Every package, whether opened or closed, and containing margarine shall be branded or durably marked "Margarine" on the top, bottom, and sides, in printed capital letters, not less than three-quarters of an inch square; and if such margarine be exposed for sale, by retail, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one and a half inches square, "Margarine": and every person selling margarine by retail, save in a package duly branded or duly marked as aforesaid, shall in every case deliver the same to the purchaser in [*or with*] a paper wrapper, on which shall be printed in capital letters [*not less than a quarter of an inch square*] "Margarine."

Note.

The words in italics were repealed by the Act of 1899,¹³ which contains further provisions as to marking articles. **Amendment.**

Imported margarine, margarine-cheese, adulterated or impoverished milk, butter, or other articles of food, are required by the same Act to be on importation contained in packages conspicuously marked.¹⁴ **Imported margarine.**

That Act also requires margarine-cheese, when sold or dealt in otherwise than by retail, to be inclosed in packages marked in accordance with the present section as amended, or to be itself conspicuously branded with the words "Margarine-cheese."¹⁵ **Margarine-cheese.**

It was held that an open tub, which was placed behind the counter of a shop in view of persons entering the shop, and from which margarine was taken by means of a scoop for customers, ought to be marked in accordance with the first regulation in the present section.¹⁶ And such a tub was held to be a "parcel" and the branding on it of the word "Margarine" was held not to be a "label,"¹⁷ **Marking of tub.**

Six separate pound packages of margarine, placed in a pyramid in a shop window, were held to require only one label.¹⁸ **Label.**

Where two packages of margarine duly stamped in accordance with the present section were wrapped in unstamped brown paper before being handed to the purchaser, the court upheld the dismissal of a summons under the last part of the section, the words "or with" not having been repealed at that time. *Per* Lord Russell, C.J., "If the outer wrapper had been put on by the vendor without request from the purchaser, it might have been some evidence of an attempt to deceive him." And *per* Cave, J., "there would have been a technical breach of the Act, even if the outer wrapper had been put on at the purchaser's request"¹⁹ See also the cases cited in the Notes to sect. 8 of the principal Act,²⁰ sect. 6 of the Sale of Food and Drugs Act, 1899,²¹ and (as to the use of "fancy or other descriptive names" in wrappers, etc.), sect. 8 of the Butter and Margarine Act, 1907.²² **Wrapper.**

Margarine, spread on bread, and sold for consumption on the premises, is not "margarine sold by retail" within the meaning of the present section.²³ As to "exposure for sale," see the Note to sect. 7, *infra*. **Sale by retail.**

County justices may convict under the present section, although the margarine may have been delivered to the purchaser in a borough.²⁵ **Procedure.**

It was held that the summons under the section need not be served within the twenty-eight days mentioned in the now repealed sect. 10 of the Act of 1879;²⁶

(12) No doubt s. 4 is meant, as s. 5 does not mention "dealing in" margarine.

(13) See s. 27 and Sched., *post*, p. 1015. The words "or with" were also repealed by s. 6 (3), *post*, p. 1008.

(14) See s. 1, *post*, p. 1003.

(15) See ss. 5, 6, *post*, p. 1007.

(16) *McNair v. Horan* (1904, K. B. D.), 91 L. T. 555; 68 J. P. 518; 2 L. G. R. 1239; 20 Cox C. C. 729.

(17) *Maguire v. Porter*, 1905 Ir. K. B. 147.

(18) *Parkinson v. McNair* (1905), 93 L. T. 553; 69 J. P. 399; 3 L. G. R. 982; 21 Cox C. C. 42.

(19) *Toler v. Bishop* (1895), 65 L. J. M. C.

4; 73 L. T. 403; 60 J. P. 9. See also the *World's Tea Co. Case*, *post*, p. 1000 (2); *Millard's Case*, *post*, p. 1008 (19); and the *Keeloma Dairy Case*, *post*, p. 1019 (24).

(20) *Ante*, p. 971.

(21) *Post*, p. 1008.

(22) *Post*, p. 1019.

(23) *Moore v. Pearce's Dining Rooms, Ltd.*, L. R. 1895, 2 Q. B. 657; 65 L. J. M. C. 7; 73 L. T. 400; 59 J. P. 805.

(25) *Buckler v. Wilson*, L. R. 1896, 1 Q. B. 83; 65 L. J. M. C. 18; 73 L. T. 580; 60 J. P. 118. Further as to this case, see *ante*, p. 976 (7), and *post*, p. 1000 (28).

(26) *Ante*, p. 997.

Sect. 6, n.

and that compliance with sect. 14 of the principal Act²⁷ is not a condition precedent to such a summons.²⁸

Evidence.

The last-cited case was distinguished in one in which the dismissal of a summons against a wholesale dealer was upheld on the ground that the only evidence tendered to prove that the article in question was margarine was a certificate of analysis made for the purposes of another prosecution which had been instituted against the retail dealer to whom he had sold the article.²⁹

Presumption
against vendor.

Sect. 7. Every person dealing with, selling, or exposing, or offering for sale, or having in his possession for the purpose of sale, any quantity of margarine contrary to the provisions of this Act, shall be liable to conviction for an offence against this Act, unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter, and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter, and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence.

Note.

Butter fat.

It is an offence to manufacture, sell, or expose for sale, or import any margarine, the fat of which contains more than 10 per cent. of butter fat.¹

Offering
for sale.

An offer to sell contained in an advertisement, is not an "offering for sale" within the present section, and if the vendor, when actually selling the margarine, complies with the section, no offence is committed by issuing the advertisement without the word "Margarine" in it.²

Exposure
for sale.

A customer asking for margarine was served from a parcel of margarine then in the shop and unlabelled, but placed behind a screen so as not to be visible to customers. It was held that there had been no contravention of the section; for the meaning is that if the stuff is exposed in a shop for sale so as to induce persons coming into, or looking into the shop to buy, the label must be such as to show them what the stuff really is.³

The margarine may, however, be "exposed for sale" within the meaning of the Act, although it is wrapped up in paper, and is therefore itself actually not visible to the purchaser.⁴

In Ireland it has been held that the present section does not make penal the mere fact of exposure of margarine for sale as butter, irrespective of the state of mind of the seller; though in the interest of the public the intent and knowledge of the seller will be presumed unless he disproves it. The question arose in an action for breach of warranty, in which it was held that the plaintiff could not recover damages for general loss of trade profits, whether consequent on his conviction or on the resales of the adulterated substances to his customers, nor could he recover the amount of the fine imposed on him.⁵

Analysis.

There must be an analysis of the article sold before the vendor can be convicted; and on this ground a conviction for exposing margarine for sale without the label required by sect. 6, and for selling margarine without the printed wrapper required by the same section, was quashed; although the defendant's manager had after the sale admitted that the article in question was margarine.⁶

Warranty.

Further provisions with regard to the defence of purchase with warranty are made by the Act of 1899.⁷ See also the Note to the similar enactment contained in the principal Act.⁸

The provisions of the present section with respect to the defence of warranty are applied to prosecutions in respect of milk-blended butter.⁹

(27) *Ante*, p. 976.

(28) See *Buckler's Case*, *ante*, p. 999 (25).

(29) *Tyler v. Kingham & Son*, L. R. 1900, 2 Q. B. 413; 69 L. J. Q. B. 630; 83 L. T. 169; 64 J. P. 598.

(1) See S. F. D. Act, 1899, s. 8, *post*, p. 1009.

(2) *World's Tea Co v. Gardner* (1895), 59 J. P. 358.

(3) *Crane v. Lawrence* (1890), L. R. 25 Q. B. D. 152; 59 L. J. M. C. 110; 63 L. T. 197; 54 J. P. 471.

(4) *Wheat v. Brown*, L. R. 1892, 1 Q. B.

418; 61 L. J. M. C. 94; 66 L. T. 464; 56 J. P. 153.

(5) *Fitzgerald v. Leonard* (1893), 32 L. R. Ir. 675. But see *Bett's Case*, *ante*, p. 969 (93).

(6) *Smart v. Watts*, L. R. 1895, 1 Q. B. 219; 64 L. J. M. C. 89; 71 L. T. 768; 59 J. P. 54.

(7) See s. 20, *post*, p. 1012.

(8) Namely, s. 25, *ante*, p. 985.

(9) See B. & M. Act, 1907, s. 9 (3), *post*, p. 1020.

Sect. 8. All margarine imported into the United Kingdom of Great Britain [*and Ireland*], and all margarine whether imported or manufactured within the United Kingdom of Great Britain [*and Ireland*], shall, whenever forwarded by any public conveyance, be duly consigned as margarine; and it shall be lawful for any officer of [His] Majesty's Customs [and Excise ¹⁰], or any medical officer of health, [sanitary inspector,¹¹ inspector of weights and measures ¹²], or police constable, authorised under sect. 13 of the Sale of Food and Drugs Act, 1875, to procure samples for analysis if he shall have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against this Act has been committed.

Sect. 8.
Margarine
imported or
manufactured.

Note.

See further, as to the unlawful importation of margarine, sect. 1 of the Act of 1899.¹³

Unlawful
importation.
Milk-blended
butter.

The present section, with some modification, is applied to milk-blended butter.¹⁴

When a sample is taken of margarine or margarine-cheese forwarded by a public conveyance, a portion of it is to be sent to the consignor, if his name and address are on the package.¹⁵

Division of
sample.

With regard to the purchase of samples by deputy, see the Note to sect. 13 of the principal Act.¹⁶

Purchase
by deputy.

Sect. 9. Every manufactory of margarine within the United Kingdom of Great Britain [*and Ireland*] shall be registered by the owner or occupier thereof with the local authority from time to time in such manner as the [Minister of Health] . . .¹⁷ may direct, and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence under this Act.

Registration of
manufactory.

Note.

An Order of the Local Government Board as to the registration of manufactories of margarine and margarine-cheese, dated 26th February, 1900, has been issued under the present section and sects. 5 and 7 of the Act of 1899.¹⁸ It will be found elsewhere.¹⁹

Registration
of manu-
factory.

Another order of the Local Government Board as to the registration of manufactories of butter and milk-blended butter, dated 28th December, 1907, has been issued under the present section, sect. 7 of the Act of 1899, and sect 1 of the Butter and Margarine Act, 1907. It will be found elsewhere.¹⁹

The registration of the manufactory is to be forthwith notified to the Minister of Agriculture and Fisheries by the local authority referred to in sect. 13 of the present Act.²⁰

Registration
of consign-
ments.

The Act of 1899 requires the occupier of the manufactory to keep a register of the quantity and destination of every consignment of margarine or margarine-cheese sent out,²⁰ and extends the present section to "any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on."²¹

The present section, amended as above mentioned by the Act of 1899, is applied to milk-blended butter factories.²²

Milk-blended
butter.

Sect. 10. Any officer authorised to take samples under the Sale of Food and Drugs Act, 1875,²³ may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purposes of analysis samples of any butter, or substances purporting to be butter, which are exposed for sale, and

Power to inspec-
tors to take
samples without
purchase.

(10) See *ante*, p. 984. For other powers given to departmental officers, see S. F. D. Act, 1875, s. 30, *ante*, p. 990; S. F. D. Act, 1899, ss. 1 (3), 2—4, *post*, p. 1003; and B. & M. Act, 1907, s. 2, *post*, p. 1016.
(11) Now the appellation of "inspectors of nuisances," see *ante*, p. 530.
(12) Added, "except in the administrative county of London," by B. & M. Act, 1907 (7 Edw. VII. c. 21), s. 12.
(13) *Post*, p. 1003.
(14) See B. & M. Act, 1907, s. 9 (2), *post*, p. 1020.

(15) See S. F. D. Act, 1899, s. 10, *post*, p. 1009.
(16) *Ante*, p. 975.
(17) Scotland and Ireland.
(18) *Post*, p. 1007.
(19) *Post*, Vol. II., Part V., under heading "FOOD."
(20) See S. F. D. Act, 1899, s. 7, *post*, p. 1008.
(21) See s. 7 (4), *post*, p. 1008.
(22) See B. & M. Act, 1907, s. 1, *post*, p. 1016.
(23) See s. 13 and Note, *ante*, p. 975.

Sect. 10. are not marked Margarine, as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter.

Note.

Form of purchase.

The marginal note suggests that this enactment authorises samples to be taken compulsorily without payment. The principal Act does not prescribe any particular form of purchase, but requires that, "after the purchase shall have been completed," the purchaser is to give the vendor notice of the intended analysis, and have the sample divided into three parts.²⁴

Obstruction of officer.

Wilful obstruction, bribery, or attempted bribery, of the officer is punishable under the Act of 1899.²⁵

Appropriation of penalties.

Sect. 11. Any part of any penalty recovered under this Act may, if the court shall so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the court shall consider him entitled.

Note.

Application of penalties.

Penalties under the present Act are to be applied as directed by the principal Act.²⁶ In the metropolitan police district they are payable to the inspector of the local authority and not to the receiver of the metropolitan police, notwithstanding sect. 47 of the Metropolitan Police Courts Act, 1839.²⁷

Proceedings.

Sect. 12. All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sects. 12 to 28 inclusive of the Sale of Food and Drugs Act, 1875, and all officers employed under that Act are hereby empowered and required to carry out the provisions of this Act.

Definition of local authority.

Sect. 13. The expression "local authority" shall mean any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875.

Note.

Local authority.

The "local authorities" are the county councils, county borough councils, and councils of the larger quarter sessions boroughs.²⁸

(24) See s. 14, *ante*, p. 976.

(25) See s. 16, *post*, p. 1010.

(26) See s. 26, *ante*, p. 989.

(27) 2 & 3 Vict. c. 71, s. 47. *Reg. (Quelch) v. Titterton*, L. R. 1895, 2 Q. B. 61; 64

L. J. M. C. 202; 73 L. T. 345; 59 J. P. 327.

(28) See S. F. D. Act, 1875, s. 10, *ante*, p. 974, and L. G. Act, 1888, ss. 3 (x.), 34, 35, 36, *post*, Vol. II., pp. 1889, 1918, 1920, 1922.

SALE OF FOOD AND DRUGS ACT, 1899.

62 & 63 VICT. c. 51.

An Act to amend the Law relating to the sale of Food and Drugs.

[9th August, 1899.]

Sect. 1.—(1.) If there is imported into the United Kingdom any of the following articles, namely :—

- (a.) margarine or margarine-cheese, except in packages conspicuously marked “Margarine” or “Margarine-cheese,” as the case may require; or
- (b.) [*adulterated or impoverished butter (other than margarine)* or] adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the [*butter or*] milk or cream has been so treated; or
- (c.) condensed separated or skimmed milk, except in tins or other receptacles which bear a label whereon the words “Machine-skimmed Milk” or “Skimmed Milk,” as the case may require, are printed in large and legible type; or
- (d.) any adulterated or impoverished article of food to which [His] Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated;

[(e.) . . . (j.) . . . ¹]

the importer shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2.) The word “importer” shall include any person who, whether as owner, consignor, or consignee, agent, or broker, is in possession of, or in any wise entitled to the custody or control of, the article; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs; and subject to the provisions of this Act this section shall have effect as if it were part of the Customs Consolidation Act, 1876.

(3.) The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the [Minister] of Agriculture [and Fisheries], take such samples of consignments of imported articles of food as may be necessary for the enforcement of the foregoing provisions of this section.

(4.) Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories, and retain one part.

(5.) In any proceeding under this section the certificate of the principal chemist of the result of the analysis shall be sufficient evidence of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness.

(6.) If, in any case, the Commissioners of Customs are of opinion that an offence against this section has been committed, they shall communicate to the [Minister] of Agriculture [and Fisheries] for [his] information the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

(7.) For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health.

Precautions against importation of agricultural and other produce insufficiently marked.

(1) See added sub-clauses (e) to (j), *post*, p. 1018.

Sect. 1, n.

Sale of Food
and Drugs
Acts.Margarine
and milk-
blended
butter.Meaning of
"Marga-
rine."Meaning
of "food."Defence of
warranty.

Appeal.

Preserva-
tives.Power for
[Minister of
Health] or
[Minister] of
Agriculture[and
Fisheries] to
sample articles
of food.

Note.

As to the Sale of Food and Drugs Acts generally, see the Note at the commencement of the Act of 1875.²

Subsect. (1) of the present section is applied by the Act of 1907 to the importation of impoverished or adulterated margarine and milk-blended butter as well as to butter other than margarine, and the words in italics in clause (b) of that subsection are repealed.³ As to the maximum fine for an offence under the present section as amended, see sect. 5 (2) of the same Act. Subsect. (5) of the present section is amended by sect. 5 (3) and (4) with respect to the effect of the certificate of analysis.

A certificate given by the principal chemist of the Government Laboratories under subsect. (5) of the present section is not required to be in the form prescribed by the principal Act,⁴ for the certificate of a public analyst; and the Divisional Court, therefore, held that a certificate of the principal chemist that a sample of imported margarine contained a certain percentage of water which exceeded the legal limit,⁵ was sufficient, although it was not in the form prescribed as above-mentioned, and in particular did not state whether or not any change had taken place in the constitution of the article that would interfere with its analysis.⁶

Margarine is now defined as meaning "any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter."⁷ It had been defined by the Act of 1887,⁸ as meaning "all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not"; and that Act was extended by sect. 5 of the present Act to margarine-cheese, which is defined by sect. 25 of the present Act.

For the definition of "food," see sect. 26 of the present Act.

The defence, under s. 25 of the principal Act,⁹ of having purchased the goods with a written warranty, cannot be set up in answer to a charge under the present section of having imported adulterated butter not in packages properly marked.¹⁰

The Divisional Court decided (Bray, J., dissenting) that an appeal to quarter sessions would not lie against a conviction under the present section, because no such appeal was given by the Customs Consolidation Act, 1876, referred to in subsect. (2).¹¹

As to the use of preservatives in milk and cream,¹² butter,¹³ and cake,¹⁴ see the footnotes below.

Sect. 2.—(1.) The [Minister of Health] may, in relation to any matter appearing to that [Minister] to affect the general interest of the consumer, and the [Minister] of Agriculture [and Fisheries] may, in relation to any matter appearing to that [Minister] to affect the general interests of agriculture in the United Kingdom, direct an officer of the [Minister] to procure for analysis samples of any article of food, and thereupon the officer shall have all the powers of procuring samples conferred by the Sale of Food and Drugs Acts, and those Acts shall apply as if the officer were an officer authorised to procure samples under the Sale of Food and Drugs Act, 1875, except that—

(a.) the officer procuring the sample shall divide the same into four parts, and shall deal with three of such parts in the manner directed by sect. 14 of the Sale of Food and Drugs Act, 1875, as amended by this Act, and shall send the fourth part to the [Minister], and

(b.) the fee for analysis shall be payable to the analyst by the local authority of the place where the sample is procured.

(2.) The [Minister] shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and

(2) *Ante*, p. 957.

(3) See B. & M. Act, 1907, s. 5 (1), *post*, p. 1018.

(4) As to such form, see s. 18 and Sched., *ante*, pp. 980, 993.

(5) Prescribed by B. & M. Act, 1907, s. 5 (1) (f), *post*, p. 1018.

(6) *Foot v. Findlay*, L. R. 1909, 1 K. B. 1; 78 L. J. K. B. 48; 99 L. T. 798; 72 J. P. 494; 6 L. G. R. 1129.

(7) See B. & M. Act, 1907, s. 13, *post*, p. 1021.

(8) See s. 3, *ante*, p. 998.

(9) *Ante*, p. 985. See also the cases there cited.

(10) *Kelly v. Lonsdale & Co.*, L. R. 1906, 2 K. B. 486; 75 L. J. K. B. 822; 95 L. T. 427; 70 J. P. 441; 4 L. G. R. 949.

(11) *Rex v. Otto Monsted, Ltd.*, L. R. 1906, 2 K. B. 456; 75 L. J. K. B. 629; 95 L. T. 526; 70 J. P. 435; 4 L. G. R. 949.

(12) Regulations of 1912, *post*, Vol. II., Part V., under heading "FOOD." Circular, *re* milk, July 11, 1906, set out in 4 L. G. R. (Orders) 100.

(13) B. & M. Act, 1907, s. 7, and Note, *post*, p. 1019.

(14) M. H. Circular, March 20, 1923, *re* boric acid, set out in 21 L. G. R. (Orders) 37.

power on the part of the local authority to cause proceedings to be taken as if the local authority had caused the analysis to be made.¹⁵ **Sect. 2.**

Sect. 3.—(1.) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

Power for
[Minister of
Health] or
[Minister] of
Agriculture[and
Fisheries] to
act in default
of local
authority.

(2.) If the [Minister of Health] or [Minister] of Agriculture [and Fisheries], after communication with a local authority, [is] of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interests of agriculture in the United Kingdom, as the case may be, the [Minister] concerned may, by order, empower an officer of the [Minister] to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3.) The expenses incurred by the [Minister] or [his] officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the [Minister] on demand, and in default the [Minister] may recover the amount of the expenses with costs from the local authority.

(4.) For the purposes of this section an order of the [Minister] shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5.) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the [Minister of Health].

Note.

The local authorities referred to in the present section do not include all district councils, but only those who are authorised to appoint analysts for the purposes of the Sale of Food and Drugs Acts,¹ namely, the councils of boroughs having populations of not less than 10,000, and also separate quarter sessions or separate police establishments.² In other boroughs and districts outside the county of London, the county councils are the local authorities.

Local
authority.

The expenses of the local authority are payable out of the county or borough rate, as the case may be.³

Power to deal with defaulting local authorities is conferred by sect. 11 of the Act of 1922.⁴

Unless it is desired to impose the cost of proceedings on a defaulting local authority under the present section, the Departmental officials need not follow the procedure laid down in sect. 2 (a) of the present Act, so long as they follow that laid down in sect. 14 of the principal Act.⁵

Government
sampling.

The regulations of the Local Government Board (dated March 7th, 1900) as to the proof of competency to be furnished by an analyst are as follows:—

Competency
of analysts.

“Every person appointed on or after the 1st January, 1900, to the office of public analyst shall furnish such proof as we may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy. Such proof shall in every case comprise documentary evidence that such person holds the requisite certificate, diploma, licence, or document conferring the qualification or attesting his possession of the skill or knowledge to which the same applies, and granted or issued by any person or body of persons for the time being recognised by us as competent to confer such qualification or to test such skill or knowledge. Such proof shall also comprise such further evidence as we may in any particular case require. All such documentary evidence as is herein-before mentioned shall be furnished by such person to the local authority

(15) As to the taking, etc., of samples, see S. F. D. Act, 1875, ss. 13, 14, 16, *ante*, pp. 975, 976, 978; S. F. D. Act, 1879, s. 3, *ante*, p. 994; M. Act, 1887, s. 10, *ante*, p. 1001; and ss. 3 and 14 of the present Act, and the Notes to those sections.

(1) See s. 25, *post*, p. 1014.

(2) See S. F. D. Act, 1875, s. 10, *ante*, p. 974; L. G. Act, 1888, ss. 38, 39, *post*, Vol. II., pp. 1922, 1923.

(3) See S. F. D. Act, 1875, s. 29, *ante*, p. 990.

(4) *Post*, p. 1041.

(5) *Falconer v. Whyte*, 1908 S. C. (J.) 40.

Sect. 3, n.

by whom he is appointed and shall be transmitted to us by the local authority when applying for our approval of the appointment: Provided that nothing in this Regulation contained shall, in the case of any person who was appointed to the office of public analyst with our approval between the 1st January, 1891, and the date hereof, or of any person who is so appointed for the first time after such last-mentioned date, apply upon any subsequent appointment of such person to the said office."

Proof of competency.

In their Circular of the 8th March, 1900, the Board stated that they would accept, as the documentary evidence required by the present Order, "the diploma of fellowship or associateship of the Institute of Chemistry of Great Britain and Ireland, together with the certificate granted by the Institute after an examination, conducted by them on lines approved by the Board, in therapeutics, pharmacology, and microscopy."

They also stated that "the possession of a diploma as a registered medical practitioner" would be "accepted as sufficient proof of competency in microscopy and therapeutics," and that "it would only be necessary that a medical practitioner appointed as a public analyst should furnish evidence of competent skill in and knowledge of analytical chemistry," and that "evidence of skill or knowledge on the part of a candidate in respect of any of the qualifications referred to as requisite, which is tendered by an individual, must be from a person recognised as entitled to speak with authority as to proficiency in the particular qualification in question."

Tenure of office.

The Board did not approve of an analyst's appointment "subject to three months notice on either side," but they would approve of it "until they shall upon the application of the council approve of its determination." They would not approve of the analyst's removal from office solely on the ground that the council could get the work executed at a lower rate.

Power for [Minister] of Agriculture [and Fisheries] to make regulations as to analysis of milk, cream, butter, or cheese.

Sect. 4.—(1.) The [Minister] of Agriculture [and Fisheries] may, after such inquiry as [he deems] necessary, make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary is proved, that the milk, cream, butter, or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis under those Acts.

(2.) Any regulations made under this section shall be notified in the London and Edinburgh Gazettes, and shall also be made known in such other manner as the [Minister] of Agriculture [and Fisheries] may direct.

Note.**Butter and preservatives.**

The regulations may now relate to the proportion of any milk-solid other than milk-fat in butter or milk-blended butter,⁶ and may also be made with respect to the use of preservatives in butter, margarine, or milk-blended butter.⁷

Standard of butter.

The regulations, with regard to the standard of butter, made by the Board of Agriculture and Fisheries under the present section on the 22nd April, 1902, came into operation on the 15th May, 1902, extend to Great Britain, and provide that "Where the proportion of water in a sample of butter exceeds 16 per cent. it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein."

Milk.

The regulations, with regard to the standard of milk, made by the Board of Agriculture and Fisheries under the present section are as follows:—

Those of 1901, which came into operation on the 1st September, 1901, and extend to Great Britain, provide that "where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water"; and that "where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8.5 per cent. of milk-solids other than milk-fat,

(6) See B. & M. Act, 1907, s. 6, *post*, p. 1019.

(7) *Ibid.*, s. 7.

it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat or the addition thereto of water."

Those of 1912, which came into operation on the 1st September, 1912, and extend to England and Wales, revoke (with a saving for certificates of analysis given before their commencement and legal proceedings thereunder) the provisions as to "skimmed or separated milk" in the Regulations of 1901, and provide that "where a sample of skimmed or separated milk (not being condensed milk) contains less than 8.7 per cent. of milk solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, until the contrary is proved, that the milk is not genuine, by reason of either the addition thereto of water, or the abstraction therefrom of milk-solids other than milk-fat."

In the case cited below,⁸ it was held that this regulation was not *ultra vires*.

Regulations as to milk and cream, and condensed and dried milk, have been made under the Public Health (Regulations as to Food) Act, 1907,⁹ and are set out elsewhere.¹⁰

An analyst's certificate, stating the extent of deficiency in milk-solids of a certain sample of milk, was held to be sufficient although it did not refer to the standard laid down by the regulations.¹¹

An analyst certified that a sample of skimmed milk contained "Solids not fat, 7.35; fat, 1.31; water, 91.34—100.00; ash, .59." He observed: "These figures show that this sample of skimmed milk falls under the standard (9 per cent.) fixed by the Board of Agriculture in total solids." The summons was dismissed on the ground that this certificate was unintelligible. It was held that the certificate was sufficiently clear as (*per* Lord Salvesen) "he found that there was .34 per cent. of water in excess of what there ought to have been in accordance with the regulations."¹²

An analyst certified as follows: "I am of opinion that the said sample contained the parts as under, viz., 2.5 per cent. of fat. Compared with the limit of the Board of Agriculture, it is deficient in fat to the extent of 16.67 per cent." The justices dismissed the summons on the ground that the certificate did not (1) state the constituent parts of the sample and the percentage of solids other than fat, or (2) contain sufficient materials to enable them to conclude whether the milk had been adulterated either by a percentage of fat having been extracted or by water having been added. An appeal was allowed, reluctantly by Bray and Lawrence, JJ., on the authority of the cases cited below,¹³ and readily by Shearman, J., who said that since the passing of the present Act "it is enough if the statutory deficiency be shown. The analyst has simply to set out the parts of fat in the sample and the deficiency as compared with the standard."¹⁴

Evidence to rebut the presumption enacted in the present section was given by the defendant, his mother, and various servants, and the conviction, which was based on the ground that such evidence, not having been corroborated by neutral testimony, was not sufficient to rebut the presumption, was quashed.¹⁵ As to the effect on the presumption of evidence that the milk in question is as it came from the cow, see the case cited below.¹⁶

In the case above cited,¹⁷ an objection that the Regulations did not apply to "skimmed milk," or that, if they did, they were *ultra vires*, was overruled. *Per* Lord Salvesen: "The argument was that when the phrase 'genuine milk' is used it means milk as it comes from the cow and cannot include 'skimmed milk.' . . . But the word 'genuine' there qualifies all the words that follow—genuine cream, genuine butter, and genuine cheese, and is really equivalent to 'unadulterated.' . . . Unless we read the section in that way the Board will have no power to fix a standard at all for such an important commodity as skimmed milk."

Sect. 4, n.

Milk and cream, etc.

Analysts' certificates.

Presumption.

Validity of Regulations.

Sect. 5. The provisions of the Margarine Act, 1887, as amended by this Act, shall extend to margarine-cheese, and shall apply accordingly, with the substitution of

Extension of Margarine Act, 1887, to margarine-cheese.

(8) *Gordon's Case*, *infra* (17).

(9) *Post*, p. 1022.

(10) *Post*, Vol. II., Part V., under heading "FOOD."

(11) *Bayley v. Cook* (1905, K. B. D.) 92 L. T. 170; 69 J. P. 139; 3 L. G. R. 304.

(12) *Gordon v. Love*, 1911 S. C. (J.) 75; 2 Glen's Loc. Gov. Case Law 96.

(13) *Bayley's Case*, *supra* (11), and *Bake-well's Case*, *ante*, p. 980 (19).

(14) *Jenkins v. Naden* (1919), 88 L. J. K. B. 1137; 121 L. T. 142; 83 J. P. 154; 17 L. G. R. 324, at p. 329.

(15) *Lamont v. Rodger*, *ante*, p. 977 (16).

(16) *Penrice's Case*, *ante*, p. 967 (68).

(17) *Gordon's Case*, *supra* (12).

Sect. 5.

“ margarine-cheese ” and “ cheese ” for “ margarine ” and “ butter,” and provided that all margarine-cheese sold or dealt in otherwise than by retail shall either be inclosed in packages marked in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words “ margarine-cheese.”¹⁷

Marking of
margarine and
margarine-
cheese.

Sect. 6.—(1.) Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto.

(2.) The letters required to be printed on the paper wrapper in which margarine or margarine-cheese is sold shall be capital block letters not less than half an inch long and distinctly legible, and no other printed matter shall appear on the wrapper.

(3.) The words “ or with ” in sect. 6 of the Margarine Act, 1887,¹⁸ shall be repealed.

Note.

**Margarine
wrappers.**

Margarine was wrapped first in plain parchment paper, then in a cardboard case, on which was printed a cabbage leaf and the words “ Green Leaf Margarine,” and then in thin transparent paper on which was printed the word “ Margarine.” Each end of the last wrapper was fastened by a circular gummed label on which were printed the words “ 4d. per packet, about $\frac{1}{2}$ lb.” A conviction of the vendor for selling margarine, in a wrapper with printed matter on it in addition to the word “ Margarine,” was upheld.¹⁹ In this case Lord Alverstone, C.J., said that the present section was not impliedly repealed by sect. 8 of the Act of 1907.

Provisions as to
manufacturers
of and dealers
in margarine
and margarine-
cheese.

Sect. 7.—(1.) Every occupier of a manufactory of margarine or margarine-cheese, and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the [Minister] of Agriculture [and Fisheries].

(2.) . . . ²⁰

(3.) If any such occupier or dealer—

(a.) fails to keep such a register, or

(b.) refuses to produce the register when required to do so by an officer of the [Minister] of Agriculture [and Fisheries], or

(c.) fails to keep the register posted up to date, or

(d.) wilfully makes any entry in the register which is false in any particular, or

(e.) fraudulently omits to enter any particular which ought to be entered in the register,

he shall be liable on summary conviction for the first offence to a fine not exceeding ten pounds, and for any subsequent offence to a fine not exceeding fifty pounds.

(4.) The provisions of sect. 9 of the Margarine Act, 1887,²¹ relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

(5.) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the [Minister] of Agriculture [and Fisheries].

Note.

**Milk-blended
butter.**

The above mentioned provisions of the Act of 1887, as amended by the present section, are applied to milk-blended butter factories, and the provisions of the present section as to registers of consignments of margarine are applied to consignments of milk-blended butter.²²

**Inspection
of registers.**

The right to inspect a register includes a right to take notes from it, and a refusal to allow this amounts to a refusal to “ produce ” the register.²³

(17) “ Margarine-cheese ” and “ cheese ” are defined by s. 25. As to the mode of marking packages of margarine, see M. Act, 1887, s. 6, *ante*, p. 999.

(18) *Ante*, p. 999.

(19) *Millard v. Allwood or Alwood*, L. R. 1912, 1 K. B. 590; 81 L. J. K. B. 514; 106 L. T. 111; 76 J. P. 139; 10 L. G. R. 127. See also *Williams' Case*, *post*, p. 1020 (25).

(20) As to inspection by Bd. of Ag., repealed by B. & M. Act, 1907, s. 2, *post*, p. 1016, which contains other provisions for this purpose.

(21) *Ante*, p. 1001.

(22) See B. & M. Act, 1907, s. 1, *post*, p. 1016.

(23) *Hart v. Cohen* (1902), 39 Sc. L. R. 322; 4 Fraser 445.

Sect. 8. It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than ten per cent. of butter fat, and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage, shall be guilty of an offence under the Margarine Act, 1887, and any defence which would be a defence under sect. 7 of that Act shall be a defence under this section, and the provisions of the former section shall apply accordingly. [Provided that nothing in this section shall apply to any margarine manufactured or imported in fulfilment of any contract made before the 20th day of July, 1899.²⁴]

Note.

The present section did not prevent the sale of milk-blended butter containing more than 10 per cent. of butter fat, as such butter is not "margarine."²⁵

A mixture of butter and margarine may not be merely "colourable," but the presence of only 4½ per cent. of butter fat does not justify giving the mixture that name, having regard to the fact that the present section makes it unlawful to sell such a mixture containing more than 10 per cent. of butter fat. A conviction for selling such a mixture "to the prejudice of the purchaser" was accordingly quashed.²⁶

A fine not exceeding £20 is imposed for a first offence under the Act of 1887, not exceeding £50 for a second, and not exceeding £100 for a third or subsequent offence.²⁷ Such penalties are recoverable summarily in the manner provided by the principal Act.²⁸

Sect. 9. Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address, and in default shall be liable on summary conviction to a fine not exceeding two pounds.

Note.

Sect. 6 of the Milk and Dairies (Consolidation) Act, 1915,²⁹ will take the place of the present section if and when it comes into force.

Where milk was delivered from a can which had not the vendor's name upon it, but the cart in which the can had been conveyed had the name upon it and was standing near, the justices dismissed an information under the present section subject to a case. But the court remitted the case to them to find whether the sale was in fact a sale from the cart or from the can, as in the latter case they ought to have convicted.^{29a}

As to the sale of milk from false measures, see the Note to sect. 21 of the Markets and Fairs Clauses Act, 1847.³⁰

Sect. 10. In the case of a sample taken of milk in course of delivery, or of margarine or margarine-cheese forwarded by a public conveyance, the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the consignor if his name and address appear on the can or package containing the article sampled.³¹

Sect. 11. Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section he shall be liable on summary conviction to a fine not exceeding ten pounds.

Note.

Lord Alverstone, C.J.,³² expressed the opinion that the present section applied only to condensed separated milk, or condensed skimmed milk, and not to separated or skimmed milk carried for sale in ordinary milk cans.

The Public Health (Condensed Milk) Regulations, 1923,³³ will be found elsewhere.

(24) Repealed by S. L. R. Act, 1908.

(25) See *Bayley v. Pearks, Ltd.*, ante, p. 998 (7).

(26) *Anness v. Grivell*, L. R. 1915, 3 K. B. 685; 85 L. J. K. B. 121; 113 L. T. 995; 79 J. P. 558; 13 L. G. R. 1215. Further as to this case, see ante, p. 965 (48).

(27) See s. 4, ante, p. 998.

(28) See M. Act, 1887, s. 12, ante, p. 1002; and S. F. D. Act, 1875, s. 20, ante, p. 981.

(29) *Post*, p. 1026.

(29a) *Crabtree v. Skelton* (1901), 70 L. J. K. B. 560; Loc. Gov. Chron. 723.

(30) *Post*, Vol. II., p. 1432 (4).

(31) See also S. F. D. Act, 1879, s. 3 and Note, ante, p. 994, as to milk in course of delivery; and M. Act, 1887, s. 8 and Note, ante, p. 1001, as to margarine forwarded by public conveyance.

(32) In *French v. Card*, ante, p. 979 (13).

(33) *Post*, Vol. II., Part. V., under heading "FOOD, Milk."

Sect. 8.

Restriction on amount of butter fat in margarine.

Milk-blended butter.

Colourable mixture.

Penalties.

Provision as to name and address of person selling milk or cream in a public place.

Repeal.

Sale from vehicle.

False measures.

Division of samples taken in course of delivery or transit.

Provisions as to condensed separated or skimmed milk.

Condensed milk.

Sect. 12.

Notice of mixtures.

Sect. 12. The label referred to in sect. 8 of the Sale of Food and Drugs Act, 1875, shall not be deemed to be distinctly and legibly written or printed within the meaning of that section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label: Provided that nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before the commencement of this Act; but the Comptroller-General of Patents, Designs, and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment.³³

Taking samples in course of delivery.

Sect. 13. [*Amendment of 38 & 39 Vict. c. 63 as to samples.*³⁴]

Sect. 14. The provisions of sect. 3 and sect. 4 of the Sale of Food and Drugs Act Amendment Act, 1879 (relating to the taking of samples of milk in course of delivery),³⁵ shall apply to every other article of food: ³⁶ Provided that no samples shall be taken under this section except upon the request or with the consent of the purchaser or consignee.

Obstruction of officer in discharge of his duties.

Sect. 15. [*Amendment of 38 & 39 Vict. c. 63 as to registered parcels.*³⁷]

Sect. 16. Any person who wilfully obstructs or impedes any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent, the due execution by such inspector or officer of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding £20, for the second offence to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100.

Note.**Obstruction.**

Mens rea is necessary for obstruction to be an offence under the present section. Thus, where an inspector asked for a sample of whisky out of a particular bottle, and the husband of the licensee, without her authority or connivance, smashed the bottle in order to prevent a sample being taken, the conviction of the licensee was quashed.³⁸ For other cases relating to obstruction of inspectors, see the Note to sect. 17 of the principal Act.³⁹ See also sect. 14 of the Milk and Dairies (Consolidation) Act, 1915.^{39a}

Penalties for offences under the Sale of Food and Drugs Acts.

Sect. 17.—(1.) Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to £20 as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100.

(2.) Where, under any provision of the Sale of Food and Drugs Acts, a person guilty of an offence is liable to a fine exceeding £50, and the offence, in the opinion of the court, was committed by the personal act, default, or culpable negligence of the person accused, that person shall be liable (if the court is of opinion that a fine will not meet the circumstances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months.

Note.**Penalties.****Corporations.**

For the penalties imposed by the principal Act, see the Note to sect. 20.⁴⁰ Subsect. (2) of the present section could not be applied to corporations.⁴¹

Sect. 18. [Articles sold in tins or packets.⁴³]

Time for proceeding and regulation as to summons.

Sect. 19.—(1.) When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in sect. 20 of the Sale of Food and Drugs Act, 1875, shall not be instituted after the expiration of twenty-eight days from the time of the purchase.

(33) For cases relating to "labels," see Note to S. F. D. Act, 1875, s. 8, *ante*, p. 971.

(34) The present section was repealed by S. L. R. Act, 1908, but not so as to affect the amendments to S. F. D. Act, 1875, s. 14, noted *ante*, p. 976.

(35) *Ante*, pp. 994, 996.

(36) For definition of "food," see s. 26, *post*, p. 1015.

(37) See S. F. D. Act, 1875, s. 16, *ante*, p. 978.

(38) *Taylor v. Nixon*, 1910 Ir. K. B. 94.

(39) *Ante*, p. 979.

(39a) *Post*, p. 1029.

(40) *Ante*, p. 981.

(41) See *per* Channell, J., in *Hennen v. Southern Counties Dairies Co.*, L. R. 1902, 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51; 66 J. P. 774; and the Note to s. 6, *ante*, p. 961.

(43) See Note to S. F. D. Act, 1875, s. 17, *ante*, p. 979 (11).

(2.) In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less time than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

Sect. 19.

Note.

The "institution" of summary proceedings consists of the laying of the information, and not the service,⁴⁴ or even the issue of the summons. Therefore in a prosecution for selling adulterated milk, in which the information had been laid within the twenty-eight days mentioned in subsect. (1) of the present section, and the first summons issued thereon had not been served in time to allow the fourteen days mentioned in subsect. (2) to elapse before the date on which it was returnable, the court held that a second summons might be issued on the original information after the expiration of the twenty-eight days.⁴⁵

Institution of proceedings.

Justices have jurisdiction to hear and determine an information under the Act, although the person prosecuting, who obtained the sample and procured the analysis from the county analyst, may have instituted the prosecution as sanitary inspector of, and by direction of, a borough council who are not authorised to appoint an analyst,⁴⁶ and therefore, not being a local authority within sect. 25 of the present Act, may not be authorised to direct their inspector to institute such a prosecution.⁴⁷

There must be fourteen clear days between the date of the service of the summons and the date on which it is made returnable.⁴⁸

Return of summons.

Appearance under protest would probably not amount to waiver of this time limit.⁴⁹

Waiver.

As to the computation of the times specified in the present section, see the cases referred to below.⁵⁰

Computation of time.

The limitation in the present section does not apply to proceedings under sects. 2 or 3 of the Butter and Margarine Act, 1907.⁵¹

Butter.

The limitation in the repealed sect. 10 of the Act of 1879 was held not to apply to proceedings for giving a false warranty.⁵² As to the limitation imposed by sect. 20, see the Note to that section.

False warranty.

A shopkeeper having been convicted on the 29th April of selling an adulterated article which had been purchased for test purposes on the 24th March, the manufacturer was summoned on the 6th May for aiding and abetting. It was held that, as sect. 5 of the Summary Jurisdiction Act, 1848, made them "principals," they were entitled to the benefit of the present section, and the proceedings were out of time.⁵³

Aiding and abetting.

The sufficiency of the particulars of adulteration given in the summons is a matter on which the justices are to decide, and the court refused to call upon justices to state a case, where they had convicted the defendant on a summons which did not give any particulars as to how the milk in question was adulterated, but merely stated that the thing which had been demanded was new milk.⁵⁴

Particulars

In a subsequent case a summons for selling one pint of milk not of the nature, substance, and quality of the article demanded was held to be bad on the ground that it did not contain particulars of the alleged defect in the milk.⁵⁵ But this decision was disapproved by Mathew and Cave, JJ., in a later case, in which they held that the omission of particulars from the summons does not deprive the justices of jurisdiction, but merely entitles the defendant to an adjournment of the

(44) *Beardsley v. Giddings*, L. R. 1904, 1 K. B. 847; 73 L. J. K. B. 378; 90 L. T. 651; 68 J. P. 222; 2 L. G. R. 719.

(45) *Brooks v. Bagshaw*, L. R. 1904, 2 K. B. 798; 73 L. J. K. B. 839; 91 L. T. 535; 68 J. P. 514; 2 L. G. R. 1007.

(46) See S. F. D. Act, 1875, s. 10, and Note, *ante*, p. 974.

(47) *Worthington v. Kyme* (1905, K. B. D.), 93 L. T. 546; 69 J. P. 390; 3 L. G. R. 1098; 21 Cox C. C. 37.

(48) *McQueen v. Jackson*, L. R. 1903, 2 K. B. 163; 72 L. J. K. B. 606; 88 L. T. 871; 67 J. P. 353; 1 L. G. R. 601.

(49) See *Dixon v. Wells*, *ante*, p. 982 (11).

(50) *Radcliffe's Case*, *ante*, p. 651 (29); *Robinson's Case*, *post*, Vol. II., p. 2104 (9);

Frew v. Morris (1897), 34 Sc. L. R. 527; 24 Rettie 50; *Horan v. Power* (1916), 50 Ir. L. T. 64.

(51) See *Monro's Case*, *post*, p. 1017 (11).

(52) *Cook v. White*, L. R. 1896, 1 Q. B. 284; 65 L. J. M. C. 46; 74 L. T. 53; 60 J. P. 330.

(53) 11 & 12 Vict. c. 43, ss. 5, 11; *Gould & Co. v. Houghton*, L. R. 1921, 1 K. B. 509; 90 L. J. K. B. 369; 124 L. T. 566; 85 J. P. 93; 19 L. G. R. 85. S. J. Act, 1848, s. 5, is set out and annotated *ante*, p. 665. For s. 11, and cases thereon, see *ante*, p. 650.

(54) *Reg. v. Wakefield* (1890), 54 J. P. 148, n.

(55) *Barnes v. Rider* (1892), 62 L. J. M. C. 25; 68 L. T. 447; 57 J. P. 473; 17 Cox C. C. 623.

Sect. 19, n.

Name of
prosecutor.Service of
certificate.

hearing in the event of the justices being satisfied that he is prejudiced by the omission.⁵⁶

A complaint described as being "at the instance of the burgh prosecutor," without naming him, was held bad under the repealed section of the Act of 1875.⁵⁷

On February 16th the appellant sold some adulterated milk. On March 11th the magistrate without hearing any evidence dismissed the summons on the ground that the analyst's certificate had not been served with it. On April 1st a fresh summons was served with the certificate. On May 11th the magistrate convicted the appellant. It was held that the appeal must be allowed, as the appellant had been in peril of conviction on March 11th, and *nemo debet bis vexari*.⁵⁸

Where, however, a defendant took a preliminary objection to a summons for selling adulterated milk on the ground of non-service of a copy of the analyst's certificate, and the justices adjourned the case, and the prosecution at once issued a fresh summons and served with it a copy of the certificate, and at the adjourned hearing the justices took this summons first and convicted and then allowed the first to be withdrawn, the court refused to quash the conviction on a plea of *autrefois acquit*.⁵⁹ And where a summons (as to betting on licensed premises) was withdrawn, a conviction under another summons was upheld;⁶⁰ and a conviction after a "mis-trial" was similarly upheld.⁶¹

Further, as to certificates for the prosecution, see sect. 13 of the Act of 1922;⁶² and as to certificates for the defence, see sect. 22 of the present Act.

Waiver.

Vinegar brewers sent to a retail grocer vinegar 30 per cent. of which was not derived from malted barley or cereals, and posted to him an invoice containing the words "guaranteed pure malt vinegar." The brewers were prosecuted for giving a false warranty, but a copy of the analyst's certificate was not served with the summons. The justices convicted and the conviction was affirmed.⁶³ *Per* Avory, J., "The neglect to serve the copy of the analyst's certificate with the summons did not deprive the justices of jurisdiction. It was an informality in the procedure which no doubt could not have been cured, and would have entitled the appellants to have the case dismissed if the objection had been taken at once, but it was one which was capable of being waived; and I think that a person who, knowing of the informality, waits until after cross-examination before taking it waives it."

Provisions as to
use of warranty
or invoice as
defence, and
proceedings
against the
warrantor.

Sect. 20.—(1.) A warranty or invoice shall not be available as a defence to any proceedings under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person.

(2.) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3.) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

(4.) Where the defendant is a servant of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on sect. 25 of the Sale of Food and Drugs Act, 1875, and sect. 7 of the Margarine Act, 1887, in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further

(56) *Neal v. Devenish*, L. R. 1894, 1 Q. B. 544; 63 L. J. M. C. 78; 70 L. T. 628; 58 J. P. 246.

(57) *Burns v. Williamson* (1897, Sc., J.), 34 Sc. L. R. 670; 24 Rettie 58; 2 Adam 308.

(58) *Haynes v. Davis*, L. R. 1915, 1 K. B. 332; 84 L. J. K. B. 441; 112 L. T. 417; 79 J. P. 187; 13 L. G. R. 437.

(59) *Williams v. Letheren*, L. R. 1919, 2 K. B. 262; 88 L. J. K. B. 944; 121 L. T. 145; 83 J. P. 159; 17 L. G. R. 338.

(60) *Davies v. Morton*, L. R. 1913, 2 K. B. 479; 82 L. J. K. B. 665; 108 L. T. 677; 77 J. P. 223.

(61) *Rex (Pethick-Lawrence) v. Marsham*, L. R. 1912, 2 K. B. 362; 81 L. J. K. B. 957; 107 L. T. 89; 76 J. P. 284.

(62) *Post*, p. 1042.

(63) *Grimble & Co. v. Preston*, L. R. 1914, 1 K. B. 270; 83 L. J. K. B. 347; 110 L. T. 115; 78 J. P. 72; 12 L. G. R. 382.

proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor. Sect. 20.

(5.) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of sect. 25 of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts for giving the warranty relied on by the defendant in such prosecution, may be taken as well before a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

(6.) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be liable on summary conviction, for the first offence, to a fine not exceeding £20, for the second offence to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true.

Note.

The Sale of Food and Drugs Act, 1875,³ made it a good defence for the defendant to prove that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect, that when he sold it he had no reason to believe that it was otherwise, and that he sold it in the same state as when he purchased it. The defendant was, however, to pay the prosecutor's costs, unless he had given due notice of his intention to rely upon that defence. Similar provisions with respect to the warranty of margarine as butter are made by the Margarine Act, 1887.⁴ The defence of warranty is not available on a charge of importing butter in contravention of sect. 1 (1) (b) of the present Act, see the Note to that section.⁵ Warranty.

The present section and sect. 25 of the principal Act are applied, with modifications, by the Sale of Tea Act, 1922.⁶ Tea.

Where there is room for contention as to what the warranty actually was under which the article was sold, and the notice sets out what the defendant *bonâ fide* considers the warranty to have been, the defendant is not deprived of his defence if his view of what the warranty was turns out to be erroneous.⁷ Notice of warranty.

Though the notice must be posted within the seven days specified in subsect. (1) of the present section, it is not necessary for the purchaser to receive it within that period.⁸

As to notice to the warrantor, see the Note to sect. 25 of the principal Act.⁹

Sub-sect. (5) of the present section does not allow proceedings for giving a false warranty to be taken before a court having jurisdiction in the place where the article was purchased but not in the place where the warranty was given, unless it was given to the person from whom the article was purchased for analysis. And accordingly in a case where a retail milk dealer had, on a prosecution for selling adulterated milk, successfully relied on a warranty given by a dairy company, and the person who had sold the milk to the dairy company also under a warranty was subsequently prosecuted for giving a false warranty, it was held that the sub-section did not allow the latter prosecution to be instituted before the court having jurisdiction in the place where the milk was purchased for analysis from the retail dealer.¹⁰ Jurisdiction of court.

Where the adjudicating justices had jurisdiction in the place where the warranty was received but none in the place where it was written and whence it was sent, an objection to the venue was overruled.¹¹ *Per* Avory, J., "I think that the warranty was given to the purchaser within the meaning of sect. 20 (6) when he received it." Venue.

The time for taking proceedings under sub-sect. (6) of the present section in Limitation of time.

(3) See s. 25, *ante*, p. 985. See also s. 27 and Note, *ante*, p. 989.

(4) See s. 7, *ante*, p. 1000.

(5) *Ante*, p. 1004 (10).

(6) See s. 4 and Sched., *ante*, p. 991.

(7) *Farthing v. Parkinson* (1904), 90 L. T. 783; 68 J. P. 353; 2 L. G. R. 989; 20 Cox C. C. 661. See also *Marcus' Case*, *ante*, p. 985 (6), and *Irving's Case*, *ante*, p. 987 (28).

(8) *Retail Dairy Co. v. Clarke*, L. R. 1912, 2 K. B. 388; 81 L. J. K. B. 845; 106 L. T. 848; 76 J. P. 282; 10 L. G. R. 547.

(9) *Ante*, p. 985.

(10) *Manners v. Tyler*, L. R. 1902, 1 K. B. 901; 71 L. J. K. B. 585; 86 L. T. 716; 66 J. P. 806.

(11) *Grimble & Co. v. Preston*, *ante*, p. 1012 (63).

Sect. 20, n.

respect of a false warranty is not limited to six months from the date when the warranty was given, as the warranty "runs from day to day."¹²

Penalty.

The principal Act also imposed a penalty not exceeding £20 for giving a false warranty, but did not increase the penalty for a second or subsequent offence.¹³

Belief in truth of warranty.

Where the person who had sold milk to a retail dealer with a warranty (given when the milk was delivered to a railway company for conveyance to London) proved that he had reason to believe that the statements or descriptions in the warranty were true, and that the milk had been tampered with in the course of transit, he was held to have brought himself within the latter part of sub-sect. (6), and the summons against him for giving a false warranty was held to have been rightly dismissed.¹⁴

A farmer sold a consignment of adulterated milk to a wholesaler with a ticket on it warranting its purity. The wholesaler, on the day in question, took samples of thirty-five consignments from other farmers, but no sample from this particular farmer's consignment. He sold some of it, with his own warranty, to a retailer, and was convicted of giving a false warranty. The conviction was affirmed on appeal to quarter sessions. But it was held by the Divisional Court that, as the wholesaler was in the habit of taking various precautions to ensure the purity of the milk supplied by farmers, and had hitherto always found this farmer's milk up to the standard, the justices ought to have found that he "had reason to believe" that his warranty was true, and the conviction was accordingly quashed.¹⁵

A limited company can be convicted of giving a false warranty, the exoneration of a person having "reason to believe" the warranty to be true having been held not to imply that the offence can only be committed by persons capable of exercising the faculty of belief.¹⁶

Duty of court to send article for analysis.

Sect. 21. The justices or court referred to in sect. 22 of the Sale of Food and Drugs Act, 1875, shall on the request of either party under that section cause an article of food or drug to be sent to the Commissioners of [Customs and Excise] for analysis, and may, if they think fit, do so without any such request.¹⁷

Provisions as to certificates of analysis.

Sect. 22.—(1.) At the hearing of the information in any proceedings under the Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in sect. 18 of the Sale of Food and Drugs Act, 1875, shall be sufficient evidence of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness.¹⁸

(2.) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

Sects. 23 and 24. [Scotland and Ireland].

Interpretation of terms.

Sect. 25. In this Act, unless the context otherwise requires—

The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese and which contains fat not derived from milk:

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk:

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression "public analyst" means an analyst so appointed.

Other expressions have the same meaning as in the Sale of Food and Drugs Acts, and an offence under this Act shall be treated as an offence under those Acts.

Note.**Definitions.**

The terms "drug," "county," and "justices" are defined by the Sale of Food and Drugs Act, 1875;¹⁹ and the terms "butter," "margarine," and "local

(12) *Thomas, Ld. v. Houghton*, ante, p. 988 (37); *Draper v. Newnham*, ante, p. 988 (35), applied; and *Whitaker v. Pomfret Bros.*, L. R. 1902, 1 K. B. 661; 71 L. J. K. B. 353; 86 L. T. 420; 66 J. P. 408, distinguished.

(13) See s. 27, ante, p. 989.

(14) *Oatley v. Lemon* (1905), 92 L. T. 200; 69 J. P. 163; 3 L. G. R. 315; 20 Cox C. C. 791. See also *Houlston's Case*, ante, p. 989 (56).

(15) *Dairy Supply Co. v. Houghton* (1911, K. B. D.), 106 L. T. 220; 76 J. P. 43; 10 L. G. R. 208; 22 Cox C. C. 704; 28 T. L. R.

94. Cf. the *Blaydon Co-op. Soc. Case*, ante, p. 988 (40).

(16) *Chuter v. Freeth & Pocock, Ld.* (K. B. D.), L. R. 1911, 2 K. B. 832; 80 L. J. K. B. 1322; 105 L. T. 238; 75 J. P. 430; 9 L. G. R. 1055; followed in *Rex v. Ascanio Puck & Co.*, ante, p. 230 (32); see also *Evans & Co. v. London C. C.*, post, Vol. II., p. 2245 (4).

(17) See Note to s. 22, ante, p. 984.

(18) See S. F. D. Act, 1875, ss. 18, 21, and Notes, ante, pp. 980, 983.

(19) See s. 2, ante, p. 959.

authority " by the Margarine Act, 1887.²⁰ With regard to the term " food," see sect. 26 of the present Act. **Sect. 25, n.**

With regard to proceedings for offences, see sect. 19 of the present Act, sects. 20-28 of the Act of 1875, and sect. 12 of the Act of 1887. **Offences.**

Sect. 26. For the purposes of the Sale of Food and Drugs Acts the expression " food " shall include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and shall also include flavouring matters and condiments.²¹ **Definition of " food."**

Sect. 27. [The enactments in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.] **Repeal of enactments in schedule.**

Note.

The present section and the schedule, both of which were repealed by the Statute Law Revision Act, 1908, but not so as to revive the repealed enactments, repealed the following Acts to the extent indicated :— **Repeals.**

1875—38 & 39 Vict. c. 63 (Sale of Food and Drugs). In sect. 2, the definition of the term " food "; in sect. 14, the words " offer to," and the words " proceed accordingly and shall "; sect. 15; in sect. 27, the words from " Every person who shall give a false warranty in writing " to " a penalty not exceeding twenty pounds."

1879—42 & 43 Vict. c. 30 (Sale of Food and Drugs Act Amendment), sect. 10.

1887—50 & 51 Vict. c. 29 (Margarine). In sect. 6, the words " or with," and the words " not less than a quarter of an inch square."

1891—54 & 55 Vict. c. 46 (Post Office), sect. 11.

With regard to the Post Office Act, see the Note to sect. 16 of the principal Act.²²

Sect. 28.—(1.) This Act may be cited as the Sale of Food and Drugs Act, 1899, and the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887, and this Act may be cited collectively as the Sale of Food and Drugs Acts, 1875 to 1899, and are in this Act referred to as the Sale of Food and Drugs Acts.²³ **Short title and commencement.**

(2.) This Act shall come into operation on the 1st January, 1900.

(20) See ss. 3, 13, *ante*, pp. 989, 1002.

(22) *Ante*, p. 978.

(21) As to the expressions " food " and " drug," see S. F. D. Act, 1875, s. 2, and Note, *ante*, p. 959; and as to water, see P. H. Act, 1875, s. 70, and Note, *ante*, p. 159.

(23) As to the Sale of Food and Drugs Acts generally, see the Note at the commencement of the principal Act, *ante*, p. 957.

THE BUTTER AND MARGARINE ACT, 1907.

7 EDW. VII. c. 21.

An Act to make further provision with respect to the Manufacture, Importation, and Sale of Butter and Margarine and similar Substances.

Note. [21st August, 1907.]

Sale of Food and Drugs Acts.

Scope of Act.

As to the Sale of Food and Drugs Acts generally, see the Note at the commencement of the principal Act.¹
The main purpose of the present Act is to provide for the registration inspection and control of factories where butter is blended reworked or subjected to other treatment, and any premises where milk-blended butter is manufactured or on which is carried on the business of a wholesale dealer in milk-blended butter, but it contains other important amendments of the law relating to butter and margarine.

Registration of factories and consignments.

Sect. 1.—(1.) The provisions of sect. 9 of the Margarine Act, 1887,² as amended by sect. 7 of the Sale of Food and Drugs Act, 1899,³ relating to the registration of manufactories of margarine, shall, with the necessary adaptations, apply to—(a) Butter factories, that is to say, any premises on which by way of trade butter is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter; and (b) Any premises on which there is manufactured any milk-blended butter (that is to say, any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream) or on which there is carried on the business of a wholesale dealer in milk-blended butter.
(2) The provisions of sect. 7 of the Sale of Food and Drugs Act, 1899,³ relating to registers of consignments of margarine, shall, with the necessary adaptations, apply to consignments of milk-blended butter.
(3) Premises shall not be used as a butter factory if they form part of or communicate, otherwise than by a public street or road, with any other premises which are required to be registered under the Sale of Food and Drugs Acts or under paragraph (b) of this section, and if any premises are so used the occupier thereof shall be guilty of an offence under this Act, and the local authority shall remove from the register of butter factories kept by them any premises used as a butter factory contrary to this provision : Provided that this subsection shall not apply to premises which on the 1st January, 1907, were being used as a butter factory and formed part of or communicated with premises which were then registered under the Sale of Food and Drugs Acts, if and so long as the [Minister] of Agriculture and Fisheries so [directs].

Note.

Registration Regulations. Definitions.

The Regulations as to the registration of butter and margarine factories have been set out elsewhere.^{3a}
The expression “ butter ” is defined in sect. 3 of the Margarine Act, 1887,⁴ and the expression “ margarine ” in sect. 13 of the present Act. The latter definition supersedes that contained in sect. 3 of the Act of 1887, which was extended by sect. 5 of the Act of 1899 so as to include “ margarine-cheese ” as defined by sect. 25 of that Act.⁵

Registered premises.

The provisions of sub-sect. (3) of the present section are new and are doubtless designed to prevent facilities for mixing butter and margarine upon registered premises. As to the registration of premises, see sect. 9 of the Margarine Act, 1887,⁶ and sects. 5 and 7 (4) of the Act of 1899.⁷

Percentage of water.

As to the limit of percentage of water that may be contained in imported butter, margarine, and milk-blended butter, see sect. 5 (1) of the present Act.

Penalties.

As to penalties for offences against the present Act, see sect. 11.

Inspection of factories.

Sect. 2.—(1.) Any officer of the [Minister] of Agriculture and Fisheries or of the [Minister of Health] shall have power to enter at all reasonable times any premises registered under the Sale of Food and Drugs Acts or this Act, and to

(1) *Ante*, p. 957. (4) *Ante*, p. 998.
(2) *Ante*, p. 1001. (5) *Ante*, p. 1014.
(3a) *Post*, Vol. II., Part V., under heading (6) *Ante*, p. 1001.
“ FOOD, Butter and Margarine.” (7) *Ante*, pp. 1007, 1008.
(3) *Ante*, p. 1008.

inspect any process of manufacture, blending, reworking, or treatment used therein, and to take samples for analysis of any butter, margarine, margarine-cheese, milk-blended butter, or of any article capable of being used in the manufacture, treatment, or adulteration of any such article as aforesaid.

Sect. 2.Inspection of
factories—*cont*

(2.) An officer of a local authority who is authorised to procure samples under the Sale of Food and Drugs Acts shall, if specially authorised in that behalf by the local authority, have the like powers of entry, inspection, and sampling as regards any premises registered with the authority as a butter factory.

(3) If the [Minister] of Agriculture and Fisheries [has] reason to believe—
(a) that on any unregistered premises there is carried on any process of manufacture, blending, reworking, or treatment or any wholesale dealing which under the Sale of Food and Drug Acts or this Act cannot be carried on except on registered premises; or (b) that on any premises butter is by way of trade either made or stored, and that for the purposes of those Acts inspection is desirable, the [Minister] may specially authorise any officer of the [Minister] to enter the premises, and in such case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered.

(4.) Where under this section a special authority is required, an officer of the [Minister] or of a local authority shall not be entitled to exercise any of his powers under this section unless, if so requested by or on behalf of the occupier of the premises to be entered, he produces his authority.

(5.) Sect. 7 (2) of the Sale of Food and Drugs Act, 1899,⁸ is hereby repealed.

Note.

As to the definition of “butter,” “margarine,” and “margarine-cheese,” see the Note to sect. 1.

Definitions.

An inspector of the local authority is authorised by sect. 10 of the Margarine Act, 1887,⁹ to take for analysis samples of butter, or substances purporting to be butter, which are exposed for sale and not marked “margarine” as provided by that Act, without going through the form of purchase prescribed by sect. 14 of the principal Act,¹⁰ though in other respects he must comply with the requirements of that Act.

**Taking of
samples.**

Two inspectors of the Board of Agriculture and Fisheries filled two bottles with some milk powder which they found in a butter factory, and also took some butter. In taking these samples there was no division into parts, no handing of any portion to the occupiers of the factory, no sealing or marking of the samples, and no statement that they were taken for the purpose of analysis. After leaving the factory, the inspectors sealed the samples and delivered them at the Government laboratory. Subsequent proceedings under sect. 3 of the present Act were dismissed by the justices on the ground that there had been no compliance with sect. 14 of the Act of 1875, or sect. 19 of the Act of 1899. But the case was sent back, as the procedure had complied with the present section, and sects. 14 and 19 did not apply.¹¹ The summons was subsequently dismissed on its merits, with £40 costs, on the ground that there was no evidence of any intention to use the milk powder for purposes of adulteration.¹²

For successful police court proceedings under the present section and sect. 3, see the case cited below.¹³

No such special authority as is mentioned in the present section was required under the Act of 1887.

**Special
authority.**

As to penalties for obstruction, bribery, or attempted bribery, of officers, see sect. 16 of the Act of 1899.¹⁴

**Obstruction
and bribery.**

Sect. 3.—If any substance intended to be used for the adulteration of butter is found in any butter factory, the occupier of the factory shall be guilty of an offence under this Act, and if any oil or fat capable of being so used is found it shall be deemed to be intended to be so used, unless the contrary is proved.

**Prohibition of
adulterants in
butter factories.****Note.**

As to penalties, see sect. 11. The requirements as to the taking of samples contained in sect. 14 of the Sale of Food and Drugs Act, 1875, do not apply to proceedings under the present section. See the Note to sect. 2.

Penalties.

(8) *Ante*, p. 1008.

(9) *Ante*, p. 1001.

(10) *Ante*, p. 976.

(11) *Monro v. Central Creamery Co.*, L. R. 1912, 1 K. B. 578; 81 L. J. K. B. 547; 106

L. T. 114; 76 J. P. 131; 10 L. G. R. 134.

(12) *Times*, Feb. 19, 1912, p. 3.

(13) *Monro v. Applin & Barrett* (1912), 3 Glen's Loc. Gov. Case Law 54.

(14) *Ante*, p. 1010.

Sect. 4.

Limit of
moisture in
butter,
margarine, and
milk-blended
butter.

Sect. 4.—(1.) If any butter which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any butter factory, or if any margarine which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any margarine factory, or if any such butter or margarine is consigned from a butter factory or margarine factory, the occupier of the factory or consignor, as the case may be, shall (whether the excess of moisture is due to adulteration or not) be guilty of an offence under this Act, unless the occupier or consignor proves to the satisfaction of the court that the butter or margarine was not made, blended, reworked, or treated in the factory.

(2.) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any milk-blended butter which contains more than twenty-four per cent. of water, shall be guilty of an offence under this Act.

Note.**Regulations.**

Under the Sale of Butter Regulations, 1902,¹⁵ more than sixteen per cent. of water in butter is presumed to be excessive. As to the power of the Minister to make further regulations as to butter and milk-blended butter, see sect. 6.

Provisions as to
the importation
of butter,
margarine, and
milk-blended
butter.

Sect. 5.—(1.) There shall be included in the list of articles importation of which is made an offence by sect. 1 of the Sale of Food and Drugs Act, 1899,¹⁶ the following articles :—(e) Butter containing more than sixteen per cent. of water; (f) margarine containing more than sixteen per cent. of water, or more than ten per cent. of butter fat; (g) milk-blended butter containing more than twenty-four per cent. of water; (h) milk-blended butter, except in packages conspicuously marked with such name as may be approved by the [Minister] of Agriculture and Fisheries for the purpose; (j) butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act, or an amount of a preservative in excess of the limit allowed by any such regulation; and in the said section the words “adulterated or impoverished butter (other than margarine) or,” and the words “butter or” shall be repealed.

(2.) The maximum fine for an offence under the said sect. 1, as amended by this section, shall, where the article in respect of which the offence was committed is butter, margarine, margarine-cheese, or milk-blended butter, be either such as is provided in the said sect. 1, or, at the election of the Commissioners of Customs, a fine equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind but of the best quality were sold at or about the time of the importation.

(3.) In any proceeding under the said sect. 1 as amended by this section the certificate of the principal chemist of the Government laboratories, or, if the person who made the analysis be called as a witness, the evidence of that person, that an imported substance is margarine, or milk-blended butter shall raise a presumption, until the contrary is proved, that the substance is margarine or milk-blended butter, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4.) Where a sample taken under the said sect. 1 as amended by this section is certified by the principal chemist to be margarine or milk-blended butter the Commissioners of Customs shall upon receiving the certificate forthwith notify the importer thereof.

Note.**Effect of
amendment.**

Sect. 1 of the Act of 1899 did not absolutely prohibit the importation of any articles, but it prohibited the importation of certain articles of food except in duly marked packages. The effect of the amendment in the present section is to prohibit absolutely the importation of the articles specified in sub-sect. (1) of that section.

**Meaning of
importer.**

The expression “importer” is defined in sect. 1 (2) of the Act of 1899.¹⁷

(15) *Ante*, p. 1006.
(16) *Ante*, p. 1003.

(17) *Ante*, p. 1003.

Proceedings under sect. 1 of the Act of 1899 are to be taken by the Commissioners of Customs.

As to the quantity of water allowable in genuine butter, see the Note to sect. 4 of the present Act.

Sect. 6. The power of making regulations under sect. 4 of the Sale of Food and Drugs Act, 1899,¹⁸ shall extend to making regulations as to the proportion of any milk-solid other than milk-fat in any sample of butter or milk-blended butter.

Note.

The power referred to is that conferred on the Minister of Agriculture and Fisheries to make regulations as to the analysis of milk, cream, butter, or cheese—see the Note to sect. 4 of the present Act.

Up to the date of going to press,¹⁹ further regulations had not been made under the present section.

Sect. 5.

Legal proceedings.

Genuine butter.

Regulations as to milk-solids in butter.

Regulations.

Sect. 7.—(1) The [Minister of Health] may, after such inquiry as [he deems] necessary, make regulations for prohibiting the use as a preservative of any substance specified in such regulations in the manufacture or preparation for sale of butter, margarine, or milk-blended butter, or for limiting the extent to which, either generally or as regards any particular substance or substances, preservatives may be used in the manufacture or preparation for sale of butter, margarine, or milk-blended butter.

Regulations as to preservatives.

(2.) Any regulations made under this section shall be notified in the London, Edinburgh, or Dublin Gazette as the case may require, and shall also be made known in such other manner as the [Minister of Health] may direct.

(3.) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any butter, margarine, or milk-blended butter which contains a preservative prohibited by a regulation under this section or an amount of a preservative in excess of the limit allowed by any such regulation, shall be guilty of an offence under this Act.

Note.

No regulations have yet been made under the present section, but see the regulations as to milk and cream made under the Public Health (Regulations as to Food) Act, 1907,²⁰ and the Circular of the Local Government Board referred to below.²¹

Regulations.

Sect. 8. If in any wrapper enclosing margarine, or on any package containing margarine, or on any label attached to a parcel of margarine, or in any advertisement or invoice of margarine a person dealing in margarine describes it by any name other than either "margarine," or a name combining the word "margarine" with a fancy or other descriptive name approved by the [Minister] of Agriculture and Fisheries and printed in type not larger than and in the same colour as the word "margarine," he shall be guilty of an offence under this Act.

Marking of wrappers, &c., used in connection with margarine.

Note.

Provisions relating to the marking of margarine packages, and the labelling of margarine when exposed for sale and when sold, are contained in sect. 6 of the Margarine Act, 1887,²² and further provisions on the same subject are contained in sect. 6 of the Sale of Food and Drugs Act, 1899.²³ These provisions are applied to margarine-cheese by sect. 5 of the last mentioned Act.

Marking packages.

The Local Government Board did not lay down any general rule as to the kind of name of which they would approve, but considered each application for their approval on its merits.

Fancy names.

It was held under the Act of 1887 that margarine could be sold under a fancy name so long as it was sold as margarine.²⁴

(18) *Ante*, p. 1006.

(19) Information supplied by M. of Ag. on Feb. 21, 1924.

(20) *Post*, p. 1022. For the regulations of 1912 and 1917, see *post*, Vol. II., Part V., under heading "FOOD, Milk."

(21) July 11, 1906, set out in 4 L. G. R. (Orders), 100, referring to Departmental Committee's report of 1901, set out in

"Bell's Sale of Food and Drugs Acts," 1923 Ed., at p. 351.

(22) *Ante*, p. 999.

(23) *Ante*, p. 1008.

(24) *Tanner v. Dyball* (1906, K. B. D.), 94 L. T. 539; 70 J. P. 279; 4 L. G. R. 506; 21 Cox C. C. 123. Followed in *Keeloma Dairy Co. v. Jones* (1906, K. B. D.), 70 J. P. 533; 5 L. G. R. 246; 22 T. L. R. 535.

Sect. 8, n.

The present section does not allow the fancy or descriptive name to be used in combination with the word “ margarine ” which is required by sect. 6 of the Act of 1887 to be marked *on* the paper wrapper in which margarine sold by retail is delivered.²⁵ Further as to such names, see sect. 10 of the present Act.

Penalties.

As to penalties, see sect. 11.

Regulation of sale of milk-blended butter.

Sect. 9.—(1.) Milk-blended butter shall be dealt with under such name or names as may be approved by the [Minister] of Agriculture and Fisheries and under the conditions applicable to the sale or description of margarine, with the substitution of an approved name for the word “ margarine,” and with this modification, that, in any case where, in order to comply with those conditions, the article is delivered to the purchaser in a wrapper, there shall, in addition to the approved name, be printed on the wrapper in such manner as the [Minister approves] such description of the article, setting out the percentage of moisture or water contained therein, as may be approved by the [Minister].

(2.) Milk-blended butter, whenever forwarded by any public conveyance, shall be duly consigned under the name which, as respects the article consigned, has been approved by the [Minister] under this section; subject to this modification, sect. 8 of the Margarine Act, 1887, shall apply to milk-blended butter in like manner as it applies to margarine.

(3.) If any person deals with, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, or describes any milk-blended butter contrary to the provisions of this section, he shall be guilty of an offence under this Act, but any defence which would be a defence under sect. 7 of the Margarine Act, 1887, as respects margarine, shall be a defence under this section as respects milk-blended butter.

Note.

Consignments.

Sect. 8 of the Margarine Act, 1887,²⁶ relates to the conditions under which margarine imported into or manufactured in the United Kingdom may be carried by public conveyance, and to the taking of samples by officers of Customs and officers of local authorities.

Defence of warranty.

It is a defence, under sect. 7 of that Act,²⁷ if the person charged proves that he purchased the article in question as butter with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that it was other than butter, and that he sold it in the same state as when he purchased it; but see that section, and also sect. 20 of the Act of 1899,²⁸ as to notice of this defence.

Milk-blended butter.

It was held that butter “ blended ” with milk was not margarine within the meaning of the Act of 1887.²⁹

Penalties.

As to penalties, see sect. 11.

Names of margarine, &c.

Sect. 10. A name shall not be approved by the [Minister] of Agriculture and Fisheries for use in connection with margarine if it refers to or is suggestive of butter or anything connected with the dairy interest, nor shall such a name be approved as a name under which milk-blended butter may be imported or dealt with.

Penalties for offences.

Sect. 11.—(1.) Any person guilty of an offence under this Act shall be liable on conviction under the Summary Jurisdiction Acts for a first offence to a fine not exceeding £20 and for a second offence to a fine not exceeding £50 and for a third or any subsequent offence to a fine not exceeding £100, and in cases where imprisonment can be inflicted under sect. 17 of the Sale of Food and Drugs Act, 1899,³⁰ to such imprisonment as is by that section authorised.

(2.) Sect. 5 of the Margarine Act, 1887 (which exempts employers from liability in certain cases),³¹ and sect. 11 of the same Act (which relates to the appropriation of penalties),³² and sect. 12 of the same Act (which relates to proceedings under that Act),³³ shall apply to proceedings under this Act, with the substitution of references to this Act for references to the Margarine Act, 1887.

Sect. 12. [Amendment of s. 8 of Margarine Act, 1887.³⁴]

(25) *Williams v. Baker*, L. R. 1911, 1 K. B. 566; 80 L. J. K. B. 545; 104 L. T. 178; 75 J. P. 89; 9 L. G. R. 178. Followed in *Millard's Case*, ante, p. 1008 (19).

(26) *Ante*, p. 1001.

(27) *Ante*, p. 1000.

(28) *Ante*, p. 1012.

(29) See *Bayley's Case*, ante, p. 998 (7).

(30) *Ante*, p. 1010.

(31) *Ante*, p. 998.

(32) *Ante*, p. 1002.

(33) *Ante*, p. 1002, *re* persons empowered to take samples.

(34) *Ante*, p. 1001.

Sect. 13.—(1.) For the purposes of the Sale of Food and Drugs Acts and this Act the expression “ margarine ” shall mean any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter.

Sect. 13.
Definition of
margarine.

(2.) The above definition shall be substituted for the definition of margarine in the Margarine Act, 1887.³⁵

Sect. 14.—(1.) This Act may be cited as the Butter and Margarine Act, 1907, and shall be construed as one with the Sale of Food and Drugs Act, 1899, and may be cited with the Sale of Food and Drugs Acts as the Sale of Food and Drugs Acts, 1875 to 1907.

Short title,
construction,
and commence-
ment.

(2.) This Act shall come into operation on the 1st January, 1908.

(35) See s. 3, *ante*, p. 998.

THE PUBLIC HEALTH (REGULATIONS AS TO FOOD) ACT, 1907.

7 EDW. VII. c. 32.

An Act to enable regulations to be made for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food.

[28th August, 1907.]

Power to make regulations as to the importation, preparation, storage, and distribution of articles of food.

Sect. 1.—(1.) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption, and, without prejudice to the generality of the powers so conferred, the regulations may—

- (a) provide for the examination and taking of samples of any such articles;
- (b) apply, as respects any matters to be dealt with by the regulations, any provision in any Act of Parliament dealing with the like matters, with the necessary modifications and adaptations;
- (c) provide for the recovery of any charges authorised to be made by the regulations for the purposes of the regulations or any services performed thereunder;
- [(d) provide for the manner in which any tin or other receptacle containing dried, condensed, skimmed, or separated milk is to be labelled or marked, and prescribe the minimum percentages of milk fat and milk solids in dried or condensed milks.¹]

(2.) For the purposes of regulations made under this Act, articles commonly used for the food or drink of man shall be deemed to be intended for sale for human consumption unless the contrary is proved.

(3.) . . . [Scotland.]

Note.

Regulations.

The “enactments mentioned in” the Public Health Act, 1896,² are sects. 130 and 134 of the Public Health Act, 1875. Under sect. 130 of the Act of 1875,³ the Minister of Health may make regulations with a view to the treatment of persons affected with cholera, or any other epidemic, endemic, or infectious disease, and preventing the spread of such diseases, and to declare by what authority or authorities the regulations shall be enforced. And under sect. 134⁴ the Minister may make regulations for certain purposes whenever any part of England is threatened or affected by any formidable epidemic, endemic, or infectious disease.

The above-mentioned provisions of the Public Health Act, 1875, are extended to London by the Public Health (London) Act, 1891,⁵ which contains elaborate provisions as to the execution of regulations made under the enactments thus applied.⁶

The Milk and Cream Regulations of 1912 and 1917,⁷ the Public Health (Foreign Meat) Regulations, 1908,⁸ the Public Health (First Series : Unsound Food) Regulations, 1908,⁹ the Public Health (Shell Fish) Regulations, 1915,¹⁰ the Public Health (Condensed Milk) Regulations, 1923,⁷ and the Public Health (Dried Milk) Regulations, 1923,⁷ which were made under the present Act, will be found elsewhere.

For regulations under the Sale of Food and Drugs Acts, as to milk and butter, see the Note to sect. 4 of the Act of 1899.¹¹

Bread.

By sect. 2 of the Bread Acts Amendment Act, 1922,¹² “the power of the Minister of Health to make regulations under the” present Act “shall include a power to make regulations prohibiting or restricting the use for the purpose aforesaid of any such ingredient or mixture as may be prescribed, and prescribing

(1) Added by M. & D. Act of 1922, s. 8, *post*, p. 1041. See also M. & D. Act of 1915, s. 11, *post*, p. 1029.

(2) *Ante*, p. 249.

(3) *Ante*, p. 248.

(4) *Ante*, p. 258.

(5) 54 & 55 Vict. c. 76, s. 113.

(6) *Ibid.*, ss. 82-87.

(7) *Post*, Vol. II., Part V., under heading

“FOOD, Milk.”

(8) *Ibid.*, under “FOOD, Foreign Meat.”

(9) *Ibid.*, under “FOOD, Unsound Food.”

(10) *Ibid.*, under “FOOD, Shell Fish.”

(11) *Ante*, p. 1006.

(12) 12 & 13 Geo. V. c. 28, s. 2. For ss. 1 and 3 to 6 of this Act, see Note to s. 116 of P. H. Act, 1875, *ante*, p. 225.

the descriptions under which any flour to which any such ingredient or mixture has been added may be sold.” **Sect. 2, n.**

As from the 1st October, 1920,¹¹ the functions of the Ministry of Health “in relation to the following,” among other, “matters in so far as concerns Wales and Monmouthshire,” were transferred to the Welsh Board of Health:—“The Sale of Food and Drugs Act, milk supply, food inspection, slaughterhouses, markets, etc.” These five transfers are expressed to be “excepting matters directly affecting consumers and public authorities in England, or involving relations with the Colonies or with foreign countries, *i.e.*, (a) imported foodstuffs, (b) shell fish, (c) statistics from public analysts’ reports.” A sixth transfer is: “Appointment of public analysts and officers under Food Acts and Regulations.” The Minister directed that “local authorities should, as from the date appointed, address all correspondence relating to these functions of the Ministry to the Secretary, Welsh Board of Health, Ministry of Health, City Hall, Cardiff,” adding that “in case of doubt as to the office to which communications should be sent, it is desired that they should be addressed to the Welsh Board, which office will send the papers to the Department concerned.” **Welsh Board of Health.**

Sect. 2. All regulations made under this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893,¹² shall apply to such regulations as if they were statutory rules within the meaning of sect. 1 of that Act, and . . . [*Scotland.*] **Publication of regulations.**

Sect. 3. This Act may be cited as the Public Health (Regulations as to Food) Act, 1907. **Short title**

(11) See M. H. Circular, Sep. 30, 1920, 19 L. G. R. (Orders) 397, 398. (12) *Ante*, p. 260.

THE MILK AND DAIRIES (CONSOLIDATION) ACT, 1915.

5 & 6 GEO. V. c. 66.

An Act to consolidate certain Enactments relating to Milk and Dairies.

[29th July, 1915.]

Note.

Postponement of Act.

By sect. 1 of the Act of 1922,¹ the present Act is not to "come into operation before the 1st September, 1925, except in so far as it repeals the Milk and Dairies Act, 1914, and the Milk and Dairies Acts Postponement Act, 1915." It will not come into operation until an order is made under sect. 21 (1) of the present Act.

By the Milk and Dairies (Consolidation) Act, 1915 (Commencement of Operation) Order, 1922,² sect. 21 (3) of the present Act, so far as it relates to the repeal of the Milk and Dairies Act, 1914, and the Milk and Dairies Postponement Act, 1915, shall "come into operation on the 1st day of September, 1922."

Repeals.

By sect. 18 (3) and Sched. IV. of the Act of 1914,³ portions of the following Acts were repealed to the extent indicated in the footnotes:—The Contagious Diseases (Animals) Act, 1886,⁴ the Public Health (London) Act, 1891,⁵ and the London Government Act, 1899.⁶

By sect. 1 of the Act of 1915,⁷ the Act of 1914 was not to come into operation "until such date, not being later than the expiration of one year after the termination of the present war, as the Local Government Board may by order appoint."

The present Act,⁸ in addition to repealing the Act of 1914 and so much of the Act of 1915 as related to England, repeals the whole of the Contagious Diseases (Animals) Acts, 1878 and 1886,⁹ so far as unrepealed, and sects. 9 and 11 of the Sale of Food and Drugs Act, 1899.¹⁰

Further as to the Contagious Diseases (Animals) Acts, see sect. 7 of the Act of 1922, and the Note thereto.¹¹

Sect. 21 (3) of the present Act also repeals as from the expiration of one year after the commencement of the present Act so much of any local Act as deals with any of the matters dealt with by any of the provisions of the present Act, but contains a saving for orders or regulations made under such local Acts.

Certain enactments relating to milk and dairies which, under sect. 21, are not to be prejudiced by the present Act are set out in the Note to that section.

Milk and Dairies Orders.

Sect. 1.—(1.) The [Minister of Health] may make such general or special orders (hereinafter referred to as Milk and Dairies Orders) as [he thinks] fit for all or any of the following purposes:—(a) for the registration with local authorities of all persons carrying on the trade of dairymen; (b) for the registration with local authorities of all dairies; (c) for the inspection of cattle in dairies; (d) for the inspection by persons authorised by the local authority for the locality in which the dairy is situate of dairies and persons in or about dairies who have access to the milk or to the churns or other milk receptacles; (e) for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies in the occupation of persons following the trade of dairymen; (f) for securing the cleanliness of milk stores, milk shops, and milk vessels used for containing milk for sale by such persons; (g) for prescribing the precautions to be taken for protecting milk against infection or contamination; (h) for preventing danger to health from the sale for human consumption, or from the use in the manufacture of products for human consumption, of infected, contaminated, or dirty milk; (i) for regulating the cooling, conveyance, and distribution of milk intended for sale for human consumption, or for use in the manufacture of products for human consumption; (j) as to the labelling, marking, or identification and the sealing or closing of churns, vessels, and other receptacles of milk for sale for human consumption or used for the conveyance of such milk; (k) for prohibiting the addition of colouring matter; and for prohibiting or regulating the addition of skimmed

(1) *Post*, p. 1036.

(2) 20 L. G. R. (Orders) 182, 183. Having regard to the terms of sect. 21 (1) of the present Act, it is not clear what power the Minister had to postpone the operation of these repeals after the 31st August, 1921, see *post*, p. 1032 (37).

(3) 4 & 5 Geo. V. c. 49, s. 18 (3), Sched. IV.

(4) 49 & 50 Vict. c. 32, s. 9 (3) (5) and

(6), so far as they relate to England.

(5) 54 & 55 Vict. c. 76, s. 28.

(6) 62 & 63 Vict. c. 14, the last paragraph in both columns of Sched. II., Part I.

(7) 5 & 6 Geo. V. c. 59, s. 1.

(8) See s. 21 (3), *post*, p. 1032.

(9) 41 & 42 Vict. c. 74; 49 & 50 Vict. c. 32.

(10) *Ante*, p. 1009.

(11) *Post*, p. 1038.

or separated milk or water or any other substance to milk intended for sale for human consumption, or the abstraction therefrom of butter-fat or any other constituent; and for prohibiting or regulating the sale for human consumption of milk to which such an addition or from which such abstraction has been made, or which has been otherwise artificially treated; (l) for authorising the use, in connexion with the sale of milk, of the designation "certified milk," for prescribing the conditions subject to which milk may be sold under such designation, and for prohibiting the use of such designation in connexion with the sale of milk in respect of which the prescribed conditions are not complied with; (m) for authorising a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions (if any) as the [Minister of Health prescribes.] **Sect. 1.**

(2.) A Milk and Dairies Order with respect to the inspection of cattle in a dairy may authorise the person making the inspection to require any cow to be milked in his presence and to take samples of the milk, and to require that the milk from any particular teat shall be kept separate and to take separate samples thereof.

(3.) If any person is guilty of a contravention of, or non-compliance with, the provisions of any Milk and Dairies Order, he shall be guilty of an offence against this Act.

(4.) Milk and Dairies Orders shall be made by the [Minister of Health] with the concurrence of the [Minister] of Agriculture and Fisheries, and shall have effect as if enacted in this Act.

(5.) All Milk and Dairies Orders shall be laid before each House of Parliament as soon as may be after they are made; and if an Address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after the order is laid before it praying that the order may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of a new order. If the session of Parliament ends before such forty days as aforesaid have expired, the order shall be laid before each House of Parliament at the commencement of the next session as if it had not previously been laid.

(6.) The Rules Publication Act, 1893,¹² shall apply to any such order as if it was a statutory rule within the meaning of sect. 1 of that Act.

Note.

Portions of the present section will replace sect. 34 of the Contagious Diseases (Animals) Act, 1878,¹³ which, as mentioned in the preceding Note, is repealed by the present Act. **Dairies.**

As to the local authorities empowered to act hereunder, see sect. 19 (4) (5). That section also defines the expressions "sanitary authority," "common council," "medical officer of health," and "veterinary inspector," as well as "dairy," "dairyman," "milk," and "purveyor of milk."

Milk which is "kept in any dairy, or in the custody or possession of any dairyman" is presumed to be "kept for purposes of sale, or manufacture for sale" (see sect. 19 (3)), and milk which is "sold or exposed or kept for sale" is presumed to be "for sale for human consumption or for use in the manufacture of products for human consumption" (see sect. 19 (2)).

As to penalties, see sect. 18.

As to the registration of retail purveyors of milk, see sect. 2 of the Act of 1922.^{13a} **Registration.**

Sect. 2. A local authority and their officers for the purpose of enforcing a Milk and Dairies Order and any regulations made thereunder shall have the same right to be admitted to any premises as a local authority within the meaning of the Public Health Act, 1875, and their officers have under sect. 102 of that Act for the purpose of examining as to the existence of any nuisance thereon,¹⁴ and if such admission is refused, the like proceedings may be taken, with the like incidents and consequences, as to orders, payment, penalty, costs, expenses and otherwise, as in the case of a refusal to admit to premises for any of the purposes of the said sect. 102: Provided that nothing in this section shall authorise any person, except with the permission of the local authority under the Diseases of Animals Acts, 1894 to 1914,¹⁵ to enter any cowshed or other place in which an animal affected with any disease to which those Acts apply is kept and which is situated in a place declared under those Acts to be infected with such disease. **Powers of enforcing Milk and Dairies Orders.**

(12) *Ante*, p. 260.

(13) *Set out, post*, p. 1039.

(13a) *Post*, p. 1036.

(14) *Ante*, p. 201.

(15) See Note to M. & D. Act, 1922, s. 7, *post*, p. 1038.

Sect. 3.

Power to stop supply of milk likely to cause tuberculosis.

Sect. 3.—(1.) If the medical officer of health of a county or county borough is of opinion that tuberculosis is caused, or is likely to be caused, by the consumption of the milk supplied from any dairy in which cows are kept within such county or county borough, the provisions of the First Schedule to this Act shall have effect with respect to the reports to be made and the steps to be taken with a view to stopping the supply of milk from the dairy, and, with a view to stopping such supply, orders may be made in accordance with that schedule, subject to such right of appeal and the payment of compensation in such cases as are provided therein.

(2.) Where an order stopping the supply of milk is made under the said schedule a dairyman shall not be liable for an action for breach of contract if the breach is due to such order.

(3.) If any dairyman, whilst any order made in accordance with the said schedule prohibiting the supply or use of milk is in force, supplies or uses any milk in contravention of this order he shall be guilty of an offence against this Act.

(4) The [Minister of Health] may by order direct that the council of any non-county borough within the county, which is a local authority for the purposes of the Diseases of Animals Acts, 1894 to 1914, shall exercise and perform within the borough the powers and duties of the county council under this and the next succeeding section, and where such an order has been made with respect to any non-county borough this and the next succeeding section shall apply as if the borough were a county borough.

Obligation to inspect dairies in certain cases.

Sect. 4.—(1.) If the medical officer of health of any local authority has reason to suspect that tuberculosis is caused, or is likely to be caused, by the consumption of any milk which is being sold or exposed or kept for sale within the area of the local authority, he shall endeavour to ascertain the source or sources of supply, and on ascertaining the facts shall forthwith give notice of them to the medical officer of health of the county or county borough in which the cows from which the milk is obtained are kept, whether the dairy where they are kept is within or without the area of the local authority, unless the local authority are themselves the council of that county or county borough.

(2.) On the receipt of such notice it shall be the duty of the medical officer of health of the county or county borough to cause the cattle in the dairy to be inspected, and to make such other investigations as may be necessary.

(3.) Sufficient notice of the time of the inspection shall be given to the local authority whose medical officer of health gave the notice, and to the dairyman to allow that officer or a veterinary inspector or other veterinary surgeon appointed by the authority, and, if desired, another veterinary surgeon appointed by the dairyman being present at the inspection if either party so desire.

(4.) The council of the county or county borough on whose medical officer of health the notice is served shall send to the medical officer of health of the local authority who gave the notice copies of any reports which may have been made by the medical officer of health making the inspection, and of any veterinary or bacteriological or other reports which may have been furnished to him, and shall give him information as to whether any action has been taken upon those reports and as to the nature of that action.

Prohibition of sale of tuberculous milk.

Sect. 5. If a person—(a) Sells, or offers or exposes for sale, or suffers to be sold or offered or exposed for sale, for human consumption or for use in the manufacture of products for human consumption; or (b) Uses or suffers to be used in the manufacture of products for human consumption; the milk of any cow which has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder or from acute inflammation of the udder, or from any of the diseases specified in the Second Schedule to this Act, he shall be guilty of an offence against this Act, if it is proved that he had previously received notice from an officer of a local authority, or that he otherwise knew, or by the exercise of ordinary care could have ascertained, that the cow had given tuberculous milk, or was suffering from any such disease.

Provisions as to selling milk in a public place.

Sect. 6. Every person who, himself or by his servant, in any highway or place of public resort sells milk from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address, and in default shall be liable on summary conviction to a fine not exceeding two pounds.¹⁶

(16) This will replace S. F. D. Act, 1899, s. 9, *ante*, p. 1009, if and when it comes into force, see s. 21 (3) and Sched. IV., *post*. See also *Crabtree's Case*, *ante*, p. 1009 (29a).

Sect. 7. Every tin or other receptacle containing condensed, separated, or skimmed milk must bear a label, clearly visible to the purchaser, on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section he shall be liable on summary conviction to a fine not exceeding ten pounds.

Sect. 7.

Provisions as to condensed, separated, or skimmed milk.

Note.

The present section will dispose of a decision that sect. 11 of the Act of 1899, which will be repealed by the present Act if and when it comes into force, did not apply to ordinary separated or skimmed milk.¹⁷

Skimmed milk.

Sect. 8.—(1.) It shall be lawful for an inspector of the [Minister of Health], or the medical officer of health of a local authority, or any person provided with and, if required, exhibiting an authority in writing from such an inspector or from the local authority or medical officer of health, to take for examination samples of milk at any time before it is delivered to the consumer : Provided that the powers of a medical officer of health and of a person authorised by him or by the local authority under this section shall, except so far as the [Minister of Health] may otherwise direct, be exerciseable only within the area of the local authority.

Power to take samples of milk.

(2.) The result of an analysis or bacteriological or other examination of a sample of milk taken under this Act shall not be admissible as evidence in proceedings under this Act, or in proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, unless the provisions of the last-mentioned Acts which relate to the division of samples into parts are complied with, but if those provisions have been complied with, the result of the analysis shall be available for proceedings under the said Acts (as if it had been procured in accordance with those Acts) as well as for proceedings under this Act : Provided that no proceedings shall be taken against any person unless at the time the sample was taken the milk was in his custody or control or was contained in a churn or other receptacle which had been sealed or closed in accordance with a Milk and Dairies Order.

(3.) The medical officer of health or any other officer authorised for the purpose by a local authority within the area of which milk from any dairy situate outside that area is being sold or exposed or kept for sale, may by notice in writing require the medical officer of health or other authorised officer of any other local authority, being an authority for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, to take samples of the milk at that dairy or in the course of transit from that dairy to the area of the first-mentioned local authority.

(4.) Upon receipt of such notice it shall, subject to the provisions of subsection (1) of this section, be the duty of the medical officer of health or other authorised officer of the other authority as soon as practicable to take samples and to forward, for analysis or bacteriological examination, to the officer who gave the notice a part of any sample so taken, and in taking a sample the officer shall, if so required by the notice, comply with the provisions of the Sale of Food and Drugs Acts, 1875 to 1907, which relate to the division of samples into parts.

The authority requiring the samples to be taken shall be liable to defray any reasonable expenses incurred, the amount whereof shall in default of agreement be settled by the [Minister of Health].

For the purpose of the Sale of Food and Drugs Acts, 1875 to 1907, the sample shall be deemed to have been taken within the area of the officer who gave the notice, and proceedings under those Acts may be taken either before a court having jurisdiction within the district for which that officer acts or before a court having jurisdiction in the place where the sample was actually taken.

(5.) In any proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, or this Act, the production of a certificate of the officer who took the sample under this section that the provisions of this section, as to the manner in which samples are to be dealt with, were complied with shall be sufficient evidence of compliance, unless the defendant requires that officer to be called as a witness.

(6.) In the exercise at any railway station or upon any railway premises of the powers conferred upon him by this section, such inspector, medical officer of health, or other person so authorised as aforesaid shall conform to such reasonable requirements of the railway company owning or using such station or premises as are necessary to prevent the working of the traffic thereat being obstructed or interfered with.

(17) See *French's Case*, ante, p. 1009 (32).

Sect. 8, n.

Samples of milk.

Note.

The powers conferred by the present section are apparently intended to be in addition to the powers of sect. 13 of the principal Act,¹⁸ and sect. 3 of the Act of 1879,¹⁹ as extended by sect. 2 of the Act of 1899,²⁰ at any rate so far as they are not inconsistent with these powers, as the latter are not expressly repealed by the present Act. Under those provisions, persons taking samples need not be authorised in writing, whereas, with certain exceptions, under the present section they must be so authorised. Under sect. 3 of the Act of 1879, samples had to be taken "at the place of delivery," whereas under the present section and Sched. III. they may be taken at any time before delivery to the consumer, *e.g.*, during transit.

It should be noted that whereas, when acting under sect. 13 of the principal Act, it is necessary to purchase the sample, this is not necessary either under sect. 3 of the Act of 1879 or the present section. Under the present section, if proceedings are to be taken as a result of the analysis, the formalities prescribed by sect. 14 of the principal Act as to division of the sample into parts must be observed equally as when acting under sect. 13 of the principal Act, though this is not required when acting under sect. 3 of the Act of 1879.

As to the admissibility of the evidence of analysts' certificates in legal proceedings, see sect. 21 of the principal Act,²¹ and sect. 22 of the Act of 1899.²²

The expression "sold or exposed or kept for sale" used in sub-sect. (3) of the present section is not defined by the interpretation clause (sect. 19), but sub-sect. (3) of that section provides that "where milk is kept in any dairy or in the custody or possession of any dairyman it shall be presumed to be kept for purposes of sale or manufacture for sale unless the contrary is proved."

Amendment of Sale of Food and Drugs Acts.

Sect. 9.—(1.) The provisions of the Sale of Food and Drugs Acts, 1875 to 1907, in reference to the taking of samples of milk, and any proceedings in connexion therewith, shall be amended in accordance with the provisions contained in the Third Schedule to this Act.

(2.) So much of any contract, made after the 13th day of August, 1914, whether made before or after the passing of this Act, as requires a purveyor of milk on a sample of his milk being taken under the Sale of Food and Drugs Acts, 1875 to 1907, to send to the person from whom he procured the milk any part of such sample or to give such person notice that a sample has been so taken, shall be null and void.

Note.

The present section is no doubt intended to refer to all taking of samples if the samples taken are of milk, although, if read without the relative provision in the first paragraph of Sched. III., it might be thought that they only refer to such provisions of the Sale of Food and Drugs Acts as deal specifically with milk, namely, sects. 3 and 4 of the Act of 1879, and sects. 1 and 10 of the Act of 1899. On the former assumption, the Schedule contains important modifications of the law affecting the powers and duties of inspectors and local authorities in relation to milk and cream under whichever of the Food and Drugs Acts the sample may be taken. As pointed out in the Note to sect. 8, however, none of these provisions of the earlier Acts are expressly repealed by the present Act, though it is a question whether they must not be taken to be impliedly repealed so far as they are inconsistent with the present Act, notwithstanding the saving in sect. 21 (4) of the present Act.

The expression "purveyor of milk" is defined by sect. 19 (1) as including "a seller of milk whether wholesale or by retail."

Application of section.

Appointment of veterinary inspectors.

Sect. 10.—(1.) A local authority may, and when required by the [Minister of Health] shall, appoint or combine with another local authority in appointing one or more veterinary inspectors or employ for the purposes of this Act and the Milk and Dairies Orders any veterinary inspector appointed under the Diseases of Animals Act, 1894, and any local authority may, and when required by the [Minister of Health] shall, provide or arrange for the provision of such facilities for bacteriological or other examinations of milk, as may be approved by the [Minister].²³

(18) *Ante*, p. 975.

(19) *Ante*, p. 994.

(20) *Ante*, p. 1004.

(21) *Ante*, p. 983.

(22) *Ante*, p. 1014.

(23) The expression "veterinary inspector" is defined by s. 19. In the *Kilmallock Case*, *ante*, p. 513 (7), the appointment of such an inspector was enforced by *mandamus*.

(2.) Any order requiring a combination of local authorities for the purposes of this section may provide for all matters incidental to such combination, and in particular how the expenses incurred are to be apportioned. **Sect. 10.**

Sect. 11. The [Minister of Health] shall make regulations under the Public Health (Regulations as to Food) Act, 1907,²⁴ for the prevention of danger arising to public health from the importation of milk and milk products intended for sale for human consumption or for use in the manufacture of products for human consumption. **Regulations as to imported milk.**

Sect. 12.—(1.) The sanitary authority of any district may, with the approval of the [Minister of Health], establish and thereafter maintain depôts for the sale at not less than cost price of milk specially prepared for consumption by infants under two years of age, and purchase and prepare milk and provide such laboratories, plant, and other things, and exercise and perform such other powers and duties, as may be necessary for the purposes of this section. **Establishment of milk depôts.**

(2.) The [Minister of Health] may attach such conditions to [his] approval as [he] may deem necessary.

Note.

The present section will enable local authorities to obtain, with the approval of the Minister of Health, useful powers which some authorities have obtained by means of local Acts. The expression "sanitary authority" is defined by sect. 19 (1). **Milk depôts.**

Sect. 13.—(1.) If a local authority fail to fulfil any of their duties under this Act, or under any Milk and Dairies Order, the [Minister of Health] may after holding a local inquiry make such order as [he thinks] necessary or proper for the purpose of compelling the authority to fulfil their duties, and any such order may be enforced by *mandamus*. **Enforcement of duties of local authorities.**

(2.) Where the authority in default is a district council, the [Minister of Health] may determine that all or any of the powers of the council under this Act or the Milk and Dairies Orders be transferred to the county council, and those powers shall be transferred accordingly, and sect. 63 of the Local Government Act, 1894,²⁵ shall apply as if the powers had been transferred under that Act.

Sect. 14. If any person obstructs any inspector or other officer of the [Minister of Health], or any medical officer of health, or any veterinary inspector or surgeon, or other officer of or person employed by a local authority, in the execution of his powers under this Act or any Milk and Dairies Order, or fails to give any such officer all reasonable assistance in his power, or to furnish him with any information he may reasonably require, he shall be guilty of an offence against this Act.²⁶ **Penalty for obstruction.**

Sect. 15.—(1.) The [Minister of Health] may by order apply for the purposes of this Act the provisions of any public general Act relating to the holding of local inquiries by the [Minister of Health], and the expenses of such inquiries, and the powers of the persons holding any such inquiry, and the manner in which notices may be served. **Supplemental provisions.**

(2.) A local authority may delegate to a committee any of their powers or duties (other than the power of raising rates) under the provisions of this Act or of any Milk and Dairies Order, and in such case anything required or authorised by those provisions to be done to or by the local authority may be done to or by the committee to which such powers and duties have been so delegated.

(3.) For the purpose of the exercise and performance of their powers and duties by sanitary authorities under this Act and the Milk and Dairies Orders the purposes of this Act and those Orders shall be deemed to be included amongst the purposes of the Public Health Act, 1875, or the Public Health (London) Act, 1891, as the case may require.

(4.) Any inspection of cattle made in pursuance of this Act or any Milk and Dairies Order shall be carried out by a veterinary inspector or other properly qualified veterinary surgeon.

Sect. 16. If in consequence of the passing of the Milk and Dairies Act, 1914, or this Act, or of anything done in pursuance or in consequence thereof any officer or servant of any local authority who held office at the passing of this Act suffers any direct pecuniary loss by abolition of office, or by diminution or loss of fees **Compensation to existing officers or servants.**

(24) *Ante*, p. 1022.

(25) *Post*, Vol. II., p. 2097.

(26) See S. F. D. Act, 1875, s. 17, and

S. F. D. Act, 1899, s. 16, and Notes, *ante*, pp. 978, 1010.

Sect. 16.

or salary, he shall be entitled to have compensation paid to him for such pecuniary loss by the local authority, and such compensation shall be determined in accordance with and subject to the conditions prescribed by sect. 120 of the Local Government Act, 1888,²⁷ and that section with the necessary adaptations shall apply accordingly.

Expenses of
local
authorities.

Sect. 17. The expenses of local authorities under this Act and the Milk and Dairies Orders shall be defrayed—(a) in the case of a county council, out of the county fund, as expenses for general county purposes, or, if an order of the [Minister of Health] so directs as respects any such expenses as expenses for special county purposes charged on such part of the county as may be provided by the order; (b) in the case of the common council, out of the general rate; (c) in the case of the council of a metropolitan borough, as part of the expenses incurred by the council in the execution of the Public Health (London) Act, 1891; (d) in the case of the council of a municipal borough or urban or rural district, as part of their general expenses incurred in the execution of the Public Health Acts.

Note.**Expenses.**

As to the county fund, see sect. 68 of the Local Government Act, 1888,²⁸ and as to expenses under the Public Health Act, 1875, see sects. 209 and 210 of that Act for councils of boroughs and urban districts,²⁹ and sect. 229 for councils of rural districts.³⁰

**Provisions as
to offences.**

Sect. 18.—(1.) If any person commits an offence against this Act he shall be liable on summary conviction to a fine not exceeding in the case of a first offence £5 and in the case of a second or subsequent offence £50, and if the offence is a continuing offence to a further fine not exceeding forty shillings for each day during which the offence continues.

(2.) Proceedings against a dairyman for failure to comply with an order made under the First Schedule to this Act, requiring the dairyman not to supply milk from a dairy, may be taken before a court of summary jurisdiction, either in the place where the offence was committed or in the place where the dairy is situated, and shall be taken only by the authority by which the order was made.

(3.) Where the occupier of a dairy is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and, if, after the commission of the offence has been proved, the occupier of the dairy proves to the satisfaction of the court—(a) that he has used due diligence to enforce the execution of this Act and the Milk and Dairies Orders; and (b) that the said other person had committed the offence in question without his knowledge, consent or connivance; that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(4.) When it is made to appear to the satisfaction of the authority by or on whose behalf proceedings are about to be taken—(a) that the actual occupier of the dairy has used all due diligence to enforce the execution of this Act and the Milk and Dairies Orders; and (b) by what person the offence has been committed; and (c) that it has been committed without the knowledge, consent, or connivance of the occupier of the dairy and in contravention of his orders; proceedings shall be taken against the person who is believed to be the actual offender without first proceeding against the occupier of the dairy.

(5.) The duty of taking proceedings for enforcing the provisions of sect. 5 of this Act shall rest on the county council or county borough council, without prejudice however to the power of a sanitary authority in a county to take such proceedings, and the duty of taking proceedings for enforcing the provisions of any Milk and Dairies Order shall rest on the local authority prescribed in the order, and the clerk of the local authority, or other officer whom the local authority may appoint, shall have power, if so authorised by the local authority, to institute and carry on such proceedings: Provided that in cases where the [Minister of Health makes] an order under sect. 3 of this Act directing that the council of a non-county borough shall exercise and perform within the borough the powers and duties of

(27) *Post*, Vol. II., p. 1955.

(28) *Post*, Vol. II., p. 1944.

(29) *Ante*, p. 566.

(30) *Ante*, p. 606.

a county council under sects. 3 and 4 of this Act, the duty of taking proceedings for enforcing the provisions of sect. 5 of this Act in such borough shall rest on the council thereof and not on the county council. **Sect. 18.**

(6.) Notwithstanding anything contained in any Act to the contrary, all fines imposed in any proceedings instituted by or on behalf of a local authority in the exercise of their powers and duties under this Act shall be paid to the authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

(7.) The foregoing provisions of this section shall not apply as respects offences under sect. 6 or 7 of this Act, but in any prosecution of any such offence the summons shall state particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

Note.

It is to be observed that, except as regards sects. 6 and 7, penalties recovered under the present Act at the instance of a local authority are to be paid to that authority direct and not, as under sect. 26 of the principal Act, in certain cases to the prosecutor to be paid over by him to the local authority, and in others to be applied in accordance with the Summary Jurisdiction Acts. The latter provisions will still apply in the case of proceedings under sects. 6 and 7 of the present Act, which will replace sects. 9 and 11 of the Act of 1899. **Penalties.**

The expressions "dairyman," "dairy," "sanitary authority," and "local authority," are defined by sect. 19.

Sect. 19.—(1.) In this Act, unless the context otherwise requires,—

Interpretation.

The expression "dairy" includes any farm, cowshed, milk store, milk shop, or other place from which milk is supplied on, or for, sale or in which milk is kept or used for purposes of sale or manufacture into butter, cheese, dried milk or condensed milk for sale, and, in the case of a purveyor of milk who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in the properly closed and unopened receptacles in which it was delivered to the shop, or a shop or other place in which milk is sold for consumption on the premises only;

The expression "milk" includes cream, skimmed milk, and separated milk;

The expression "dairyman" includes any occupier of a dairy, any cowkeeper, or any purveyor of milk;

The expression "purveyor of milk" includes a seller of milk, whether wholesale or by retail; **31**

The expression "medical officer of health" includes any duly qualified medical practitioner authorised by the council to act on behalf of the medical officer of health;

The expression "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or having such other veterinary qualifications as may be approved by the [Minister] of Agriculture and Fisheries;

The expression "sanitary authority" as respects London means the sanitary authority for the purposes of the Public Health (London) Act, 1891, and elsewhere the council of a borough or of an urban or rural district, and the expression "sanitary district" means the district of such authority;

The expression "common council" means the mayor, aldermen, and commons of the City of London in common council assembled.

(2.) Where milk is sold or exposed or kept for sale it shall be presumed to be sold or exposed or kept for sale for human consumption or for use in the manufacture of products for human consumption, unless the contrary is proved.

(3.) Where milk is kept in any dairy, or in the custody or possession of any dairyman, it shall be presumed to be kept for purposes of sale, or manufacture for sale, unless the contrary is proved.

(4.) The expression "local authority" in this Act shall include sanitary authorities and county councils, but with respect to the provisions of any Milk and Dairies Order, the order may prescribe by what local authority or authorities the several provisions thereof are to be enforced and executed, and any such order

(31) As to this expression see the *Spiers & Pond Case*, post, p. 1037 (4).

Sect. 19.

may provide for the giving of assistance and information by county councils to sanitary authorities and by sanitary authorities to county councils for the purpose of their respective duties under this Act or under any Milk and Dairies Order.

(5.) The Scilly Islands shall be deemed to be a county and the council of those Islands the council of a county, and any expenses incurred by that council under this Act or the Milk and Dairies Orders shall be treated as general expenses of the council.

Application
to London.

Sect. 20.—(1.) Sect. 53 of the Public Health Acts Amendment Act, 1907 (which confers powers to require dairymen to furnish lists of sources of supply),³² shall apply to London as if it were herein re-enacted with the substitution of references to sanitary authorities and districts of sanitary authorities for references to local authorities and districts of local authorities, and any penalties imposed by the said section as so applied shall be recoverable summarily.

(2.) Any provisions of the Public Health Act, 1875, applied by this Act shall, for the purposes for which they are so applied, extend to London, subject to necessary adaptations.

(3.) A Milk and Dairies Order affecting London shall provide for the exercise and performance by sanitary authorities in London of all powers and duties under the order which would have been imposed or conferred on sanitary authorities if this Act had not been passed and the order had been made under sect. 28 of the Public Health (London) Act, 1891, as amended by sects. 5 and 6 of the London Government Act, 1899,³³ except that the order may provide for the exercise and performance by the London County Council of powers and duties relating to the inspection of cattle in dairies.

(4.) Nothing in this Act, or in any Milk and Dairies Order, shall affect the powers with respect to the registration of dairymen and purveyors of milk within their own area conferred on sanitary authorities in London by sect. 5 of the London County Council (General Powers) Act, 1908.³⁴

(5.) The borrowing of moneys by any metropolitan borough council for the purposes of this Act shall be subject in all respects to the provisions of sects. 183 to 189 of the Metropolis Management Act, 1855,³⁵ as amended by any subsequent Act.

(6.) Where the authority in default is a metropolitan borough council the provisions of sect. 101 of the Public Health (London) Act, 1891,³⁶ shall apply in all respects as if such default had been made under the said Act:

Short title,
commencement,
extent, repeal,
and savings.

Sect. 21.—(1.) This Act may be cited as the Milk and Dairies (Consolidation) Act, 1915, and shall come into operation on such date not being later than the expiration of one year after the termination of the present war as the [Minister of Health] may by order appoint.³⁷

(2.) This Act shall not extend to Scotland or Ireland.

(3.) The enactments specified in the Fourth Schedule to this Act shall, except so far as they relate to Scotland or Ireland, be repealed to the extent mentioned in the third column of that Schedule, and there shall also be repealed, as from the expiration of one year after the commencement of this Act, so much of any local Act as deals with any of the matters dealt with by any of the provisions of this Act: Provided that nothing in this repeal shall affect any order or regulations made under any enactment mentioned in the said Schedule, but any such order or regulations shall, until altered or revoked, continue in force as if made under this Act.

(4.) Nothing in this Act shall prejudice or affect the enactments relating to milk and dairies mentioned in the Fifth Schedule to this Act or any other enactments relating to milk and dairies, except so far as such enactments are expressly repealed, amended, or extended by this Act.

Note.

Repeals.

For the enactments repealed by sub-sect. (3), see the Note at the commencement of the present Act.

Savings.

The enactments saved by subsect. (4) are :—The provisions of the Public Health Acts and the Public Health (London) Act, 1891, with respect to nuisances and the sale of food so far as the same relate to milk and dairies. The Sale of Food

(32) *Ante*, p. 909.

(33) 54 & 55 Vict. c. 76, s. 28; 62 & 63 Vict. c. 14, ss. 5, 6.

(34) 8 Edw. VII. c. cvii., s. 5.

(35) 18 & 19 Vict. c. 120, ss. 183-189.

(36) 54 & 55 Vict. c. 76, s. 101.

(37) See Note, *ante*, p. 1024. The war "terminated" on the 31st August, 1921, see *post*, Vol. II., p. 2103 (5).

and Drugs Acts, 1875 to 1907, so far as they relate to the sale of milk. The Public Health (London) Act, 1891, ss. 69 and 71.³⁸ The Public Health Acts Amendment Act, 1907, ss. 53 and 54.³⁹ The Infectious Diseases Prevention Act, 1890, s. 4.⁴⁰ | Sect. 21, n.

FIRST SCHEDULE.

Sections 3, 18.

PROCEDURE FOR STOPPING SUPPLY OF MILK UNDER SECTION THREE.

(1) The medical officer of health of the county or county borough in which the cows from which the milk is obtained are kept shall report the matter to the council of such county or county borough (hereinafter referred to as the responsible authority).

(2) His report shall be accompanied by the veterinary or bacteriological reports which have been furnished to him.

(3) On the receipt of the report or a copy of the report from the medical officer of health, the responsible authority may serve on the dairyman notice to appear before them, or furnish an explanation in writing, within such time not less than forty-eight hours from the time of the service of the notice on him as may be specified in the notice, to show cause why such an order as is hereinafter mentioned should not be made.

(4) The notice shall be accompanied by a copy of the reports made in respect of the dairy.

(5) The responsible authority if, in their opinion, the dairyman has failed to show cause why an order should not be made, may make an order prohibiting him, either absolutely or unless such conditions as may be prescribed in the order are complied with, from supplying for human consumption, or using or supplying for use in the manufacture of products for human consumption, any milk from the dairy or from any particular cow or cows therein until the order has been withdrawn in accordance with the provisions of this Schedule.

(6) The order shall specify the grounds on which it is made.

(7) On the making of such an order, a copy of the order shall forthwith be served on the dairyman, and notice of the facts shall also be served on the [Minister of Health] and the [Minister] of Agriculture and Fisheries.

(8) Where no order is made, the responsible authority shall allow the dairyman any reasonable expenses incurred by him in showing cause why the order should not be made.

(9) An order prohibiting the supply or use of milk made under this Schedule shall forthwith be withdrawn, and notice of withdrawal served on the dairyman as soon as may be after the responsible authority or their medical officer of health is satisfied that the milk supplied from the dairy is not likely to cause disease.

(10) The medical officer of health shall have power to withdraw an order if so authorised by the responsible authority.

(11) If a dairyman is aggrieved by the making or continuance of an order prohibiting the supply or use of milk, he may by complaint under the Summary Jurisdiction Acts appeal to a court of summary jurisdiction.

(12) A court of summary jurisdiction on such appeal may confirm, vary, or withdraw the order and may direct to and by whom the costs of the appeal are to be paid.

(13) Pending the determination of the appeal, an order shall remain in force unless previously withdrawn.

(14) If an order prohibiting the supply or use of milk is made against a dairyman he shall unless the order has been made in consequence of his own default or neglect be entitled to recover from the responsible authority full compensation for any damage or loss which he may have sustained by reason of the making of the order. The dairyman shall also be entitled to full compensation for any damage or loss which he may sustain in consequence of the responsible authority unreasonably neglecting or refusing to withdraw an order made against him.

(15) In the case of an appeal under this schedule being allowed, the court to which the appeal is made shall determine and state whether the order, the subject of appeal, was made in consequence of the default or neglect of the dairyman or the withdrawal has been unreasonably neglected or refused.

(16) Any dispute as to the fact of damage or loss or as to the amount of compensation shall be settled by arbitration in the same manner as provided by the

(38) 54 & 55 Vict. c. 76, ss. 69, 71.

(40) *Ante*, p. 937.

(39) *Ante*, pp. 909, 910.

Sched. I.

Public Health Act, 1875, and any sum awarded as compensation shall be recoverable as a civil debt.

(17) If the compensation claimed does not exceed twenty pounds it may at the option of either party instead of being settled as hereinbefore provided be settled by, and recoverable before, a court of summary jurisdiction.

Note.**Compensation.**

For cases relating to compensation, see the Note to sect. 308 of the Act of 1875,³⁹ and, for the arbitration provisions of that Act, see sects. 179 to 181.⁴⁰

Section 5.

SECOND SCHEDULE.

DISEASES OF COWS IN ADDITION TO TUBERCULOSIS TO WHICH SECTION FIVE APPLIES.

Acute mastitis. Actinomycosis of the udder. Anthrax. Foot-and-mouth disease. Suppuration of the udder. Any other disease affecting cows which by a Milk and Dairies Order is declared to be a disease for the purposes of section five of this Act.

Section 9.

THIRD SCHEDULE.**AMENDMENT OF SALE OF FOOD AND DRUGS ACTS.**

(1) Where, under the Sale of Food and Drugs Acts, 1875 to 1907, a sample of milk is procured from a purveyor of milk, he shall, on being required to do so by the person by whom or on whose behalf the sample was taken, state the name and address of the seller or consignor from whom he received the milk.

(2) The local authority in whose district the sample was taken may take or cause to be taken one or more samples of milk in course of transit or delivery from such seller or consignor.

Within sixty hours after the sample of milk was procured from the purveyor he may serve on the local authority a notice stating the name and address of the seller from whom he received the milk and the time and place of delivery to the purveyor by the seller or consignor of milk from a corresponding milking and requesting them to take immediate steps to procure, as soon as practicable, a sample of milk in the course of transit or delivery from the seller or consignor to the purveyor, unless a sample has been so taken since the sample was procured from the purveyor, or within twenty-four hours prior to the sample being procured from the purveyor, and where a purveyor has not served such notice as aforesaid, he shall not be entitled to plead a warranty as a defence in any such proceedings: Provided that the purveyor shall not have any such right to require that such a sample shall be taken in cases where the milk, from which the sample procured from the purveyor was taken, was a mixture of milk obtained by the purveyor from more than one seller or consignor.

If a purveyor has served on the local authority such a notice as aforesaid, and the local authority have not procured a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, shall be taken against the purveyor in respect of the sample of milk procured from him.

(3) Any sample of milk so taken in the course of transit or delivery shall be submitted for analysis to the analyst to whom the sample procured from the purveyor is or was submitted.

(4) If proceedings are taken against the purveyor of milk, a copy of the certificate of the result of the analysis of every sample so taken in the course of transit or delivery shall be furnished to the purveyor, and every such certificate shall, subject to the provisions of sect. 21 of the Sale of Food and Drugs Act, 1875,⁴¹ be sufficient evidence of the facts stated therein, and shall be admissible as evidence on any question whether the milk sold by the purveyor was sold in the same state as he purchased it.

(5) The local authority of the district in which the first-mentioned sample was taken may, instead of, or in addition to, taking proceedings against the purveyor of milk, take proceedings against the seller or consignor.

(39) *Ante*, p. 752.

(40) *Ante*, p. 483.

(41) *Ante*, p. 983.

(6) If a sample of milk of cows in any dairy is taken in course of transit or delivery from that dairy, the owner of the cows may, within sixty hours after the sample of milk was procured, serve on the local authority a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking of the cows, and the foregoing provisions shall apply accordingly : Provided that the person taking the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked. **Sched. III.**

Note.

As to the effect of the provisions of the present Schedule so far as they are inconsistent with those of the earlier Acts, see the Note to sect. 9 of the present Act. The sections of those Acts relating to the taking of samples are sect. 13 of the principal Act,⁴² sect. 3 of the Act of 1879,⁴³ and sects. 2 and 3 of the Act of 1899.⁴⁴ **Taking samples.**

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Note.

For the enactments repealed by the present Schedule and sect. 21 (3), and by the repealed Act of 1914, see the Note at the commencement of the present Act. **Repeal.**

FIFTH SCHEDULE.

ENACTMENTS SAVED.

Note.

For the enactments saved by the present Schedule and sect. 21 (4), see the Note to sect. 21. **Savings.**

(42) *Ante*, p. 975.

(43) *Ante*, p. 994.

(44) *Ante*, pp. 1004, 1005.

THE MILK AND DAIRIES (AMENDMENT) ACT, 1922.

12 & 13 GEO. 5. c. 54.

An Act to postpone for a further period the operation of the Milk and Dairies (Consolidation) Act, 1915, and the Milk and Dairies (Scotland) Act, 1914, to make further provision with regard to the sale of milk and for purposes connected therewith.

[4th August, 1922.]

Postponement
of 5 & 6 Geo. 5,
c. 66.

Power to refuse
registration of,
or remove from
register,
retailers of milk.

Sect. 1. The Milk and Dairies (Consolidation) Act, 1915, shall, notwithstanding anything contained in sect. 21 of that Act, not come into operation before the 1st day of September, 1925, except in so far as it repeals the Milk and Dairies Act, 1914, and the Milk and Dairies Acts Postponement Act, 1915.¹

Sect. 2.—(1) Any local authority by whom a register of purveyors of milk is kept under or in pursuance of any enactment in that behalf,² may, if they are satisfied that the public health is or is likely to be endangered by any act or default of any person who is registered or who seeks to be registered therein as a retail purveyor of milk, in relation to the quality, storage or distribution of milk, serve upon him a notice to appear before them not less than seven days after the date of the notice to show cause why the local authority should not, for reasons to be specified in the notice, refuse to register him or remove him from the register, as the case may be, either absolutely or in respect of any specified premises, and if he fails to show cause to their satisfaction accordingly they may refuse to register him or remove him from the register, as the case may be.³

Any person aggrieved by any such decision of the local authority as aforesaid, may, within twenty-one days, give notice of appeal to a court of summary jurisdiction, and that court may require the local authority to register such person or not to remove him from the register.

The local authority or such person as aforesaid may appeal from the decision of the court of summary jurisdiction to the next practicable court of quarter sessions, who may confirm or reverse the order of the court of summary jurisdiction.

The decision of a local authority to refuse registration or to remove any person from the register under this section shall not have effect until the expiration of the time for appeal to a court of summary jurisdiction nor, where any such appeal is brought, until the appeal is determined; and where notice of appeal from a court of summary jurisdiction under this section is given within seven days from the date thereof, such decision of the local authority as aforesaid shall not take effect until the appeal to quarter sessions is finally determined.

Where the appeal is from a refusal to register, such person as aforesaid may, until the appeal is finally determined, carry on business as a purveyor of milk notwithstanding that he is not registered.

(2) The court before whom any person registered as a purveyor of milk is convicted of any offence under this Act, or any other enactment relating to milk and dairies, or any order or regulations made thereunder, may, on the application of the local authority, in addition to any other penalty, order the removal from the register of the person so convicted either absolutely or in respect of any specified premises for such period as the court may think fit.

(3) Any enactment or order requiring a local authority to keep a register of persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk shall have effect as if it required the local authority to keep a register of persons carrying on the trade of retail purveyors of milk and a separate register of persons carrying on any other trade to which the enactment or order relates, and this section shall apply only to the first-mentioned of those registers.

Note.

On the 28th August, 1922, the Minister of Health issued a Circular on the present Act.⁴

The average total weekly takings of the keepers of a railway station refreshment room were £50, and of this sum about 4d. was in respect of milk sold to

(1) See Note at commencement of Act of 1915, *ante*, p. 1024.

(2) See Note to s. 7, *post*.

(3) As to effect on contracts of refusal to

register, or removal from register, see s. 12, *post*, p. 1042.

(4) 20 L. G. R. (Orders) 179-182.

Circular on
Act.

Meaning of
purveyor of
milk.

customers for consumption on the premises. No milk was sold for consumption off the premises. A metropolitan police magistrate found as a fact that they were "purveyors" of milk who ought to have been registered under Art. VI. (1) of the Dairies, Cowsheds and Milkshops Order, 1885, which requires registration with the local authority of persons who carry on the "trade of cowkeeper, dairyman, or purveyor of milk," and Art XIII. of which enables local authorities to make regulations "prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination." It was held that the magistrate had "misdirected" himself, and the appeal was allowed.⁴ *Per* Channell, J.,⁵ "In this Order a purveyor of milk is contrasted with a person selling milk by retail, and there cannot be the slightest doubt within which of those two classes the present case comes. All the mischief that might arise from contamination of milk in such a place as this refreshment room is provided for without its being necessary for the owners to be registered under the Order in respect of it." *Per* Avory, J.,⁶ "A person may carry on more businesses than one, and may possibly be a purveyor of milk within this Order although he is selling other things as well; but in order to so constitute him the sale of milk must at least be a substantial part of the trade which he is carrying on, and in the present case it is obviously not so."

Under the same Order, which has been set out elsewhere,⁷ it was held that a purveyor, who was registered in one place and sold milk from a hand cart in another, had committed no offence, there being no prohibition against mere "selling" but only against "carrying on the trade of" a dairyman, etc.⁸

The occupier of a farm who kept cows, the milk of which was used not for sale but for fattening calves, was held not to be a "cowkeeper" within sect. 141 of the Public Health (London) Act, 1891.⁹

Sect. 3.—(1) A person shall not, either by himself or by any servant or agent, except under and in accordance with a licence granted by the Minister of Health, or with his authority under the provisions of an order made by him under this Act—
(a) sell or offer or expose for sale any milk as "certified," "Grade A," "pasteurised" or under such other designation as may be from time to time prescribed by order of the Minister; or (b) on or in connection with any sale or offer for sale or proposed sale of any milk or in any advertisement, circular, or notice relating to any milk, describe or refer to the same as "certified," "Grade A," "pasteurised" or by any other designation prescribed as aforesaid, or use any description or designation including or resembling any such description or designation.

(2) A licence may be granted for the purposes of this section for such period and subject to such terms and conditions (including conditions as to the payment of fees) as may be prescribed by an order made under this Act.

(3) This section shall come into operation on the 1st day of January, 1923, and until that date the provisions of the Milk (England and Wales) Order, 1921, and the Local Authorities (Milk) Order, 1921, relating to the sale of milk under special designations or to the matters connected therewith, shall continue in force, and shall have effect as if they were enacted in this Act.

Note.

The present section and sect. 4 are enforced by the local authorities acting under the Sale of Food and Drugs Acts: see sect. 10 (1) of the present Act. As to expenses, see sub-sect. (2) of that section.

The two Orders mentioned in subs. (3) of the present section as being in force until the 1st January, 1923, will be found in the publication referred to below.¹⁰

As to "pasteurised" milk, see the Circular of the Minister of Health of the 19th December, 1922.¹¹

The Milk (Special Designations) Order, 1922,¹² was issued by the Minister of Health under the present section on the 9th December, 1922, and amended on the

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Meaning of purveyor of milk—cont.

Meaning of cowkeeper.

Licences by Minister of Health to sell milk under special designations.

Milk Orders.

(4) *Spiers & Pond, Ltd. v. Green*, L. R. 1912, 3 K. B. 576; 82 L. J. K. B. 26; 77 J. P. 11; 10 L. G. R. 1050.

(5) L. R. 1912, 3 K. B., at p. 581.

(6) *Ibid.*, at p. 582.

(7) *Post*, Vol. II., Part V., under heading "FOOD, Dairies, Etc."

(8) *Emerton v. Hall* (1910, K. B. D.), 102 L. T. 889; 74 J. P. 301; 8 L. G. R. 686.

(9) *Umfreville v. London C. C.*, ante, p.

886 (33).

(10) 19 L. G. R. (Orders) 70, 71. See M. H. Circular on both Orders, *ibid.*, 69.

(11) 20 L. G. R. (Orders) 297. Also dealt with in Circular on present Act, referred to ante, p. 1036 (3), and in Memo, referred to post, p. 1038 (13).

(12) 20 L. G. R. (Orders) 271-280. For M. H. Circular of Dec. 12, 1922, on this Order, see 20 L. G. R. (Orders) 261-270.

Sect. 3, n.

18th December, 1922.¹³ Both these Orders were revoked on the 23rd May, 1923, by the Order of that year.¹⁴

Instructions were also issued by the Minister as to "bacteriological tests for graded milk," and "sampling and testing."¹⁵

See also the Orders as to "condensed milk" and "dried milk."^{15a}

Prohibition of addition of colouring matter, &c.

Sect. 4.—(1) No person shall add any colouring matter or water or any dried or condensed milk or any fluid reconstituted therefrom or any skimmed milk or separated milk to milk intended for sale, and no person shall, either by himself or by any servant or agent, sell, or offer or expose for sale, any milk to which any such addition has been made.

(2) No person either by himself or any servant or agent shall sell, or offer or expose for sale, as milk any liquid in the making of which dried milk or condensed milk has been used.

(3) For the purposes of this section, except as regards the addition of skimmed or separated milk, milk includes skimmed milk and separated milk.¹⁶

Prohibition of sale of tuberculous milk.

Sect. 5.—(1) No person shall, by himself or by any servant or agent, sell or offer or expose for sale the milk of a cow suffering from tuberculosis of the udder, and he shall be guilty of an offence under this section if it is proved that he knew or could by the exercise of ordinary care have ascertained that the cow was suffering from that disease.

(2) If any person is guilty of an offence under this section, he shall be liable on summary conviction for a first offence to a fine not exceeding £20, and for a second or subsequent offence to a fine not exceeding £100 or to imprisonment with or without hard labour for a period of six months, or to both such fine and imprisonment.¹⁷

Milk and dairy orders to be laid before Parliament.

Sect. 6. All orders relating to milk and dairies made by the Minister of Health under this Act or under any other enactment shall be laid before each House of Parliament as soon as may be after they are made, and if an Address is presented to His Majesty by either House of Parliament within the next subsequent twenty days on which that House has sat next after the order is laid before it praying that the order may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of a new order. If the session of Parliament ends before such twenty days as aforesaid have expired, the order shall be laid before each House of Parliament at the commencement of the next session as if it had not previously been laid.

Any order made under this Act may be varied or revoked by an order made in the same manner and subject to the same provisions as the original order.

Orders to be made with concurrence of Minister of Agriculture and Fisheries.

Sect. 7. Any order made after the commencement of this Act by the Minister of Health under sect. 34 of the Contagious Diseases (Animals) Act, 1878, as amended by the Contagious Diseases (Animals) Act, 1886, shall be made with the concurrence of the Minister of Agriculture and Fisheries.

Note.

Diseases of animals.

The Contagious Diseases (Animals) Acts, 1878 to 1893,¹⁸ with the exception of sect. 34 of the Act of 1878 (quoted below in this Note) and sect. 9 of the Act of 1886 (also quoted below in this Note), were repealed and consolidated by the Diseases of Animals Act, 1894.¹⁹ The Act of 1894 was amended by Acts of 1896,²⁰ 1903,²¹ 1909,²² 1910,²³ 1911,²⁴ 1914,²⁵ and 1922.²⁶

The Markets and Sales Order, 1910,²⁷ as to the cleansing, etc., of cattle markets,

(13) 20 L. G. R. (Orders) 298, 299. For M. H. Circular of Dec. 19, 1922, on this Order, see 20 L. G. R. (Orders), 297, 298; and for M. H. Memo of Jan., 1923, on both Orders, see 21 L. G. R. (Orders), 25-32.

(14) Set out *post*, Vol. II., Part V., under heading "FOOD, Milk." For Circular on this Order, see 21 L. G. R. (Orders) 95-97.

(15) Undated, 21 L. G. R. (Orders) 32-35. See also sect 8 of the present Act.

(15a) *Post*, Vol. II., Part V., under heading "FOOD, Milk."

(16) See Note to s. 3, *supra*, and s. 13, *post*, p. 1042.

(17) The local authority to enforce the present section is the "sanitary authority": see s. 10.

(18) 41 & 42 Vict. c. 74; 47 & 48 Vict. cc. 13, 47; 49 & 50 Vict. c. 32; 53 & 54 Vict.

c. 14; 55 & 56 Vict. c. 47; and 56 & 57 Vict. c. 43. See saving, *ante*, p. 944.

(19) 57 & 58 Vict. c. 57, s. 78, and Sched. V.

(20) 59 & 60 Vict. c. 15, *re* slaughter of foreign animals.

(21) 3 Edw. VII. c. 43, *re* sheep dipping.

(22) 9 Edw. VII. c. 26, *re* fees to veterinary surgeons for notifications.

(23) 10 Edw. VII. & 1 Geo. V. c. 20, *re* export of unfit horses.

(24) See under "Poultry," *post*, p. 1039.

(25) 4 & 5 Geo. V. c. 15, *re* export of unfit horses.

(26) 12 Geo. V. c. 8, *re* provision of funds by Parliament.

(27) Set out *post*, Vol. II., Part V., under heading "MARKETS."

and the Tuberculosis Order, 1914,²⁶ as to bovine tuberculosis, were made under the Act of 1894. **Sect. 7, n.**

The Poultry Act, 1911,²⁷ authorises orders under sect. 22 of the Diseases of Animals Act, 1894,²⁸ for "protecting live poultry from unnecessary suffering while being conveyed by land or water and in connection with their exposure for sale and their disposal after sale, and for requiring the cleansing or disinfection of receptacles or vehicles used for the conveyance of live poultry," the expression "poultry" including "domestic fowls, turkeys, geese, ducks, guinea fowls, and pigeons." **Poultry.**

As to the protection of animals generally, see the Protection of Animals Act, 1911.²⁹ **Protection of animals.**

The power of the Board of Agriculture to restrict the slaughter, etc., of immature animals under the Maintenance of Live Stock Act, 1915,³⁰ has now expired. **Maintenance of live stock.**

Urban and rural district councils are not directly concerned with the provisions of these Acts other than those relating to dairies, cowsheds, and milkshops, which are excepted from the above-mentioned repeal. The other provisions of the Act of 1894, with those of the Destructive Insects and Pests Acts, 1877 and 1907,³¹ are carried into effect by the "local authority" as defined by that Act,³² namely, the Corporation of London, the borough council in a borough with a population of not less than 10,000 (according to the census of 1881), the Hove Urban Authority, and elsewhere the county council. **Local authorities.**

Sect. 34 of the Contagious Diseases (Animals) Act, 1878,³³ which, it must be remembered, will cease to be in force if and when sect. 1 of the Milk and Dairies Act of 1915 takes its place,³⁴ enacts that "the [Privy Council] may from time to time make such general or special orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them: (i.) For the registration with the local authority of all persons carrying on the trade of cowkeepers, dairymen or purveyors of milk. (ii.) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen. (iii.) For securing the cleanliness of milk-stores, milkshops, and of milk vessels used for containing milk for sale by such persons. (iv.) For prescribing precautions to be taken for protecting milk against infection or contamination. (v.) For authorising a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions, if any, as the [Privy Council] prescribe." **Dairies, cowsheds, and milkshops.**

By sect. 9 of the Contagious Diseases (Animals) Act, 1886.³⁵—(1.) The powers vested in the Privy Council of making general or special orders under sect. 34 of the [Act of 1878], for the purposes in that section mentioned, are hereby transferred to and shall henceforth be exercisable by the [Minister of Health]; every such order shall have effect as if enacted in this section, and shall be published in such manner as the [Minister of Health] may direct, and the said [Minister] may from time to time alter or revoke any such order.

(2.) For the purposes of the said section and this section, and of any order in force thereunder, the expression "local authority," unless the context otherwise requires, in the metropolis has the same meanings as in the [Act of 1878], and elsewhere has the same meanings as in the Public Health Act, 1875.

(3.) Any expenses incurred by a local authority in the metropolis in pursuance of sect. 34 of the [Act of 1878], as amended by this section, shall be defrayed out of the local rate applicable to their expenses under the [Act of 1878]; and any expenses so incurred by any other local authority shall be defrayed as if they were incurred in the execution of the Public Health Act, 1875, and in the case of a rural sanitary authority shall be deemed to be general expenses.

(4.) The local authority and their officers, for the purpose of enforcing the said orders and any regulations made thereunder, shall have the same right to be admitted to any premises as the local authority, within the meaning of the Public Health Act, 1875, and their officers have, under sect. 102 of that Act, for the

(26) Set out *post*, Vol. II., Part V., under heading "FOOD, Bovine Tuberculosis."

(27) 1 & 2 Geo. V. c. 11, s. 1.

(28) 57 & 58 Vict. c. 57, s. 22.

(29) *Post*, Vol. II., p. 2223.

(30) 5 & 6 Geo. V. c. 65.

(31) 40 & 41 Vict. c. 68; 7 Edw. VII. c. 4.

(32) 57 & 58 Vict. c. 57, ss. 2, 3, 58.

(33) 41 & 42 Vict. c. 74, s. 34.

(34) See Note at commencement of that Act, and Note to s. 1 of same Act, *ante*, pp. 1024, 1025.

(35) 49 & 50 Vict. c. 32, s. 9. Repealed as from date when M. & D. Act, 1915, comes into operation; see Note, *ante*, p. 1024.

Sect. 7, n.
Dairies, cow-
sheds, and
milk shops—
continued.

purpose of examining as to the existence of any nuisance thereon; and if such admission is refused the like proceedings may be taken, with the like incidents and consequences as to orders for admission, penalties, costs, expenses, and otherwise, and in the case of a refusal to admit to premises for any of the purposes of the said sect. 102, and as if the local authority mentioned in the said Act included a local authority in the metropolis as defined in this section. Provided that nothing in this section shall authorise any person, except with the permission of the local authority under the [Act of 1878], to enter any cowshed or other place in which an animal affected with any disease is kept, and which is situate in a place declared to be infected with such disease.

(5.) The like penalties for offences against orders or regulations made for the purposes of sect. 34 of the [Act of 1878] as amended by this section may be imposed by the [Minister of Health] or local authority making the same, and such offences may be prosecuted and penalties recovered in a summary manner, and subject to the like provisions, as if such orders or regulations were bye-laws of a local authority under the Public Health Act, 1875, and as if the local authority mentioned in that Act included a local authority in the metropolis as defined in this section.

(6.) Whereas under the powers of the principal Act the Privy Council have made an order known as the Dairies, Cowsheds, and Milkshops Order of 1885, and certain authorities have made regulations under that Order, or having effect in pursuance thereof; and it is expedient by reason of the foregoing provisions of this section to make provision respecting such order and regulations: Be it therefore enacted as follows:—(a.) The Dairies, Cowsheds, and Milkshops Order of 1885, and any regulations thereunder, or having effect in pursuance thereof, made by any local authority under the [Act of 1878], other than the local authority of a county, shall be deemed to have been made respectively by the [Minister of Health] and by a local authority under this section; and any such regulations made by the local authority of a county, within the meaning of the principal Act, shall, so far as they extend to the district of any local authority as defined in this section, be deemed to have been made by such local authority. (b.) So much of any register kept by the local authority of any county under the said order as relates to the district of any local authority as defined in this section, or a copy thereof, shall, as soon as may be after the passing of this Act, be delivered to the local authority by the local authority of the county."

The other powers of the Privy Council under the repealed Contagious Diseases (Animals) Acts were transferred to the Board of Agriculture (now the Minister of Agriculture and Fisheries) by the Board of Agriculture Act, 1889,³⁶ and similar powers are now exercisable by that Minister under the Diseases of Animals Act, 1894. The local authorities might, no doubt, if necessary, be compelled to put their powers in force so far as relates to the sanitary condition of the dairies, cowsheds, and milkshops by reason of the general provision in sect. 7 of the Housing of the Working Classes Act, 1885.³⁷

Expenses.

With regard to the expenses of urban authorities, see sect. 207 of the Public Health Act, 1875; and, with regard to those of rural authorities, sect. 229, and the Notes to those sections.³⁸

Admission to
premises.

Under sect. 102 of that Act,³⁹ if admission is refused, a justices' order may be obtained requiring the person having custody of the premises to admit the officer of the local authority.

Infected
areas.

Places and areas are in certain cases declared to be infected with cattle plague, by or in pursuance of sects. 5, 6, of the Act of 1894⁴⁰; with pleuro-pneumonia, or foot and mouth disease, by or in pursuance of sects. 8, 9, 12,⁴¹ and under sect. 10⁴² the Minister of Agriculture and Fisheries may make general orders for prescribing the cases in which places and areas are to be declared to be infected with other diseases.

Penalties.

A penalty not exceeding the sum of £5 for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority, may be imposed by a bye-law under the Public Health Act, 1875.⁴³ Such penalties are recoverable before a court of summary jurisdiction.⁴⁴

(36) 52 & 53 Vict. c. 30, s. 2, and Sched. I.
(37) *Ante*, p. 741. And see s. 11 of the present Act, *post*, p. 1041.
(38) *Ante*, pp. 561, 606.
(39) *Ante*, p. 201.

(40) 57 & 58 Vict. c. 57, ss. 5, 6.
(41) *Ibid.*, ss. 8, 9, 12.
(42) *Ibid.*, s. 10.
(43) See s. 183, *ante*, p. 506.
(44) *Ibid.*, s. 251, *ante*, p. 649.

A private individual may take proceedings for the recovery of penalties under the Diseases of Animals Act, 1894, and the orders made in pursuance of that Act.⁴⁵

The order of 1885 and an amending order issued by the Local Government Board and dated the 1st November, 1886, have been set out.⁴⁶

As to what constitutes the business of dairyman or cowkeeper, see the case cited below.⁴⁷

The regulations which may be made with respect to the "ventilation" of cow-sheds, etc., include regulations with respect to the volume of air space to be provided for each cow.⁴⁸

Sect. 9 of the Act of 1886 was repealed as regards London by the Public Health (London) Act, 1891,⁴⁹ which authorises the Minister of Health to make general or special orders with respect to the registration of dairymen and the regulation of dairies, and the making of bye-laws by the London County Council.⁵⁰

As to the registration of retail milk purveyors, see sect. 2 of the present Act.

Sect. 7, n.

Dairies,
etc., orders.

London.

Registration.

Sect. 8.—(1.) The Minister of Health shall make regulations under the Public Health (Regulations as to Food) Act, 1907, for the prevention of danger arising to public health from the importation of milk intended for sale for human consumption or for use in the manufacture of products for human consumption.⁵¹

Regulations by
Minister of
Health.

(2.) Sect. 1 (1) of the said Act shall have effect as though at the end thereof the following paragraph were added. . . .⁵²

Sect. 9.—(1.) If any person is guilty of a contravention of, or non-compliance with, the provisions of this Act or any of them, he shall, save as otherwise provided in this Act, be liable on summary conviction to a fine not exceeding, in the case of a first offence, £5, and, in the case of a second or subsequent offence, £50, and, if the offence is a continuing offence, to a further fine not exceeding forty shillings for each day during which the offence continues.⁵³

Penalties.

(2.) Where it appears to a local authority that an offence has been committed in respect of which proceedings might be taken under this Act against a purveyor of milk, the local authority shall, if reasonably satisfied that the offence of which complaint is made was due to an act or default of a servant or agent without the knowledge, consent, or connivance of his employer, take proceedings against the servant or agent without first proceeding against his employer.

(3.) A person shall not be convicted of any offence under any enactment relating to the sale of milk in respect of a sample of milk taken after the milk has left his custody and control, if it is proved to the satisfaction of the court that the churn or other receptacle in which the milk was contained was effectively closed and sealed at the time when it left his custody and control, but was not so closed and sealed at the time when it reached the person by whom the sample was taken.

Sect. 10.—(1.) The local authority for the purpose of the enforcement of sects. 3 and 4 of this Act shall be the same as the local authority concerned with the enforcement of the Sale of Food and Drugs Acts, 1875 to 1907 (including an authority empowered by sect. 13 of the Sale of Food and Drugs Act, 1875,⁵⁴ to give directions to the officers named therein to procure samples of food or drugs), and the local authority for the enforcement of sect. 5 of this Act shall be the sanitary authority: Provided that, where a local authority have been authorised by the Minister to grant licences under sect. 3 of this Act, that local authority shall also be a local authority for the purpose of the enforcement of that section.

Administration
of Act.

(2.) The expenses incurred by a local authority authorised to grant licences under sect. 3, or incurred by a local authority under sects. 2 and 5, of this Act, shall be defrayed, in the case of a county council out of the county fund as expenses for general county purposes, and in the case of a sanitary authority as part of their general expenses in the execution of the enactments relating to public health, and any other expenses incurred by a local authority under this Act shall be

(45) *Reg. v. Stewart*, L. R. 1896, 1 Q. B. 300; 65 L. J. M. C. 83; 74 L. T. 54; 60 J. P. 356.

(46) *Post*, Vol. II., Part V., under heading "FOOD, Dairies, Etc."

(47) *Umfreville's Case*, ante, pp. 886 (33), 1037 (9).

(48) *Baker v. Williams*, L. R. 1898, 1 Q. B. 23; 66 L. J. Q. B. 880; 77 L. T. 495; 62 J. P. 21.

(49) 54 & 55 Vict. c. 76, s. 142, and Sched. IV.

(50) *Ibid.*, s. 28.

(51) In 1923 two Orders were issued under the present section, one as to "condensed milk" and the other as to "dried" milk. They will be found *post*, Vol. II., Part V., under heading "FOOD, Milk." For M. H. Circulars thereon, see 21 L. G. R. (Orders) 62, 237.

(52) See addition, ante, p. 1022.

(53) A special penalty for selling "tuberculous" milk is provided by s. 5 (2).

(54) *Ante*, p. 975.

Sect. 11.

defrayed in the same manner as expenses for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907.

Transfer of powers under Act to county council.

Sect. 11.—(1.) If a local authority fail to fulfil any of their duties under this Act or under any order relating to milk and dairies made by the Minister of Health, the Minister may, after holding a local inquiry, make such order as he thinks necessary or proper for the purpose of compelling the authority to fulfil their duties, and any such order may be enforced by *mandamus*.

(2.) If a county council resolve that a district council within the county have failed to exercise or perform any of their powers or duties under this Act or any enactments relating to milk and dairies, or any order or regulations made there-under, and make complaint thereof to the Minister of Health, the Minister may after such inquiry as he deems necessary by order determine that all or any of the said powers or duties be transferred to the county council either for a definite period or until the Minister shall otherwise direct, and those powers and duties shall be transferred accordingly, and sect. 63 of the Local Government Act, 1894,⁵⁵ shall apply as if the powers and duties has been transferred under that Act with such modifications and adaptations as appear necessary or expedient.

Provisions as to breaches of contract.

Sect. 12. Where the registration of a retailer is refused, or a retailer is removed from a register, under this Act,⁵⁶ the retailer shall not be liable to any action for breach of a contract for the purchase of further supplies of milk from a producer, if he can prove that such refusal or removal was due to the quality of milk supplied by the producer.

Certificate of analyst *prima facie* evidence.

Sect. 13. At the hearing of the information in any proceedings under sect. 4 of this Act, the production of the certificate of an analyst acting under the Sale of Food and Drugs Acts, 1875 to 1907, for the place in which the sample was taken, shall be sufficient evidence of the facts stated therein unless the defendant shall require that the analyst shall be called as a witness.⁵⁷

Sect. 14. [*Application to Scotland.*]

Short title and extent.

Sect. 15.—(1.) This Act may be cited as the Milk and Dairies (Amendment) Act, 1922.

(2.) This Act shall not apply to Ireland.

(3.) This Act, except where otherwise expressly provided, shall come into operation on the first day of September, nineteen hundred and twenty-two.

Note.

Commence-ment of Act.

The only section in the present Act expressly providing that it shall come into operation on a date other than the 1st September, 1922, is sect. 3.⁵⁸

(55) *Post*, Vol. II., p. 2097.

(56) See s. 2 of present Act.

(57) As to such certificates, see S. F. D.

Act, 1875, s. 21, and Note, *ante*, p. 983.

(58) See sub-sect. (3), *ante*, p. 1037.

PART II.—(Continued).

DIVISION III.

ACTS RELATING TO HOUSING AND TOWN PLANNING.

THE HOUSING OF THE WORKING CLASSES ACT, 1890.

53 & 54 VICT. c. 70.

An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes.

[18th August, 1890.]

Sect. 1. This Act may be cited as the Housing of the Working Classes Act, 1890.

Short title
of Act.

Note.

The Housing Acts are divided into Parts, and there are many references to these "Parts" which do not refer to the sections. For the convenience of readers, every ODD page has at the top, after the chapter of the Act, the number of the Part which is dealt with on that page.

The present Act consolidated and repealed (with the exception of certain sections of the Housing of the Working Classes Act, 1885) three sets of Acts, namely, the Labouring Classes Lodging Houses Acts, 1851 to 1885,¹ the Artizans Dwellings Acts, 1868 to 1885,² and the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1885.³

The Working Classes Dwellings Act, 1890,⁴ exempts from the Mortmain and Charitable Uses Acts, gifts of land, or money to be laid out in land, for the erection of dwellings for the working classes in populous places.

The Housing of the Working Classes Act, 1894,⁵ amends Part II. of the present Act, as regards borrowing money. The Housing of the Working Classes Act, 1900,⁶ enables urban authorities to acquire land outside their district for the purposes of Part III. of the present Act, provides for the expenses of metropolitan borough councils under that Part, and contains "re-housing" provisions. The Housing of the Working Classes Act, 1903,⁷ extends the maximum period for loans under the Acts to eighty years, and contains amendments as regards procedure and otherwise. The Housing, Town Planning, &c. Act, 1909,⁸ amends the previous Acts, and provides for the making of town planning schemes. The Housing Act, 1914,⁹ and the Housing (No. 2) Act, 1914,¹⁰ gave the Board of Agriculture and Local Government Board certain powers for providing houses themselves. The two last-mentioned Acts are not included in the "collective title" of "the Housing Acts." The Housing, Town Planning, &c. Act, 1919,¹¹

Division of
Acts into
Parts.

Housing Acts.

(1) 14 & 15 Vict. c. 34; 29 & 30 Vict. c. 28; 30 & 31 Vict. c. 28; and part of 48 & 49 Vict. c. 72; corresponding to Part III. of the present Act.

(2) 31 & 32 Vict. c. 130; 42 & 43 Vict. c. 64; 43 Vict. c. 8; 45 & 46 Vict. c. 54, Part II.; and part of 48 & 49 Vict. c. 72; corresponding to Part II. of the present Act.

(3) 38 & 39 Vict. c. 36; 42 & 43 Vict. c. 63; 45 & 46 Vict. c. 54, Part I.; and part of 48 & 49 Vict. c. 72; corresponding to Part I. of

the present Act.

(4) Quoted in Note to H. T. P. Act, 1909, s. 8, *post*, p. 1096.

(5) Quoted in Note to s. 43 of the present Act, *post*, p. 1065.

(6) *Post*, p. 1088.

(7) *Post*, p. 1089.

(8) *Post*, p. 1094.

(9) *Post*, p. 1129.

(10) Quoted in Notes to last-mentioned Act.

(11) *Post*, p. 1152.

Sect. 1, n.

Citation of
Housing Acts.

the Housing (Additional Powers) Act, 1919,¹² the Housing Act, 1921,¹³ and the Housing, &c. Act, 1923,¹⁴ amend the previous Acts.

The Short Titles Act, 1896, does not give a collective title to these Acts. The unrepealed portion of the Housing of the Working Classes Act, 1885,¹⁶ is not included in any of the collective titles mentioned below. By sect. 8 (1) of the Housing of the Working Classes Act, 1900,¹⁷ the present Act, the above-mentioned Act of 1894, an Act of 1896 applying to Scotland only,¹⁸ "and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1900." By sect. 17 (1) of the Act of 1903,¹⁹ "the Housing of the Working Classes Acts, 1890 to 1900, and this Act, may be cited together as the Housing of the Working Classes Acts, 1890 to 1903." In sect. 1 (2) of the Act of 1903,²⁰ there is the expression "the principal Act or any Acts (including this Act) amending it (in this Act collectively referred to as the Housing Acts)." By sect. 51 (in Part I.) of the Act of 1909,²¹ "In this part of this Act the expression 'Housing Acts' means the principal Act, and any Act amending that Act, including this Act." By sect. 76 (1) of the Act of 1909,²² "Part I. of this Act shall be construed as one with the Housing of the Working Classes Acts, 1890 to 1903, and that part of this Act and those Acts may be cited together as the Housing of the Working Classes Acts, 1890 to 1909." So that sect. 76 (1) expressly excludes, from the collective title "Housing of the Working Classes Acts," all parts of the Act of 1909, except Part I.; but, as the definition of the expression "Housing Acts" in Part I. does not allude specially to Part I., but speaks of the Act of 1909 as a whole, it would appear that, unless the context is repugnant to such a construction, the whole of the Act of 1909, including Part II., is intended to be included in the expression "Housing Acts" where used in Part I. of the Act of 1909. The point is of importance, because, in numerous sections in Part I. of the Act of 1909, powers are given and duties are imposed by reference to "the Housing Acts," and many of them are relevant to, and would be useful in connection with, town planning schemes. Part II. of the Act of 1909 uses the expression "Housing Acts" in sect. 67 only, which section deals with the application of Part II. to Scotland, and here the words used are "for the purposes of the Housing Acts as defined in Part I. of this Act." Sects. 73 and 74 (in Part IV.) of the Act of 1909 use the expression "under the Housing Acts or Part II. of this Act," and this throws doubt upon the above proposition, as also does the fact that some of the sections in Part I. of the Act of 1909, in which the expression "Housing Acts" occurs, are expressly made applicable for town planning purposes,²³ which would be unnecessary if the expression included Part II. Moreover, Parts I., III., and IV. of the Act of 1909 amend the principal Act, but Part II. of the Act of 1909 does not "amend" that Act at all; and sect 47 (1) of the Act of 1909 enacts that "any provisions of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained." It seems, therefore, to be at least arguable that the expression "Housing Acts" is used as synonymous with the expression "Housing of the Working Classes Acts" as defined by sect. 76 (1) of the Act of 1909, or that, even if it includes Parts III. and IV., it does not include Part II. of the Act of 1909. Neither of the two Acts of 1914 contains a collective title enactment.²⁴ By sect. 52 (2) of the Housing, Town Planning, &c., Act, 1919,²⁵ "the Housing of the Working Classes Acts, 1890 to 1909, and this Act so far as it amends those Acts may be cited together as the Housing Acts, 1890 to 1919, and are in this Act referred to as the Housing Acts." As to the construction of Part I. of the Act of 1919 as one with the present Act, see sect. 40 of that Act.²⁶ By sect. 11 (2) of the Housing Act, 1921,²⁷ "the

(12) *Post*, p. 1152.

(13) This Act, except so far as repealed or dealing with enactments since repealed, has been dealt with in the Notes to the English enactments which it amended, thus, s. 1 (repealed by Act of 1923), s. 2 (see footnote (5), *post*, p. 1152), s. 3 (quoted *post*, p. 1132), s. 4 (see footnote (10), *post*, p. 1152), s. 5 (quoted *post*, pp. 1084, 1147), s. 6 (quoted *post*, pp. 1153 (15) (16), 1138 (39), 1149 (14), s. 7 (quoted *post*, p. 1153), s. 8 (repealed by Act of 1923, subject to saving in s. 6 (3) of that Act, *post*, p. 1178), s. 9 (quoted *post*, p. 1071), s. 10 (Ireland), s. 11 (short title, etc., and repeals), and Sched. (repeals), see *infra* (27) and *post*,

pp. 1082 (3), 1143 (15), 1144 (14), 1149 (16), and 1152 (5).

(14) *Post*, p. 1175.

(16) See s. 7, *ante*, p. 741 (1); s. 8, *ante*, p. 171 (1); and ss. 9, 10, *ante*, p. 174 (5) (7).

(17) *Post*, p. 1088.

(18) 59 & 60 Vict. c. 31.

(19) *Post*, p. 1091.

(20) *Post*, p. 1089.

(21) *Post*, p. 1115.

(22) *Post*, p. 1125.

(23) See, *e.g.*, s. 45, *post*, p. 1114, as applied by s. 60 (1), *post*, p. 1120

(24) *Post*, p. 1129.

(25) *Post*, p. 1150.

(26) *Post*, p. 1149.

(27) 11 & 12 Geo. V. c. 19, s. 11 (2).

Housing (Additional Powers) Act, 1919,²⁸ and this Act, so far as it amends that Act, may be cited together as the Housing (Additional Powers) Acts, 1919 and 1921, and the Housing Acts, 1890 to 1919, and this Act, so far as it amends those Acts, may be cited together as the Housing Acts, 1890 to 1921." And by sect. 25 (2) of the Housing, &c. Act, 1923,²⁹ "the Housing Acts, 1890 to 1921, and Part I. of this Act, may be cited together as the Housing Acts, 1890 to 1923, and are in this Act referred to as the Housing Acts."

Sect. 1, n.

The Small Dwellings Acquisition Act, 1899,³¹ enables district councils to advance money to residents in houses for the purpose of enabling them to acquire the ownership of the houses. That Act, with the amendments to it in Part III. of the Housing, Town Planning, &c. Act, 1919,³² and Part III. of the Housing, &c. Act, 1923,³³ "may be cited together as the Small Dwellings Acquisition Acts, 1899 to 1923."³⁴

Small Dwellings Acquisition Acts.

By sect. 52 (3) of the Housing, Town Planning, &c. Act, 1919,³⁵ Part II. of the Act of 1909 "and Part II. of this Act may be cited as the Town Planning Acts, 1909 to 1919," and by sect. 25 (4) of the Housing, &c. Act, 1923,³⁶ "the Town Planning Acts, 1909 and 1919, and Part II. of this Act, may be cited together as the Town Planning Acts, 1909 to 1923."

Town Planning Acts.

The Increase of Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923,³⁷ have been included in this Part of the work as materially affecting housing conditions.

Rent Restrictions Acts.

Part I. of the present Act relates to unhealthy areas, in which the streets and houses, or some of them, require rearrangement and reconstruction; Part II. to unhealthy dwelling-houses, which are in a state so dangerous or injurious to health as to be unfit for habitation, and need to be closed and either rendered fit for habitation or demolished, and also to unhealthy areas which are too small to be dealt with under the first part of the Act; and Part III. to the provision and management of lodging-houses or cottages for the working classes. The first part does not apply to rural districts, but the second applies to both urban and rural districts. The third part was, but is no longer, adoptive,³⁸ and applies to both urban and rural districts.

Division of present Act into parts.

By an Order in Council of the 27th February, 1905, made in pursuance of the Act of 1903,³⁹ all the powers and duties of the Secretary of State under the Housing Acts or under any scheme made in pursuance of those Acts, and the powers of the Secretary of State under any local Act, so far as they related to the housing of the working classes, were, as from the 1st March, 1905, assigned to the Local Government Board (now Minister of Health⁴⁰).

Transfer of powers, etc., of Secretary of State.

For the purposes of the provisions of the Housing of the Working Classes Act, 1903, with respect to rehousing persons displaced by the taking of land under provisional and other orders, or under Acts other than the Housing Acts, a definition of the expression "working class" is given.⁴¹ That definition was amended by the Housing Act of 1923 by substituting £3 for 30s. as the maximum income.⁴² In a case which arose under a provision in the London Building Act, 1894,⁴³ prohibiting dwelling-houses adapted to be inhabited by persons of the working class from being erected without the consent of the county council to a height greater than the distance between the front wall and the opposite side of the street, Channell, J., said that what was meant by the "working class" was the class of persons who ordinarily lived in such a state and condition of life that overcrowding was likely to take place.⁴⁴ A chauffeur was held to be a member of the "working class" for the purposes of the Housing Acts.⁴⁵ A dwelling may come within the same provision, although it may not be "specially adapted to be inhabited by persons of the working class only," but may be occupied by a clerk or person of small means.⁴⁶ See also the Note to sect. 28 of the Housing, Town Planning, &c. Act, 1919.⁴⁷

Meaning of working class.

(28) *Post*, p. 1152.
(29) *Post*, p. 1183.
(31) *Post*, p. 1082.
(32) Namely, s. 49, *post*, p. 1150.
(33) Namely, s. 22, *post*, p. 1182.
(34) See s. 52 (4) of Act of 1919, and s. 25 (6) of Act of 1923, *post*, pp. 1150, 1183.
(35) *Post*, p. 1150.
(36) *Post*, p. 1183.
(37) *Post*, p. 1156.
(38) See H. T. P. Act, 1909, s. 1, *post*, p. 1094.
(39) See s. 2 (1), *post*, p. 1089.

(40) See Act of 1919, *post*, Vol. II., p. 2305.
(41) See Sched., Art. 12 (e), *post*, p. 1093. See also the special definition, *re* settled land, *post*, p. 1075 (8).
(42) By s. 16 and Sched. II.
(43) 57 & 58 Vict. c. cexiii., s. 13.
(44) *London C.C. v. Davis* (1897), 77 L. T. 693; 62 J. P. 68.
(45) *White v. St. Marylebone B.C.*, *post*, p. 1113 (22).
(46) *Crow v. Davis* (1904, K. B.), 89 L. T. 407; 67 J. P. 319; 2 L. G. R. 1034.
(47) *Post*, p. 1145 (23).

Sect. 1, n.
Meaning of
labouring
population.

As to the meaning of the undefined expression “labouring population,” the Law Officers of the Crown, Sir R. T. Reed (afterwards Lord Loreburn, C.) and Sir Frank Lockwood, gave the following opinion upon these words in the Allotments Act, 1887 :—“ We are of opinion that the term ‘labouring population’ means the population that, in substance, makes a livelihood by manual labour. It includes all such as smiths, ploughmen, carpenters, artificers, workers in factories, or others whose work is in the main manual, though knowledge and skill also be required. It does not include those whose work is in the main a matter of knowledge and skill, though manual work is also required, such as nurses and cooks, postmasters, clerks, or tradesmen in general. We consider that the line of demarcation is that above indicated, but it is impossible to lay it down with precision, and each case must depend upon its own facts. We would add that under sect. 6 of the Allotments Act, 1887, the authority may make regulations defining the persons eligible to be tenants of allotments. Different districts may vary in their conditions, and a regulation made under sect. 6 would not be disturbed by a court of justice unless its provisions included persons manifestly not belonging to the labouring population. Further, it is to be observed that sect. 2 of the same Act authorises the letting of allotments to persons belonging to the labouring population. That includes not only those who labour themselves, but those really belonging to the class, though personally they may not labour : for example, the widow of a labourer.”

The Board of Agriculture and Fisheries issued, shortly after the passing of the repealed Small Holdings and Allotments Act, 1907, the following Memorandum on the same subject :—“ The Allotments Acts do not contain any definition of the expression ‘labouring population,’ and the Board have no authority to define its meaning. It might reasonably be held to include only those persons whose main occupation involved manual labour, and therefore not tradesmen, licensed victuallers or employers of labour, or persons such as clerks whose main occupation is manual work but not manual labour. In dealing with field gardens and similar small allotments sanitary authorities seem to have sometimes adopted a wider construction and let the gardens or allotments to all persons of the working classes to whom they would be of real value and in the absence of any authoritative decision councils would seem justified in doing this, but in the case of applications exceeding one acre any question as to whether the applicants come under the statutory description can be avoided if the applications are referred to the county council to be dealt with under the Small Holdings Acts, and in doubtful cases the Board suggest that a council should adopt this course.”

PART I.

UNHEALTHY AREAS.

Definitions.

Sect. 2. In this part of this Act . . .¹ The expression “ the Acts relating to nuisances ” means—as respects the county of London and city of London [*the Nuisances Removal Acts as defined by the Sanitary Act, 1866,*²] and any Act amending these Acts; and as respects any urban sanitary district in England, the Public Health Acts; and in the case of any of the above-mentioned areas, includes any local Act which contains any provisions with respect to nuisances in those areas.³

Application of
Part I. of Act.

Sect. 3. This part of this Act shall not apply to rural sanitary districts.

SCHEME BY LOCAL AUTHORITY.

Local authority
on being
satisfied by
official represen-
tation of the
unhealthiness
of district to
make scheme
for its
improvement.

Sect. 4. Where an official representation as hereinafter mentioned is made to the local authority that within a certain area in the district of such authority either—

- (a.) any houses, courts, or alleys are unfit for human habitation, or
- (b.) the narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses or groups of houses within such area, or the want of light, air, ventilation or proper conveniences, or any other sanitary defects,

(1) Definition of “ this part of this Act ” as including any confirming Act to be “ omitted,” see Housing, etc., Act, 1923, s. 16, Sched. II.

(2) 29 & 30 Vict. c. 90, s. 14. As to the repealed Sanitary Acts, see *ante*, p. 836. The

Public Health (London) Act, 1891, is now substituted for the Nuisances Removal Acts in the county of London.

(3) For other definitions, see s. 29, *post*, p. 1054, and ss. 92, 93, *post*, p. 1078.

or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings in the said area or of the neighbouring buildings :

and [that the most satisfactory method of dealing with the evils connected with such houses, courts, or alleys, and the sanitary defects in such area is an improvement scheme ⁴] for the rearrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.

Provided always, that any number of such areas may be included in one improvement scheme.

Note.

As to the " assimilation of procedure under Parts I. and II." of the present Act, see the Note to sect. 15 of the Act of 1923.^{4a}

As to the meaning of the expression " street," see sect. 29 of the present Act and sect. 48 of the Act of 1909.⁵

As to the power of local authorities to acquire in advance lands in areas proposed for inclusion in improvement schemes, see sect. 13 of the Housing, Town Planning, &c. Act, 1919.⁶

As to joint action by local authorities under the Housing Acts, see sect. 38 of the Act of 1909.⁷

As to defaults of local authorities under the Housing Acts, see sect. 10 of the Act of 1909, and the enactments cited in the Note thereto.^{7a}

If it is alleged that excessive sickness in a locality is due to bad housing conditions, an enquiry may be ordered by the Minister of Health under sect. 63 of the National Insurance Act, 1911.^{7b}

Sect. 4.

Procedure.

Meaning of " street."

Acquisition in advance.

Joint action.

Default.

Excessive sickness.

Sect. 5.—(1.) An official representation for the purposes of this part of this Act shall mean a representation made to the local authority by the medical officer of health of that authority, and in London made either by such officer or by any medical officer of health in London.

Official representation, by whom to be made.

(2.) A medical officer of health shall make such representation whenever he sees cause to make the same; and if [any justice ⁸] of the peace acting within the district for which he acts as medical officer of health, or [four or more local government electors in the district ⁹] complain to him of the unhealthiness of any area within such district, it shall be the duty of the medical officer of health forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the said area or any part thereof is an unhealthy area or is not an unhealthy area.

Note.

If the medical officer of health does not, on a complaint under the present section, represent that the area in question is unhealthy, the complainant may appeal to the Minister of Health, and the official representation may be dispensed with.¹⁰ A temporary medical officer of health is competent to make a representation under the Act.¹¹

Official representation.

Sect. 6.—(1.) The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates, and (a.) may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or

Requisites of improvement scheme of local authority.

(4) Substituted for " that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area cannot be effectually remedied otherwise than by an improvement scheme " by H. T. P. Act, 1909 (9 Edw. VII. c. 44), s. 22.

by H. T. P. Act, 1919, s. 39, Sched. II.

(9) These words were originally " twelve or more persons liable to be rated to the local rate," and " six " was substituted for " twelve " by H. T. P. Act, 1919, s. 39, Sched. II. The words in the text were substituted by Housing, etc., Act, 1923, s. 16, Sched. II. As to the meaning of " local government electors," see R. P. Act, 1918, ss. 3, 4, *post*, Vol. II., p. 2282.

(10) See s. 16, *post*, p. 1052.

(11) See s. 79 (1), *post*, p. 1076.

(4a) *Post*, p. 1180.

(5) *Post*, pp. 1054, 1115.

(6) *Post*, p. 1136.

(7) *Post*, p. 1110.

(7a) *Post*, p. 1096.

(7b) *Post*, Vol. II., p. 2236.

(8) Substituted for " two or more justices "

Sect. 6. inclusion is necessary for making their scheme efficient [*for sanitary purposes* ¹²]; and (b.) may provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; and (c.) shall provide such dwelling accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act; and (d.) shall provide for proper sanitary arrangements. [And (e) may provide for any other matter (including the diversion and closing of highways) for which it seems expedient to make provision with a view to the improvement of the area or the general efficiency of the scheme.]

(2.) The scheme shall distinguish the lands proposed to be taken compulsorily.

(3.) The scheme may also provide for the scheme or any part thereof being carried out and effected by [any person having such interest in any property comprised in the scheme as may be sufficient to enable him to carry out and effect the same ¹³], under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

Note.

Incidental matters.

In addition to amending clause (a) and adding clause (e) to sub-sect. (1) of the present section, sect. 23 of the Act of 1909 also enacts that "provision may be made in a reconstruction scheme under Part II. of the " present Act " for any matters for which provision may be made in an improvement scheme made under " the present Part.¹⁴

Rehousing persons displaced.

Provisions are made by the Housing of the Working Classes Act, 1903.¹⁵ with respect to the provision of dwelling accommodation for persons of the working class where land is acquired compulsorily or by agreement under provisional or other orders, or under any Act other than the Housing Acts.

As to the re-housing of such persons when they are displaced by improvement schemes, see sects. 11, 15, and 23 of the present Act.

CONFIRMATION OF SCHEME.

Publication of notices.

Sect. 7. Upon the completion of an improvement scheme the local authority shall [forthwith ¹⁶]

(a.) publish, . . .¹⁷ in [a ¹⁸] newspaper circulating within the district of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and

Service of notices.

(b.) . . .¹⁹ serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier [(except tenants for a month or a less period than a month) ²⁰] of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands; . . .²¹

Note.

Procedure.

As to the " assimilation of procedure under Parts I. and II." of the present Act, see the Note to sect. 15 of the Act of 1923.²²

(12) Repealed by H. T. P. Act, 1909, ss. 23, 75, Sched. VI.

(13) Substituted for "the person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person" by H. T. P. Act, 1919, s. 39, Sched. II.

(14) 9 Edw. VII. c. 44, s. 23.

(15) See s. 3, *post*, p. 1089.

(16) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(17) The words here: "during three consecutive weeks in the month of September, or October, or November," are to be "omitted"—see H. T. P. Act, 1919, s. 39, Sched. II. The words after "weeks" were directed to be "omitted" by s. 5 (1) of the Act of 1903, which is now repealed by H. T. P. Act, 1919, s. 50, Sched. V.

(18) Substituted for "some one and the

same" by H. T. P. Act, 1919, s. 39, Sched. II.

(19) The words here: "during the month next following the month in which such advertisement is published" are to be "omitted"—see H. T. P. Act, 1919, s. 39, Sched. II. These words had been replaced by the words "during the thirty days next following the date of the last publication of the advertisement" by s. 5 (1) of the Act of 1903, which has now been repealed by H. T. P. Act, 1919, s. 50, Sched. V. There are now, therefore, no words in front of the word "serve" in this sub-section.

(20) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(21) Clauses (c) and (d) were repealed by Housing, etc., Act, 1923, s. 24, Sched. III. As to service of notices now, see s. 15 of that Act, and Note, *post*, p. 1181.

(22) *Post*, p. 1180.

Forms for the advertisement, and the notices to owners, etc., were prescribed by the Local Government Board.²³

They may be dispensed with in certain cases: see sect. 41 (2) of the Act of 1909.²⁴

Sect. 7, n.

Advertisements,
notices, &c.

Sect. 8.—(1.) Upon compliance with the foregoing provisions with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition [*if it relates to any part of the county or city of London, to a Secretary of State, and if it relates to any other place*¹] to the [Minister of Health] praying that an order may be made confirming such scheme.

Making and
confirmation of
provisional
order.

(2.) The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect to the taking their lands, and shall be supported by such evidence as the [Secretary of State or¹] [Minister of Health] [*according to the circumstances of the case*¹] (in this part of this Act referred to as the confirming authority), may from time to time require.

(3.) If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area comprised in the scheme, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme.

(4.) After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area comprised in the scheme and authorising such scheme to be carried into execution.

(5.) Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a [notice²] of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this part of this Act to be served. . . .³

(6.) . . .⁴

(7.) The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

(8.) All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this part of this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this part of this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

(9.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

Note.

As to the "assimilation of procedure under Parts I. and II." of the present Act, see the Note to sect. 15 of the Act of 1923.⁵

Procedure.

Instructions as to applications with regard to improvement schemes are issued

Instructions.

(23) These forms, which have been revised, can be obtained from the Ministry of Health. For list, see Note at commencement of "HOUSING," *post*, Vol. II., Part V., opposite marginal note "Forms."

(24) *Post*, p. 1112.

(1) Repealed by S. L. R. Act, 1908.

(2) Substituted for "copy" by H. T. P.

Act, 1919, s. 39, Sched. II.

(3) The words here: "except tenants for a month or a less period than a month" are to be "omitted"—see H. T. P. Act, 1919, s. 39, Sched. II.

(4) As to confirmation by Parliament, repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

(5) *Post*, p. 1180.

Sect. 8, n.

periodically by the Minister of Health, and the current instructions should be obtained from the Ministry before any such application is made.

The powers of the Secretary of State under the Act were transferred to the Local Government Board (now Minister of Health): see the Note to sect. 1.⁶

As an order takes effect without confirmation by Parliament, whether land is taken compulsorily or not, the only opportunity to oppose is at the local inquiry or otherwise before the order is made.⁷

Inquiry on refusal of local authority to make an improvement scheme.

Sect. 9. [Costs to be awarded in certain cases.⁸]

Sect. 10. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, the local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and, upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

Order to make scheme.

Note.

As to inquiries, see sect. 85 of the present Act. If the Minister of Health, as confirming authority, is satisfied upon the report that a scheme ought to have been made by the local authority, he may, under sect. 4 of the Act of 1903,⁹ make an order, enforceable by *mandamus*, requiring that authority to make a scheme. Further as to action against local authorities in default, see sects. 10 to 13 of the Act of 1909, and sects. 3 to 6 of the Housing, Town Planning, &c. Act, 1919.¹⁰

PROVISION OF DWELLING ACCOMMODATION FOR WORKING CLASSES DISPLACED BY SCHEME.

Sect. 11.—(1.) . . .¹¹

Requisites of improvement scheme as to accommodation of working classes.

(2.) [Where¹²] a scheme [comprises an area situate elsewhere than in the county or city of London, it¹²] shall, if the confirming authority so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working classes displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry may require.

Note.

Rehousing persons displaced.

The Act of 1903 contains requirements with respect to the provision of dwelling accommodation for persons of the working classes whenever land is taken compulsorily or by agreement under a provisional or other order or under any Act other than the Housing Acts, if working-men's dwellings occupied by thirty or more persons of that class are taken.¹³ See also sects. 6, 15, and 23 of the present Act.

EXECUTION OF SCHEME BY LOCAL AUTHORITY.

Duty of local authority to carry scheme, when confirmed into execution.

Sect. 12.—(1.) [When the confirming Act authorising any improvement scheme of a local authority under this part of this Act has been passed by Parliament,] it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable. [Provided that the local authority shall not be required to acquire any leasehold interest in any property comprised in a scheme which can be allowed to expire without unduly delaying the execution of the scheme.¹⁴]

(2.) They may sell or let all or any part of the area comprised in the scheme to

(6) *Ante*, p. 1045.
(7) See Act of 1903, s. 5, as amended, *post*, p. 1090 (s. 6 has been repealed).
(8) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI., confirmation by Parliament being now unnecessary.
(9) *Post*, p. 1090.
(10) *Post*, pp. 1096, 1132.
(11) As to London, see next footnote, *infra*.

(12) Repealed, with subsect. (1) of the present section, by H. T. P. Act, 1919, s. 33, *post*, p. 1147, which brings London within the provisions applicable outside.
(13) See s. 3, and Sched., *post*, pp. 1089, 1092.
(14) Added by H. T. P. Act, 1919, s. 39, Sched. II.

any purchasers or lessees for the purpose and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the revesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease. **Sect. 12.**

(3.) The local authority may also engage with any body of trustees, society, or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

(4.) Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

(5.) . . . ^{14a}

(6.) The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with [any person having such interest in any land comprised in an improvement scheme as may be sufficient to enable him to carry out and effect the same ¹⁵] for the carrying of the scheme into effect by him in respect of such land.

Note.

As to the " assimilation of procedure under Parts I. and II." of the present Act, see the Note to sect. 15 of the Act of 1923. ¹⁶	Procedure.
The words " confirming Act " and " passed by Parliament " in sub-sect. (1) have not been amended; but such confirmation is no longer necessary (see Note to sect. 8), and the sub-section should read : " Where any improvement scheme of a local authority under this Part of this Act has been approved by an order of the Minister of Health."	Confirmation of scheme.
Where land is acquired for improvements under Part I. of the present Act, the tithe rentcharge, if any, must be redeemed. ^{16a}	Redemption of tithes.
As to defaults of local authorities under the Housing Acts, see sect. 10 of the present Act, and the enactments cited in the Note thereto. ^{16b}	Default.

Sect. 13. If within five years after the removal of any buildings on the land set aside by any scheme authorised by [*a confirming Act* ¹⁷] as sites for working-men's dwellings, the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this part of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary. **Completion of scheme on failure by local authority.**

Sect. 14. [*Notice to occupier by placards.* ¹⁸]

(14a) As to sale within 10 years, repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See, now, s. 40 of that Act, <i>post</i> , p. 1112.	(16) <i>Post</i> , p. 1180.
(15) Substituted for "the person entitled to the first estate of freehold in any land comprised in an improvement scheme" by H. T. P. Act, 1919, s. 39, Sched. II.	(16a) See <i>ante</i> , p. 96 (7).
	(16b) <i>Ante</i> , p. 1050.
	(17) See Note to s. 12, <i>supra</i> .
	(18) Directed to be " omitted " by H. T. P. Act, 1919, s. 39, Sched. II., and repealed by <i>ibid.</i> , s. 50, Sched. V.

Sect. 15.

Power of confirming authority to modify authorised scheme.

Sect. 15.—(1.) The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorised [*by a confirming Act* ¹⁷], may permit the local authority to modify any part of their improvement scheme which it may appear inexpedient to carry into execution, but any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme.¹⁹

(2.) . . .²⁰

INQUIRIES WITH RESPECT TO UNHEALTHY AREAS.

Inquiry on default of medical officer in certain cases.

Sect. 16.—(1.) Where in any district [complaint has been made ²¹] to a medical officer of health of the unhealthiness of any area within that district [by any person or persons competent under the foregoing provisions of this Part of this Act to make such a complaint ²²], and the medical officer of health has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such [complainant or complainants as the case may be ²³] may appeal to the confirming authority, [and the confirming authority may ²⁴] appoint a legally qualified medical practitioner to inspect such area, and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area or any part thereof is or is not an unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it states that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority.

(2.) The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the medical practitioner appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where he is of opinion that the area or any part thereof is an unhealthy area.

(3.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

Note.

Appeal to Minister of Health.

Any four or more local government electors may now, under sect. 4 (2) of the Act of 1903,²⁵ appeal to the Minister of Health as the confirming authority, the right of appeal being no longer confined to the electors who made the complaint in the first instance.

As to action by the Minister of Health on his own initiative, see sects. 26 and 37 of the Act of 1909.^{25a}

Inquiries.

Further as to inquiries under the present section, see sect. 26 of the Housing, Town Planning, &c. Act, 1909.²⁶

Sect. 17. [*Proceedings on local inquiry.*²⁷]

Sect. 18. [*Notice of inquiry to be publicly given.*²⁷]

Sect. 19. [*Power to administer oath.*²⁷]

ACQUISITION OF LAND.

Sect. 20. [*Acquisition of land.*²⁸]

Sect. 21. [*Special provision as to compensation.*²⁹]

(17) See Note to s. 12, *ante*, p. 1051.

(19) The power of modification conferred by this subsection is enlarged by H. T. P. Act, 1909, s. 25, *post*, p. 1107.

(20) As to confirmation by Parliament of modifications, repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

(21) Substituted for "twelve or more ratepayers have complained" by H. T. P. Act, 1919, s. 39, Sched. II.

(22) Added by H. T. P. Act, 1919, s. 39, Sched. II. As to such persons, see s. 5, *ante*, p. 1047.

(23) Substituted for "ratepayers" by H. T. P. Act, 1919, s. 39, Sched. II.

(24) Substituted for "and upon their giving security to the satisfaction of that authority for costs, the confirming authority shall" by

H. T. P. Act, 1919, s. 39, Sched. II.

(25) *Post*, p. 1090.

(25a) *Post*, pp. 1107, 1110.

(26) *Post*, p. 1107.

(27) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

(28) Repealed by Housing, etc., Act, 1923, s. 24, Sched. III. As to acquisition of land and payment of compensation now, see footnote (29), *infra*, and H. T. P. Act, 1919, ss. 9-14, *post*, p. 1134; and Act of 1923, ss. 11, 15, *post*, p. 1179.

(29) Repealed by Housing, etc., Act, 1923, s. 24, Sched. III. See now s. 41 of the present Act, which governs compensation under Part I. as well as Part II. See also footnote (28), *supra*.

Sect. 22. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this part of this Act, or as near thereto as circumstances admit.

Sect. 22.

Extinction of rights of way and other easements.

Note.

The extinction of rights of ancient light in respect of premises adjoining the lands purchased was held, under the repealed enactment,³⁰ which was in the same terms as the present section, to be matter for compensation.³¹

It was also held that ten years' enjoyment of lights gave an inchoate right which was extinguished by the enactment, and for which compensation was therefore payable.³²

Evidence, however, of loss of trade and diminution of value of goodwill to the tenant of premises, to which the extinguished right of light had been appurtenant, was held to be inadmissible before the arbitrator by whom the compensation was assessed. *Per* Neville, J., "the compensation under" the present section "is compensation, not for lands compulsorily taken, but for lands injuriously affected."³³

As to the extinction of easements, see sect. 27 of the Housing, Town Planning, &c. Act, 1909.³⁴

Compensation for ancient lights.

Extinction of easements.

Sect. 23. A local authority may, for the purpose of providing accommodation for persons of the working classes displaced [in consequence of ^{34a}] any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.³⁵

Application of lands for accommodation of working classes.

EXPENSES.

Sect. 24. [*Formation of improvement fund for purposes of Act.*³⁶]

Sect. 25.—(1.) A local authority may, in manner in this section mentioned, borrow such money as is required for the purposes of this part of this Act on the security of the local rate.

(2.) For the purpose of such borrowing, the London County Council may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works Loans Acts, 1869 to 1871, but all moneys required for the payment of the dividends on and the redemption of the consolidated stock created for the purposes of this part of this Act shall be charged to the special county account to which the expenditure for the purposes of this part of this Act is chargeable.

(3.) For the purposes of such borrowing, the [Common Council ³⁷] for the City of London may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this part of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the [Common Council ³⁷], the clauses of the Commissioners Clauses Act, 1847,³⁸ with respect to the mortgages to be executed by the commissioners shall be incorporated with this part of this Act; and in the construction of that Act "the special Act" shall mean this part of this Act; "the commissioners" shall mean the [Common Council ³⁷]; "the clerk of the commissioners" shall include any

Power of borrowing money for the purposes of Part I. of Act.

(30) 38 & 39 Vict. c. 36, s. 20.

(31) *Badham v. Morris* (1882), 52 L. J. Ch. 237, n.; 42 L. T. 579; followed in *Swainston v. Finn and Metrop. Bd. of Works* (1883), 52 L. J. Ch. 235; 48 L. T. 634; 31 W. R. 498.

(32) *Barlow v. Ross* (1890, C. A.), L. R. 24 Q. B. D. 381; 59 L. J. Q. B. 183; 62 L. T. 552; 54 J. P. 660.

(33) *Re Harvey & London County Council*, L. R. 1909, 1 Ch. 528, at p. 533; 78 L. J. Ch. 285; 73 J. P. 124; 7 L. G. R. 247.

(34) *Post*, p. 1108.

(34a) Substituted for "by" by H. T. P. Act, 1909, s. 46, Sched. II.

(35) As to "displaced" workmen, see sect. 3 and Sched. II. of the Act of 1903, *post*, p. 1089, and ss. 6, 11, and 15 of the present Act.

(36) Repealed by Housing, etc., Act, 1923, s. 24, Sched. III.

(37) See *ante*, p. 5 (8).

(38) 10 Vict. c. 16, ss. 75, 88.

Sect. 25.

officer appointed for the purpose by the [Common Council ³⁷] by this part of this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

(4.) For the purpose of such borrowing, the urban sanitary authority shall have the same power of borrowing as they have under the Public Health Acts for the purpose of defraying any expenses incurred by them in the execution of those Acts.

(5.) The Public Works Loan Commissioners may, on the recommendation of the confirming authority, lend to any local authority any money required by them for purposes of this part of this Act, on the security of the local rate. . . .³⁹

Note.

Borrowing powers.

With regard to the borrowing powers of urban district councils, see sect. 233 and following sections of the Public Health Act, 1875.⁴⁰ The maximum period for which money may be borrowed under the present Act has, however, been extended to eighty years by the Housing of the Working Classes Act, 1903; and the money borrowed is not to be reckoned for the purposes of the limitation imposed by the Act of 1875 on the total amount which a district council may borrow.⁴¹

For further borrowing powers in connection with housing schemes, see sect. 11 of the Act of 1903,⁴² sect. 3 of the Act of 1909,⁴³ sect. 13 of the Housing, Town Planning, etc., Act, 1919,⁴⁴ and sects. 2 (6) and 5 (4) of the Act of 1923.⁴⁵

With regard to loans by the Public Works Loan Commissioners, see the Public Works Loans Act, 1875.⁴⁶

GENERAL PROVISIONS.

Sect. 26. [Provision in case of absence of medical officer of health.⁴⁷]

Sect. 27. [Power of confirming authority as to advertisements and notices.⁴⁸]

Sect. 28. [Power of confirming authority to dispense with notices in certain cases.⁴⁸]

PART II.

UNHEALTHY DWELLING-HOUSES.

PRELIMINARY.

Definitions:
"Street."

"Dwelling-house."

"Owner."

Sect. 29. In this part of this Act, unless the context otherwise requires—

The expression "street" includes any court, alley, [or passage,] street, square, or row of houses [whether a thoroughfare or not] :

The expression "dwelling-house" [*means any inhabited building, and* ¹] includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined :

The expression "owner," in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits of such premises [under a lease the original term whereof is less than twenty-one years ²] . . . :³

Note.

Meaning of street.

It is to be observed that any "row of houses" is added by the present section to the usual definition of "street."

By the Housing, etc., Act, 1923,⁴ the above additions to the definition of "street"

(37) See ante, p. 5 (8).

(39) As to repayment within 50 years, repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

(40) Ante, p. 613.

(41) See s. 1, post, p. 1089.

(42) Post, p. 1091.

(43) Post, p. 1094.

(44) Post, p. 1136.

(45) Post, p. 1176.

(46) Post, Vol. II., p. 1725.

(47) "The whole section shall be omitted," see Housing, etc., Act, 1923, s. 16, Sched. II.

(48) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See, now, s. 41 of that Act, post, p. 1112.

(1) Repealed by H. T. P. Act, 1909, ss. 49 (1), 75, Sched. VI.

(2) Substituted for "for a term of years, of which twenty-one years do not remain unexpired" by 9 Edw. VII. c. 44, s. 49 (2).

(3) Definition of "closing order" as "an order prohibiting the use of premises for human habitation made under the enactments set out in the third Schedule to this Act"—namely (outside London), P. H. Act, 1875, ss. 91 (1), 94, 95, and 97—to be "omitted," see Housing, etc., Act, 1923, s. 16, Sched. II., and Note to Sched. III. of present Act, post, p. 1081.

(4) See s. 16, Sched. II. See also H. T. P., 1909. s. 48, post, p. 1115.

are made "for the purposes of Part I. as well as for the purposes of Part II. of the " present Act. See also sect. 48 of the Act of 1909.³

Sect. 29, n.

As to insanitary "courts and alleys," see sect. 4 of the present Act.⁴

Before the above amendment to the definition of "dwelling-house," it had been held that a closing order might be made in respect of a house which had been uninhabited for five and a half years.⁵

Meaning of dwelling-house.

In holding that the expression "dwelling-house" includes a block of separate dwelling-houses, Lord Dunedin, L.P., said that the expression "may include a whole tenement, even though that tenement comprises four dwelling-houses. . . . If it were the fact that one of them was in a good state, that closing order, on appeal, would be held to be a bad closing order, because it would close something that ought not to be closed. . . . But if the authority is of opinion that the whole tenement is bad, I do not see why it should not say so. You may have a dwelling-house within a dwelling-house, and I do not doubt that a closing order can competently close one dwelling-house within a tenement, if it says so, and I think the whole matter is one of identification."⁶

As to the meaning of "separate dwelling-house," see the Note to sect. 62.

The Lands Clauses Consolidation Act, 1845, defines "owner" as meaning any person or corporation who, under the provisions of that or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking.⁸ The persons enabled by that Act to sell and convey lands are those specified in sect. 7 of the Act.⁹

Meaning of owner.

An *interesse termini* interest is sufficient to make a person an "owner" for this purpose.¹⁰

The "owner" against whom proceedings could be taken under the repealed sect. 32 (1) included the person defined as owner in the present section, and the meaning of the term was not limited by the interpretation clauses of the Acts partly set out in the Schedule. A leaseholder with less than twenty-one years of his lease to run was therefore held not to be liable to such proceedings.¹¹ Now if the lease was originally for twenty-one years or more the lessee would under the 1909 Act be an owner. See above amendment to the definition of "owner."

The date for ownership purposes is that of service of the notice and not that of the making of the demolition order.¹² As to the description of owners in notices, etc., see sect. 50.

For provisions as to "superior landlords," see sect. 47 of the present Act.

BUILDINGS UNFIT FOR HUMAN HABITATION.

Sect. 30. It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation.

Representation by medical officer of health.

Note.

Under the repealed provisions ¹³ (which did not expressly declare it to be the duty of the medical officer of health to make the report), it was not necessary that there should be a separate report and order in respect of each house; nor, where the surveyor stated that the structural defects could not be remedied but that the premises ought to be demolished, was it necessary to specify in detail in what the structural defects consisted.¹⁴

Representations.

A temporary medical officer of health is competent to make a representation under this or the following section.¹⁵ It must be in writing.¹⁶ As to sending copies to the county council, see sect. 45 of the present Act. As to representations by county medical officers of health, see sect. 52 of the present Act, and as to complaints by parish councils, see sect. 6 (2) of the Local Government Act, 1894.¹⁷

(3) *Post*, p. 1115.

(4) *Ante*, p. 1046.

(5) *Robertson v. King*, *ante*, p. 200 (24).

(6) *Kirkpatrick v. Maxwelltown Town Council*, *post*, p. 1104 (24). But see the *Glasgow Case* there cited.

(8) See s. 3, *post*, Vol. II., p. 1566.

(9) *Post*, Vol. II., p. 1567.

(10) *Reg. (Berners) v. St. Marylebone Vestry* (1887), L. R. 20 Q. B. D. 415; 57 L. J. M. C. 9; 58 L. T. 180; 52 J. P. 534. *Cf.*, as to such interests, *Lord Llangattock v. Wat-*

ney & Co., L. R. 1910 A. C. 394; 79 L. J. K. B. 559; 102 L. T. 548; 74 J. P. 134.

(11) *Osborne v. Skinner's Co.* (1891), 60 L. J. M. C. 156; 39 W. R. 715.

(12) See *Berners' Case*, *supra* (10).

(13) 31 & 32 Vict. c. 130, s. 5.

(14) *Flight v. Southwark Vestry* (1871), 25 L. T. 24.

(15) See s. 79 (1), *post*, p. 1076; and see also s. 5, *ante*, p. 1047.

(16) See s. 79 (2), *post*, p. 1076.

(17) *Post*, Vol. II., p. 2001.

Sect. 30, n.**Unfitness.****Obstructive buildings.**

Representation on householders' complaint.

As to what amounts to "unfitness for human habitation," see the case cited below.¹⁸

With regard to the removal of neighbouring buildings which are not themselves unfit for habitation, see sect. 38.

Sect. 31.—(1.) If [any justice of the peace acting for a district, or any four or more [local government electors¹⁹] in a district²⁰] complain in writing to the medical officer of health of that district that any dwelling-house . . . ²¹ is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority.

(2.) If within three months after receiving the said complaint and opinion or representation of the medical officer, the local authority, not being in the administrative county of London, or not being a rural sanitary authority in any other county, declines or neglects to take any proceedings to put this part of this Act in force, the [justice of the peace or ²²] [electors²³] who signed such complaint may petition the [Minister of Health] for an inquiry, and the said [Minister] after causing an inquiry to be held may order the local authority to proceed under this part of this Act, and such order shall be binding on the local authority.

Note.**Representations.****Default.****County medical officer.****Parish council.**

Further as to representations, see sect. 30 and Note, *supra*.

As to default in carrying out the Act after a representation or complaint has been sent in, see sect. 45. See also sects. 10 and 11 of the Act of 1909.²⁴

The county medical officer of health may send in a representation to any local authority, except the council of a municipal borough, under sect. 52; and such a representation is to have the like effect as one from the district medical officer of health.

By the Local Government Act, 1894,²⁵ a parish council have the same power of making a complaint or representation as to unhealthy dwellings or obstructive buildings as the electors have under the present Act, but without prejudice to the powers of the electors.

CLOSING ORDER AND DEMOLITION.

Duty of local authority as to closing of dwelling-house unfit for human habitation.

[**Sect. 32.**—(1.) *It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and, if on the representation of the medical officer, or of any officer of such authority, or information given, any dwelling-house appears to them to be in such state, to forthwith take proceedings against the owner or occupier for closing the dwelling-house under the enactments set out in the third schedule to this Act.*

(2.) *Any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed whether the same be occupied or not, and upon such proceedings the court of summary jurisdiction may impose a penalty not exceeding twenty pounds, and make a closing order, and the forms for the purposes of this section may be those in the fourth schedule to this Act, or to the like effect, and the enactments respecting an appeal from a closing order shall apply to the imposition of such penalty as well as to a closing order.*

(3.) *Where a closing order has been made as respects any dwelling-house, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to*

(18) *Hall's Case*, post, p. 1104 (20).

(19) Substituted for "householders" by Housing, etc., Act, 1923, s. 16, Sched. II.

(20) Substituted for "in any district any four or more householders living in or near to any street" by H. T. P. Act, 1919 (9 & 10 Geo. V. c. 35), s. 39, Sched. II.

(21) By H. T. P. Act, 1919, s. 39, Sched. II.,

the words "in or near that street" shall be "omitted."

(22) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(23) See footnote (19), *supra*, and footnote (9), ante, p. 1047.

(24) *Post*, pp. 1096, 1097.

(25) See s. 6 (2) *post*, Vol. II., p. 2001.

the order. Provided that the local authority may make to every such tenant such reasonable allowance on account of his expenses in removing, as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt from the owner of the dwelling-house to the local authority, and shall be recoverable summarily.]

Sect. 32.

Note.

The present section and sect. 33 were repealed by the Act of 1909,⁸ and replaced by sects. 17 and 18 of that Act.⁹ The present section and sect. 33 are printed in full as the new provisions have been construed by comparing them with the old.¹⁰

Repeal.

[**Sect. 33.**—(1.) Where a closing order has been made in respect of any dwelling-house, and not been determined by a subsequent order, then the local authority, if of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, and that the continuance of any building being or being part of the dwelling-house is dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, shall pass a resolution that it is expedient to order the demolition of the building.

Order for demolition of house unfit for habitation.

(2.) The local authority shall cause notice of such resolution to be served on the owner of the dwelling-house, and such notice shall specify the time and place appointed by the local authority for the further consideration of the resolution, not being less than one month after the service of the notice, and any owner of the dwelling-house shall be at liberty to attend and state his objections to the demolition.

(3.) If upon the consideration of the resolution and the objections the local authority decide that it is expedient so to do, then, unless an owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, the local authority shall order the demolition of the building.

(4.) If an owner undertakes as aforesaid to execute the said works, the local authority may order the execution of the works, within such reasonable time as is specified in the order, and if the works are not completed within that time or any extended time allowed by the local authority or a court of summary jurisdiction, the local authority shall order the demolition of the building.]

Note.

See the Note to sect. 32.

Repeal.

Sect. 34.—(1.) Where an order for the demolition of a building has been made, the owner thereof shall within three months after [the order becomes operative ¹¹] proceed to take down and remove the building, and if the owner fails therein the local authority shall proceed to take down and remove the building and shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of money (if any) to the owner.

Execution of an order for demolition, and provision as to site.

(2.) Where a building has been so taken down and removed, no house or other building or erection which will be dangerous or injurious to health shall be erected on all or any part of the site of such building; and if any house, building, or erection is erected contrary to the provisions of this section, the local authority may at any time order the owner thereof to abate [or alter ¹²] the same, and in the event of non-compliance with the order, may . . . ¹³ abate or alter the same [and the expenses of such abatement or alteration shall be recoverable from the owner summarily as a civil debt ¹²].

Note.

If the proceeds of the sale of materials do not cover the cost of removing the building, the deficiency may be recovered from the owner under the Act of 1903.¹⁴

Cost of demolition.

Sect. 35.—(1.) Any person aggrieved by an order of the local authority under this part of this Act, may [if he is not entitled to appeal to the [Minister of Health]

Appeal against order of local authority.

(8) By s. 75 and Sched. VI.

(9) *Post*, pp. 1101, 1105.

(10) See *Kirkpatrick's Case*, *post*, p. 1104 (24).

(11) Substituted for "service of the order" by H. T. P. Act, 1909, s. 46, Sched. II. As to when a demolition order becomes "operative," see H. T. P. Act, 1909, ss. 18 (4),

39 (2), *post*, pp. 1105, 1111.

(12) Added by Housing, etc., Act, 1923, s. 16, Sched. II.

(13) The words here, "at the expense of the owner," are to be "omitted," see Housing, etc., Act, 1923, s. 16, Sched. II.

(14) See s. 9, *post*, p. 1090.

Sect. 35.

against the order ¹⁵] appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings taken under any order until after the appeal is determined or ceases to be prosecuted; and sect. 31 of the Summary Jurisdiction Act, 1879,¹⁶ respecting appeals from courts of summary jurisdiction to courts of quarter sessions shall apply with the necessary modifications as if the order of the local authority were an order of a court of summary jurisdiction.¹⁷

(2.) Provided that—(a.) Notice of appeal may be given within one month after notice of the order of the local authority has been served on such person; (b.) The court shall, at the request of either party, state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court.

Note.**Meaning of order.**

A notice to repair a house under sect. 28 of the Housing, Town Planning, etc., Act, 1919, is not an "order" within the present section.¹⁸

A document may be both an order and notice of an order.¹⁹

Grant of charges by way of annuity to owner on completion of works.

Sect. 36.—(1.) Where any owner has completed in respect of any dwelling-house any works required to be executed by an order of a local authority under this part of this Act, he may apply to the local authority for a charging order, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for the costs, charges, and expenses of the works, and the local authority, when satisfied that the owner has duly executed such works and of the amount of such costs, charges, and expenses, and of the costs of obtaining the charging order which have been properly incurred, shall make an order accordingly, charging on the dwelling-house an annuity to repay the amount.

(2.) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

(3.) Every such annuity may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the dwelling-house by the owner thereof.²⁰

(4.) . . .²¹

Note.**Charges.**

As to charges generally, see sect. 257 of the Public Health Act, 1875, and the Note thereto.²²

Recovery of annuities.

The repealed enactment,²³ corresponding to sub-sect. (3) of the present section, used the word "premises" instead of "dwelling-house." With reference to that enactment it was held that the term "owner" meant the freeholder and not the statutory owner; and that though the rentcharge might be recovered by action of debt against the grantor, the Act did not place the liability in any person, but the premises were charged with it, and that the occupier, being the owner, was liable during the continuance of his estate.²⁴

Redemption of annuities.

By sect. 19 of the Housing, Town Planning, etc., Act, 1909,²⁵ "any owner of or other person interested in a dwelling-house on which an annuity has been charged by a charging order made under" the present section "shall at any time be at liberty to redeem the annuity on payment to the person entitled to the annuity of such sum as may be agreed upon, or in default of agreement, determined by the [Minister of Health]."

Sect. 19 of the Act of 1909 is applied for the purposes of sect. 26 of the Housing, Town Planning, etc., Act, 1919,²⁶ by sub-sect. (8) of that section.

(15) Added by H. T. P. Act, 1909, s. 46, Sched. II.

(16) *Ante*, p. 715.

(17) As to meaning of "person aggrieved," see *ante*, pp. 661, 716. See also Note to H. T. P. Act, 1919, s. 28, *post*, p. 1144. As to appeals to M. of H., see H. T. P. Act, 1909, s. 39, and Note, *post*, p. 1111.

(18) *Ryall v. Cubitt Heath*, *post*, p. 1146 (24).

(19) See *Arlidge v. Hampstead B.C.*, *post*, p. 1182 (20).

(20) This subsection is applied for the purposes of H. T. P. Act, 1919, s. 26, by sub-sect. (8) of that section, *post*, p. 1142.

(21) As to form of charging orders, to be "omitted," see Housing, etc., Act, 1923, s. 16, Sched. II. But see Note to Sched. V., *post*, p. 1081.

(22) *Ante*, p. 673.

(23) 31 & 32 Vict. c. 130, s. 27.

(24) *Hyde v. Berners* (1889), 53 J. P. 453.

(25) 9 Edw. VII. c. 44, s. 19.

(26) *Post*, p. 1142.

Sect. 37.—(1.) Every charge created by a charging order under this part of this Act shall be a charge on the dwelling-house specified in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharge, and any charge created under any Act authorising advances of public money; and where more charges than one are charged under this part of this Act on any dwelling-house such charges shall, as between themselves, take order according to their respective dates.

(2.) A charging order shall be conclusive evidence that all notices, acts, and proceedings by this part of this Act directed with reference to or consequent on the obtaining of such order, or the making of such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the dwelling-house declared to be subject thereto.

(3.) Every such charging order, if it relates to a dwelling-house in the area to which the enactments relating to the registration of land in Middlesex apply or to a dwelling-house in Yorkshire, shall be registered in like manner as if the charge were made by deed by the absolute owner of the dwelling-house.

(4.) Copies of the charging order and of the certificate of the surveyor or engineer, and of the accounts as passed by the local authority, certified to be true copies by the clerk of the local authority, shall within six months after the date of the order be deposited with the clerk of the peace of the county in which the dwelling-house is situate, and be by him filed and recorded.

(5.) The benefit of any such charge may be from time to time transferred in like manner as a mortgage or rentcharge may be transferred. . . .²⁷

Sect. 37.
Incidence of charge.

Note.

By sect. 20 of the Housing, Town Planning, etc., Act, 1909, “ the charges excepted in sub-sect. (1) of the ” present section “ shall include charges on the dwelling-house created or arising under any provision of the Public Health Acts, or under any provision in any local Act authorising a charge for recovery of expenses incurred by a local authority.”²⁸

The present section, except sub-sect. (4), is applied for the purposes of the Housing, Town Planning, etc., Act, 1919.²⁹

A charge under this part of the Act, being created in consequence of an application by the owner, appears to require registration under the Land Charges Registration and Searches Act, 1888,³⁰ although sub-sect. (3) only makes special reference to the enactments requiring registration in Middlesex³¹ and Yorkshire.³²

Excepted charges.

Application of section.

Registration of charges.

OBSTRUCTIVE BUILDINGS.

Sect. 38.—(1.) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—(a.) It stops [or impedes¹] ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or (b.) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings; in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first-mentioned building (in this Act referred to as “ an obstructive building ”) stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2.) Any [justice of the peace acting for a district, or any²] four or more [local government electors in³] a district may make to the local authority of the district

Power to local authority to purchase houses for opening alleys, &c.

(27) As to form of transfer, to be “ omitted,” see Housing, etc., Act, 1923, s. 16, Sched. II. But see Note to Sched. V., *post*, p. 1081.

(28) 9 Edw. VII. c. 44, s. 20.

(29) See s. 26 (8), *post*, p. 1142.

(30) 51 & 52 Vict. c. 51; see *Reg. v. Vice-Registrar of Office of Land Registry or Holt* (1889), L. R. 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. 117; 54 J. P. 120.

(31) 7 Anne, c. 20; 25 & 26 Vict. c. 53, s. 104; 38 & 39 Vict. c. 87, s. 127; and see

54 & 55 Vict. cc. 10, 64.

(32) 47 & 48 Vict. c. 54; 48 & 49 Vict. c. 26; 25 & 26 Vict. c. 53, s. 104; 38 & 39 Vict. c. 87, s. 127.

(1) Added by H. T. P. Act, 1909, s. 46, Sched. II.

(2) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(3) Substituted for “ inhabitant householders of ” by Housing, etc., Act, 1923, s. 16, Sched. II.

Sect. 38.

Power to local
authority to
purchase houses
for opening
alleys, &c.—
continued.

a representation as respects any building to the like effect as that of the medical officer under this section.

(3.) The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they decide to proceed, shall cause a copy of both the representation and report to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state the objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building should be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act), and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this Act.

(7.) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house [or other building⁴] or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house [or other building⁴] or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part.

(8.) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, shall so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.⁵

(9.) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by

(4) Added by H. T. P. Act, 1909, s. 46, Sched. II. As to taking part, see cases cited in Note to Lands Clauses Act, 1845, s. 92,

post, Vol. II., p. 1586.

(5) See P. H. Act, 1875, ss. 213-215, ante, p. 594, and ss. 232 and 257, ante, pp. 612, 673.

two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.⁶ **Sect. 38.**

(10.) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, . . .⁷ abate or alter the same [and the expenses of such abatement or alteration shall be recoverable from the owner summarily as a civil debt⁷].

(11.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the [Minister of Health], and upon such terms as that [Minister thinks] expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

(12.) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

Note.

It was held that a building solely used as a workshop could be dealt with under the present section.⁸ And see now, Sched. I. (5) and (6) of the Act of 1923.^{8a}

As to representations, see sect. 30 and Note, *ante*.

As to arbitrations, see sect. 41, and Note, *post*.

As to the distribution of compensation money and as to betterment charges, see sect. 28 of the Housing, Town Planning, etc., Act, 1909,⁹ and Sched. I. (5) (6) of the Act of 1923.^{9a}

The power given by sub-sect. (12) to dedicate land as a highway "or other public place," and by sect. 39 (1) (a) (i.), to dedicate land as a highway or "open space," appears to allow the local authority to dedicate the land permanently for the public to use it for recreation or straying about, or otherwise than as a mere highway for passing from one point to another.¹⁰

Workshop.

Representations and arbitration.

Compensation and betterment.

Dedication.

SCHEME FOR RECONSTRUCTION.

Sect. 39.—(1.) In any of the following cases, that is to say—

- (a.) where an order for the demolition of a building has been made in pursuance of this part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area . . .¹¹ of which such building forms part were used for all or any of the following purposes, that is to say, either—(i.) dedicated as a highway or open space, or (ii.) appropriated, sold, or let for the erection of dwellings for the working classes, or (iii.) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection; or
- (b.) where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings, and that [the most satisfactory method of dealing with the said evils is by the demolition or the reconstruction and re-arrangement of the said buildings or of some of them¹²], and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act,

Scheme for area comprising houses closed by closing order.

(6) See Lands Cl. Act, 1845, ss. 22, 24, *post*, Vol. II., p. 1570.

(7) "At the expense of the owner thereof" omitted, and above words added, by Housing, etc., Act, 1923, s. 16, Sched. II.

(8) *Jackson v. Knutsford U.D.C.* (Eve, J.), L. R. 1914, 2 Ch. 686; 84 L. J. Ch. 305; 111 L. T. 982; 79 J. P. 73.

(8a) *Post*, p. 1181.

(9) *Post*, p. 1108.

(9a) *Post*, p. 1181.

(10) See *Robinson v. Cowpen Loc. Bd.*, *ante*, p. 25 (13).

(11) "Of the dwelling-house" to be omitted, see Housing, etc., Act, 1923, s. 16, Sched. II.

(12) Substituted for "the demolition or the re-construction and re-arrangement of the said buildings or of some of them is necessary to remedy the said evil" by Housing, etc., Act, 1923, s. 16, Sched. II.

Sect. 39.
Scheme for area comprising houses closed by closing order—*continued.*

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

(2.) Notice of the scheme may at any time after the preparation thereof [be published and served as provided in sect. 7 of this Act ¹³].

(3.) The local authority shall, after service of such notice, petition the [Minister of Health] for an order sanctioning the scheme, and the [Minister] may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications.

(4.) Upon such order being made, the local authority may purchase [by agreement ¹⁴] the area comprised in the scheme as so sanctioned * * * ¹⁴

(7.) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order : Provided that the amount of compensation shall, in case of difference, be settled by arbitration in manner provided by this part of this Act.

(8.) The provisions of Part I. of this Act [as amended by any subsequent Act ¹⁵] relating . . . ¹⁴ to the duty of a local authority to carry a scheme when confirmed into execution, [to the power of the [Minister of Health] to enforce that duty, ¹⁵] to the completion of a scheme on failure by a local authority, and to the extinction of rights of way and other easements, shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act. ¹⁶

(9.) The [Minister of Health], on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution : * * * ¹⁴

Note.

Confirmation unnecessary.

Reconstruction schemes.

Superior landlords.

Modifications.

Neighbouring lands.

Acquisition in advance.

By sect. 24 (2) of the Housing, Town Planning, etc., Act, 1909, ¹⁷ “ an order of the [Minister of Health] sanctioning a reconstruction scheme, and authorising the compulsory purchase of land for the purpose, shall, notwithstanding anything in ” the present section, “ take effect without confirmation.”

By sect. 23 (2) of the Act of 1909, ¹⁸ “ provision may be made in a reconstruction scheme for any matters for which provision may be made in an improvement scheme.” ¹⁹

Powers for the execution of improvement and reconstruction schemes are given to superior landlords. ²⁰

The power of modification conferred by sub-sect. (9) of the present section is enlarged by sect. 25 of the Act of 1909. ²¹

If the district council are of opinion that neighbouring lands ought to be included in the scheme, in order to make it efficient, they may include such lands. ²²

They may also acquire in advance lands proposed for inclusion in improvement or reconstruction schemes. ²³

Provisions for accommodation of persons of the working classes.

Sect. 40. The [Minister of Health] shall in any order sanctioning a scheme under this part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced [in consequence of ²⁴] the scheme as seem to the [Minister] required by the circumstances.

(13) Substituted for service on owner, reputed owner, etc., by Housing, etc., Act, 1923, s. 16, Sched. II. For s. 7, as amended, see *ante*, p. 1048.

(14) Repealed, with remainder of sub-section, and subsects. (5) and (6), and parts of subsects. (8) and (9), by H. T. P. Act, 1909, s. 75, Sched. VI.

(15) Added by H. T. P. Act, 1909, s. 46, Sched. II.

(16) As to the duty to carry schemes into execution, see s. 12, *ante*, p. 1050; and as to its enforcement, see H. T. P. Act, 1909, ss. 10, 11, *post*, p. 1096. As to easements, see s. 22,

ante, p. 1053.

(17) 9 Edw. VII. c. 44, s. 24 (2).

(18) 9 Edw. VII. c. 44, s. 23 (2).

(19) As to the latter schemes, see s. 6, *ante*, p. 1047.

(20) See H. T. P. Act, 1919, s. 30, *post*, p. 1147.

(21) *Post*, p. 1107.

(22) See H. W. C. Act, 1903, s. 7, *post*, p. 1090.

(23) See H. T. P. Act, 1919, s. 13, *post*, p. 1136.

(24) Substituted for “ by ” by H. T. P. Act, 1909, s. 46, Sched. II.

Note.

Provisions are made by the Act of 1903 with respect to the provision of dwelling accommodation for persons of the working class where land is acquired compulsorily or by agreement under provisional or other orders or under any Act other than the Housing Acts.²⁵ Shops and recreation grounds may, with the consent of the [Minister of Health], be provided in connection with the dwellings.²⁶

Sect. 40, n.**Rehousing
persons
displaced.****SETTLEMENT OF COMPENSATION.**

Sect. 41. In all cases in which the amount of any compensation is, in pursuance of this part of this Act, to be settled by arbitration, the following provisions shall have effect; (namely,)

Provisions as to
arbitration.

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the [Minister of Health].

(2.) In settling the amount of any compensation—

(a.) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase; and

(b.) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.

(3.) Evidence shall be receivable by the arbitrator to prove—(1st) that the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or (2ndly) that the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair; or (3rdly) that the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a.) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b.) shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

(c.) shall in the third case be the value of the land, and of the materials of the buildings thereon.

(4.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.²⁷ * * * **28**

(6.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority; but he may, and, if the local authority request him so to do, shall, from time to time make an award respecting a portion only of the disputed cases brought before him. * * * **28**

(25) See s. 3, and Sched., *post*.

(26) *Ibid.*, s. 11, *post*.

(27) See Lands Cl. Act, 1845, ss. 69-83, *post*,
Vol. II., p. 1579.

(28) Subsects. (5) and (7) to (11), inclusive,
were repealed by Housing, etc., Act, 1923,
s. 24, Sched. III.

Sect. 41, n.

Note.

Application
of section.

The present section is not to apply in cases under sect. 9 of the Housing, Town Planning, etc., Act, 1919,²⁹ and sub-sect. (3) has been "explained" by sect. 29 of the Housing, Town Planning, etc., Act, 1909.³⁰

By Sched. I. (3) of the Housing, etc., Act, 1923,³¹ the present section "shall, in its application to schemes both under Part I. and Part II. of the" present Act, "have effect as if references to dwelling-houses included references to other buildings."

Compensation.

With regard to the words "at the time of the valuation," in sub-sect. (2) (a.) of the present section, it was held, with regard to the same words in the repealed sect. 21 of the present Act, that they referred to the time when the valuation is made as between the local authority and the person seeking compensation, and not to the time when the preliminary estimate referred to in sect. 6 of the present Act was made.³²

It was also held under the repealed sect. 21 that the date of the advertisement under sect. 7 of the present Act was not the proper date for the arbitrator to take for the purpose of ascertaining the value of land taken compulsorily for housing purposes, but either the date of the arbitration or that of the notice to treat. As he had found that there was no difference between the values at the last mentioned dates, and his award was based on the proper time being the date of the arbitration, it was upheld.³³

An arbitrator was held unable to award money to persons other than the mortgagees of certain property taken for housing purposes.³⁴

Where an arbitrator had found for the plaintiff on most issues, but for the defendant on some, the taxing master was held to have been wrong in refusing to apportion the arbitrator's fees.³⁵

The publication of particulars of the scheme, which the repealed Act required to be made as soon as practicable after the confirmation of a provisional order,³⁶ was held to be analogous to the service of notice to treat under the Lands Clauses Consolidation Act, 1845, so that an owner affected by it could not subsequently alter his position and obtain a right to increased compensation by acquiring a further interest in the property.³⁷

A provisional order,³⁸ which directed that the compensation to be paid to the owner of insanitary buildings should be based on an estimate of the value similar to that prescribed by sub-sect. (2) (a) of the present section, also provided that regard should be had to "all circumstances affecting such value." It was held that in assessing compensation the arbitrator was wrong in valuing merely the site and the materials of the buildings, and that he ought to have valued them as standing before demolition and capable of being let, and without reference to the fact of approaching demolition, although in pursuance of the special enactments under which the proceedings in the case had been taken, the grand jury at quarter sessions had presented that they were unfit for human habitation, and in a condition and state prejudicial to health, and ought to be demolished.³⁹

The provision in sub-sect. (2) (a) of the present section, excluding an allowance for compulsory purchase from the estimate, does not apply to neighbouring lands taken under the Act of 1903 in order to make the scheme efficient.⁴⁰

The arbitrator will apparently now be an official arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919. That Act will apply except where it is inconsistent with the "special provisions" of the present Act "as to the assessment of the value of land acquired for the purposes of Part I. or Part II."⁴¹

(29) See sub-sect. (2), *post*, p. 1134.

(30) *Post*, p. 1108.

(31) *Post*, p. 1181.

(32) *Dye v. Patman* (1897), 46 W. R. 200; 62 J. P. 135.

(33) *London C.C. v. Wilson's Executors*, L. R. 1916, 1 K. B. 837; 85 L. J. K. B. 898; 114 L. T. 852; 80 J. P. 252; 14 L. G. R. 590.

(34) *Ex parte Strabane R.D.C.*, 1910 Ir. Ch. 135; 1 Glen's Loc. Gov. Case Law 86.

(35) *National Gas Engine Co. v. Dolphin's Barn Brick Co.* (1910, C. A., I.), 44 Ir. L. T. 248; 1 Glen's Loc. Gov. Case Law 80.

(36) 38 & 39 Vict. c. 36, Sched. (1), (3).

(37) *Wilkins v. Birmingham Cpn.* (1883), L. R. 25 Ch. D. 78; 53 L. J. Ch. 93; 49 L. T. 468; 48 J. P. 231.

(38) Confirmed by 42 & 43 Vict. c. civ.

(39) *Gough v. Liverpool Cpn.* (1891), 65 L. T. 512; 56 J. P. 357.

(40) See s. 7, *post*, p. 1090.

(41) See s. 7 (1), *post*, Vol. II., p. 2337. As to deposit of awards, abstracts of title, and taking part instead of the whole, see the unrepealed clauses of the Second Schedule to the present Act as now amended.

EXPENSES AND BORROWING.

Sect. 42.

Sect. 42.—(1.) All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed by them out of the local rate; and that authority, notwithstanding any limit contained in any Act of Parliament respecting a local rate, may levy such local rate, or any increase thereof, for the purposes of this part of this Act.⁹

Expenses of local authority.

(2.) Any expenses incurred by a rural sanitary authority under this part of this Act, other than the expenses incurred in and incidental to proceedings for obtaining a closing order, shall be charged as special expenses on the contributory place in respect of which they are incurred.¹⁰

Sect. 43.—(1.) A local authority may borrow for the purpose of raising sums required for purchase money or compensation payable under this part of this Act in like manner, and subject to the like conditions, as for the purpose of defraying the expenses of the execution by such authority of the Public Health Acts.

Provision as to borrowing.

(2.) The Public Works Loan Commissioners may, if they think fit, lend to any local authority the sums borrowed in pursuance of this part of this Act.

Note.

The Housing of the Working Classes Act, 1894,¹¹ enacts that “for any purpose for which a local authority are, by a scheme for reconstruction duly sanctioned under Part II. of the ” present Act “or by the order sanctioning the scheme, authorised to borrow, the authority shall have the power and shall be deemed always to have had power to borrow in like manner and subject to the like conditions as they may borrow under ” the present section “for the purpose of raising the sums required for the purchase money or compensation therein mentioned, and ” the present section and sect. 46 “shall apply accordingly.”

Borrowing powers.

Under the present section the local authority were, before this amendment, only authorised to borrow for the purpose of raising the sums required for purchase or compensation. Under the Act of 1894 a reconstruction scheme (under sect. 39 of the present Act, or the order of the Minister of Health sanctioning the scheme), may authorise them to borrow for any other purpose of the scheme. This is, however, subject (amongst other things) to the condition that the loan shall be raised for permanent works. See also sect. 3 of the Housing, Town Planning, etc., Act, 1909.¹²

Under the Act of 1903,¹³ the maximum period for the loans is extended to eighty years, and the amount borrowed is not to be reckoned for the purposes of the limitation by the Public Health Act, 1875, of the amount of outstanding loans. With regard to the borrowing powers of urban and rural district councils, see sect. 233 and the following sections of the Public Health Act, 1875,¹⁴ and with regard to advances by the Public Works Loan Commissioners, see the Public Works Loans Act, 1875.¹⁵

Loans.

Sect. 44. [Annual account to be presented by the local authority.¹⁶]

POWERS OF COUNTY COUNCILS.

Sect. 45.—(1.) Where the medical officer of health [sanitary inspector or other officer of the district authority¹⁷] or any [four or more local government electors in the district¹⁸] make a representation or complaint, or give information to any [metropolitan borough council] in the administrative county of London [or to the local board of Woolwich,¹⁹] or to any rural sanitary authority elsewhere (which [council] or authority is in this Act referred to as the district authority) or to the medical officer of such authority either respecting any dwelling-house being in a state so dangerous or injurious to health as to be unfit for human habitation, or respecting an obstructive building, and also where a closing order has been made

Powers county councils.

(9) For definition of “local rate,” see s. 92 and Sched. I. of the present Act, *post*, pp. 1078, 1079.

(10) As to such expenses, see P. H. Act, 1875, ss. 229 and 230, *ante*, pp. 606, 608. As to keeping the accounts separate, see H., etc., Act, 1923, Sched. I. (8), *post*, p. 1181.

(11) 57 & 58 Vict. c. 55, s. 1.

(12) *Post*, p. 1094.

(13) See s. 1, *post*, p. 1089.

(14) *Ante*, p. 613.

(15) *Post*, Vol. II., p. 1725.

(16) To be “omitted,” see Housing, etc., Act, 1923, s. 16, Sched. II.

(17) Added by H. T. P. Act, 1919, s. 39, Sched. II., sanitary inspector now being name of inspector of nuisances.

(18) Substituted for “inhabitant householders,” by Housing, etc., Act, 1923, s. 16, Sched. II.

(19) Now a metropolitan borough council, see *ante*, p. 803.

Sect. 45.

Powers of
county councils
—continued.

as respects any dwelling-house, the district authority shall forthwith forward to the county council of the county in which the dwelling-house or building is situate, a copy of such representation, complaint, information, or closing order, and shall from time to time report to the council such particulars as the council require respecting any proceedings taken by the authority with reference to such representation, complaint, information, or dwelling-house.

(2.) Where the county council—(a.) are of opinion that proceedings for a closing order as respects any dwelling-house ought to be instituted, or that an order ought to be made for the demolition of any buildings forming or forming part of any dwelling-house as to which a closing order has been made, or that an order ought to be made for pulling down an obstructive building specified in any representation under this part of this Act; and (b.) after reasonable notice, not being less than one month, of such opinion has been given in writing to the district authority, consider that such authority have failed to institute or properly prosecute proceedings, or to make the order for demolition, or to take steps for pulling down an obstructive building; the council may pass a resolution to that effect, and thereupon the powers of the district authority as respects the said dwelling-house and building under this part of this Act (otherwise than in respect of a scheme), shall be vested in the county council, and if a closing order or an order for demolition or for pulling down an obstructive building is made, and not disallowed on appeal, the expenses of the council incurred as respects the said dwelling-house and building, including any compensation paid, shall be a simple contract debt to the council from the district authority.

(3.) Any debt to the council under this section shall be defrayed by the district authority as part of their expenses in the execution of this part of this Act.

(4.) The county council and any of their officers shall, for the purposes of this section, have the same right of admission to any premises as any district authority or their officers have for the purpose of the execution of their duties under the enactments relating to public health, and a justice may make the like order for enforcing such admission.

Note.

Elsewhere than in London and in rural districts, the appeal is to the Minister of Health under sect. 31 (2). For other provisions relating to defaulting local authorities, see sect. 6 (2) of the Local Government Act, 1894,²⁰ sects. 10 and 11 of the Housing, Town Planning, etc., Act, 1909,²¹ and sects. 5 and 6 of the Housing, Town Planning, etc., Act, 1919.²²

As to the documents and information to be sent by clerks to rural district councils and officers of county districts to county medical officers of health, see sect. 69 of the Housing, Town Planning, etc., Act, 1909.²³

The county council are not entitled to add to the expenses recoverable under the present section a sum in respect of establishment charges.²⁴

As to a local authority's power to enter private premises, see sects. 102 and 305 of the Public Health Act, 1875,²⁵ and sect. 36 of the Housing, Town Planning, etc., Act, 1909.²⁶ See also, as to obstruction, sect. 51 of the present Act.

SPECIAL PROVISIONS AS TO LONDON.

Sect. 46. This part of this Act shall apply to the administrative county of London with the following modifications:—

(1.) The provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, for the purpose of this part of this Act, extend to the county and to the city of London, and in the construction of the said provisions, as respects the county of London, any local authority in that county, and as respects the city of London the [Common Council²⁷], shall be deemed to be the urban authority.

(2.) The raising of sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which the London County Council or the [Common Council²⁷] of the City of London, may borrow under Part I. of this Act, and a purpose for which a [metropolitan borough council] may borrow under the Metropolis Management Act, 1855, and the provisions of Part I. of this Act with respect to borrowing, and sects. 183

(20) *Post*, Vol. II., p. 2001.

(21) *Post*, p. 1096.

(22) *Post*, p. 1133.

(23) *Post*, p. 1123.

(24) *Durham C.C. v. Easington R.D.C.*

(1897, Seaham Harbour C. Ct.), 61 J. P. 121.

(25) *Ante*, pp. 201, 749.

(26) *Post*, p. 1110.

(27) See *ante*, p. 5 (8).

Default of
local
authority.

Expenses of
county
council.

Entry.

Application of
part of Act to
London.

to 191 of the Metropolis Management Act, 1855, shall apply and have effect accordingly. **Sect. 46.**

Application of
part of Act to
London—*cont.*

(3.) The London County Council may, if they think fit, lend to a local authority in the administrative county of London the sums borrowed in pursuance of this part of this Act.

(4.) * * * 28

(5.) Where it appears to the county council, whether in the exercise of the powers of a [metropolitan borough council] or on the representation of a [metropolitan borough council] or otherwise, that a scheme under this part of this Act ought to be made, the council may take proceedings for preparing and obtaining the confirmation of a scheme, and the provisions of this Act respecting the scheme shall apply in like manner as if they were the [metropolitan borough council], and all expenses of and incidental to the scheme and carrying the same into effect shall, save as hereinafter mentioned, be borne by the county fund.

(6.) Where the council consider that such expenses, or a contribution in respect of them, ought to be paid or made by a [metropolitan borough council], they may apply to [the Minister of Health], and the [Minister], if satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and the neighbourhood of the buildings to be dealt with, the [metropolitan borough council] ought to pay, or make a contribution in respect of, the said expenses, the [Minister] may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the [metropolitan borough council] to the council.

(7.) The county council may, if they think fit, pay or contribute to the payment of the expenses of carrying into effect a scheme under this part of this Act by a [metropolitan borough council], and if a [metropolitan borough council] consider that the expenses of carrying into effect any scheme under this part of this Act, or a contribution in respect of those expenses, ought to be paid or made by the county council, and the county council decline or fail to agree to pay or make the same, the [metropolitan borough council] may apply to [the Minister of Health], and if the [Minister] is satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the council ought to pay or make a contribution in respect of the said expenses, he may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the council to the [metropolitan borough council].

(8.) In the application of this section to Woolwich [*the local board of health shall be deemed to be a district board,*²⁹ *but*] the raising of any sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which they may borrow under the Public Health Acts, and the Public Health Acts shall apply accordingly.

Note.

As to the mode of payments under sub-sects. (6) and (7) of the present section in London, see sect. 14 of the Act of 1903,³⁰ as amended by sect. 33 of the Act of 1909.³¹

**Mode of
payment.**

With regard to the making and recovery of private improvement rates, see sects. 213-215, and with regard to the recovery of private improvement expenses, see sects. 257 and 261 of the Public Health Act, 1875.³²

**Private
improvement
expenses.**

The powers of the Secretary of State under the present Act were transferred to the Local Government Board (now the Minister of Health) by the Act of 1903.³³

The present section is applied by the Act of 1894.³⁴

SUPPLEMENTAL.

Sect. 47.—(1.) Where an owner of any dwelling-house is not the person in receipt of the rents and profits thereof, he may giye notice of such ownership to the local authority, and thereupon the local authority shall give such owner notice

**Provision as to
superior land-
lord.**

(28) Substitution of Loc. Gov. Bd. for Sec. of State, repealed by S. L. R. Act, 1908. See footnote (33), *infra*.
P. H. (London) Act, 1891 (54 & 55 Vict. c. 76), s. 105 (3).

(29) The P. H. Acts do not now apply to Woolwich, see *ante*, p. 803. As to borrowing by metropolitan borough councils, see M. M. Act, 1855 (18 & 19 Vict. c. 120), s. 183, and
(30) *Post*, p. 1091.
(31) *Post*, p. 1109.
(32) *Ante*, pp. 594, 673.
(33) See s. 2 and Note, *post*, p. 1089.
(34) See *ante*, p. 1065 (11).

Sect. 47.

Provision as to
superior
landlord—*cont.*

of any proceedings taken by them in pursuance of this part of this Act in relation to such dwelling-house.³⁴

(2.) If it appears to a court of summary jurisdiction on the application of any owner of the dwelling-house that default is being made in the execution of any works required to be executed on any dwelling-house in respect of which a closing order has been made, or in the demolition of any building or any dwelling-house or in claiming to retain any site, in pursuance of this part of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the court may make an order empowering the applicant forthwith to enter on the dwelling-house, and within the time fixed by the order to execute the said works, or to demolish the building or to claim to retain the site, as the case may be, and where it seems to the court just so to do, the court may make a like order in favour of any other owner.

(3.) A court of summary jurisdiction may in any case by order enlarge [*the time allowed under any order for the execution of any works or the demolition of a building, or*³⁵] the time within which a claim may be made to retain the site of a building.³⁶

(4.) Before an order is made under this section notice of the application shall be given to the local authority.

Remedies of
owner for breach
of covenant, &c.,
not to be
prejudiced.

Sect. 48. Nothing in this part of this Act shall prejudice or interfere with the right or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any dwelling-house in respect of which an order is made by a local authority under this part of this Act; and if any owner is obliged to take possession of any dwelling-house in order to comply with any such order, the taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

Sect. 49. [*Service of notices.*³⁷]

Description of
owner in
proceedings.

Sect. 50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

Penalty for
preventing
execution of
Act.

Sect. 51.—(1.) If any person being the occupier of any dwelling-house prevents the owner thereof, or being the owner or occupier of any dwelling-house prevents the medical officer of health, or the officers, agents, servants, or workmen of such owner or officer [or of the authority³⁹] from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act, after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things requisite for carrying into effect, with respect to such dwelling-house, the provisions of this part of this Act.

(2.) If . . .⁴⁰ such person fails to comply [with such order⁴⁰], he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding twenty pounds: Provided that if any such failure is by the occupier, the owner, unless assenting thereto, shall not be liable to such fine.

Note.

Application
of section.

The present section is applied for the purposes of sect. 26 of the Housing, Town Planning, etc., Act, 1919.⁴¹

Obstruction
of entry for
survey.

By the combined operation of the present section, and sects. 36, 47 (1), and 76 of the Act of 1909, a court of summary jurisdiction may order an owner to allow the medical officer of health to enter for survey purposes.⁴²

(34) See definition of "owner" in s. 29, and Note to that section, *ante*, p. 1054. See also powers given to superior landlords by H. T. P. Act, 1919, s. 30, *post*, p. 1147.

(35) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See, now, as to postponement of demolition orders, s. 18 (3) of that Act, *post*, p. 1105.

(36) By H. T. P. Act, 1909 (9 Edw. VII. c. 44), s. 21, this sub-section "shall cease to have effect as respects the time allowed for the execution of any works or the demolition of a building under a closing order or under an order for the demolition of a building." As to claims to retain sites, see s. 38 (5), *ante*, p. 1060.

(37) Repealed by Housing, etc., Act, 1923,

s. 24, Sched. III. See, now, H. T. P. Act, 1909, s. 41, *post*, p. 1112, and H., etc., Act, 1923, s. 15 (d), and *Arlidge's Case* in the Note to the last-mentioned section, *post*, p. 1182 (20).

(39) Added by Housing, &c. Act, 1923, s. 16, Sched. II.

(40) Words "at the expiration of ten days after the service of such order" to be "omitted," and "with such order" to be substituted for "therewith." See Housing, etc., Act, 1923, s. 16, Sched. II.

(41) See sub-sect. (3), *post*, p. 1141.

(42) *Arlidge v. Scrase*, L. R. 1915, 3 K. B. 325; 84 L. J. K. B. 1874; 113 L. T. 873; 79 J. P. 467; 14 L. G. R. 74.

Sect. 52. A representation from the medical officer of health of any county submitted to the county council and forwarded by that council to the local authority of any district in the county, not being a borough as defined by the Municipal Corporations Act, 1882, shall, for the purposes of this part of this Act, have the like effect as a representation from the medical officer of health of the district.

Sect. 52.
Report to local authority by county medical officer.

PART III.
WORKING CLASS LODGING-HOUSES.
[ADOPTION OF PART III.]

Sect. 53.—(1.) The expression “lodging-houses for the working classes” when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.¹
(2.) The expression “cottage” in this part of this Act may include a garden of not more than [one acre.²]

Definition of purposes of [Labouring Classes Lodging-houses Acts.]

Note.
The meaning of the expression “separate dwellings” was discussed in the cases cited in the Note to sect. 62.³
Sect. 54. [Adoption of this part of Act.⁴]
Sect. 55. [Provisions in case of adoption by rural sanitary authority.⁴]

Separate houses.

EXECUTION OF PART III. BY LOCAL AUTHORITY.

Sect. 56. [Where this part of this Act has been adopted in any district,⁵] the local authority shall have power to carry it into execution (subject to the provisions of this part of this Act with respect to rural sanitary authorities), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the [Common Council of the City of London ⁶] under the Acts conferring powers on such [council].

Powers of local authority.

Note.
For the meaning of “local authority” in the present Act, see sect. 92 and Note.
As to the expenses of rural district councils under Part III., see sect. 31 of the Act of 1909.^{6a} As to defaults by such councils, see sect. 13 of that Act.^{6b} The special provisions as to such councils in sects. 57 (3), 65 (iii), and 66 of the present Act have been repealed.
As to joint action by local authorities, see sect. 38 of the Act of 1909.⁷
Contracts with sanitary authorities under the present section must be sealed and otherwise comply with the provisions of sect. 174 of the Public Health Act, 1875.⁸
As to the power to compel local authorities to carry out this part of the present Act, see sects. 10 and 12 of the Act of 1909,⁹ and sects. 1 to 4 of the Housing, Town Planning, etc., Act, 1919.¹⁰

Local authorities.

Joint action.
Contracts.

Default.

Sect. 57.—(1.) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sects. 175 to 178, both inclusive, of that Act (relating to the purchase of lands),¹¹ shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the [Common Council

Acquisition of land.

(1) As to meaning of “working class,” see Note to s. 1, ante, p. 1045. In Part I. of H. T. P. Act, 1919, “the expression ‘houses for the working classes’ has the same meaning as the expression ‘lodging houses for the working classes’ has in the” present Act; see s. 40, post, p. 1149.
(2) Substituted for “half an acre, provided that the estimated annual value of such garden shall not exceed three pounds,” by 9 Edw. VII. c. 44, s. 50.
(3) Post, p. 1071 (1).
(4) The proviso to s. 54 and the whole of s. 55 were repealed by H. W. C. Act, 1900 (63 & 64 Vict. c. 59), s. 2, Sched. The remainder of s. 54 was repealed by H. T. P. Act, 1909, s. 75, Sched. VI. Under s. 1 of that Act, post, p. 1094, the present Part is
in force without adoption: “in every urban or rural district, or other place for which it has not been adopted, as if it had been so adopted.”
(5) These words were not repealed by the Act of 1909, but this Part is no longer adoptive: see footnote (4), supra.
(6) See ante, p. 5 (8).
(6a) Post, p. 1108.
(6b) Post, p. 1098.
(7) Post, p. 1110.
(8) Ante, p. 452. See *Nixon v. Erith U.D.C.*, L. R. 1924, 1 K. B. 87; 93 L. J. K. B. 63; 87 J. P. 205; 22 L. G. R. 9.
(9) Post, p. 1096.
(10) Post, p. 1131.
(11) Ante, pp. 464-482.

Sect. 57.

of the City of London¹¹] and London County Council respectively were a local authority in the said sections mentioned. * * * ¹²

(2.) * * * ¹³

(3.) The local authority may, . . .¹⁴ with the consent of the [Minister of Health], . . .¹⁴ appropriate, for the purposes of this part of this Act, any lodging-houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

Note.**Compulsory purchase.**

As to the procedure for the compulsory purchase of land for the purposes of the present part, see the Note to sect. 41 of the present Act, and sect. 2 and Sched. I. of the Act of 1909.¹⁵

Application of section.

As to the application of the present section to the acquisition of houses, etc., by local authorities, see sect. 12 of the Housing, Town Planning, etc., Act, 1919;¹⁶ and as to its application to the acquisition of land for town planning purposes, and for garden cities or town planning schemes, see sect. 60 of the Housing, Town Planning, etc., Act, 1909, and sect. 10 of the Housing (Additional Powers) Act, 1919.¹⁷

Gifts.

As to gifts to local authorities for housing purposes, see sect. 8 of the Act of 1909.¹⁸

Acquisition by Government.

As to acquisition by Government Departments, see the Acts of 1914.¹⁹

Local authority may purchase existing lodging-houses.

Sect. 58. The trustees of any lodging-houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging-houses to the local authority of the district, or make over to them the management thereof.

Erection of lodging-houses.

Sect. 59. The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging-houses for the working classes, and convert any buildings into lodging-houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Note.**Meaning of lodging-houses.**

The expression "lodging-houses" includes houses or cottages—see sect. 53 of the present Act.

Sales and leases.

As to the sale or leasing of land acquired under the present Part, see sects. 12 (2) and 15 of the Housing, Town Planning, etc., Act, 1919.^{19a}

Shops, &c.

With the consent of the Minister of Health, the district council may provide shops and recreation grounds in connection with the lodging-houses.²⁰

Financial assistance.

A municipal corporation may convert any of their corporate land into sites for working men's dwellings under the Municipal Corporations Act, 1882.²¹

As to Government subsidies and other forms of financial assistance in connection with housing schemes, see sects. 1 to 6 of the Act of 1923.^{21a}

Sect. 60. [Sale and exchange of lands.²²]**MANAGEMENT OF LODGING-HOUSES.****Management to be vested in local authority.**

Sect. 61.—(1.) The general management, regulation, and control of the lodging-houses established or acquired by a local authority under this part of this Act shall be vested in and exercised by the local authority.

(11) See *ante*, p. 5 (8).

(12) As to substitution of Loc. Gov. Bd. for Sec. of State, repealed by S. L. R. Act, 1908.

(13) Repealed by H. T. P. Act, 1919, s. 50, Sched. V., and replaced by s. 12 of that Act, *post*, p. 1135.

(14) Words "if not a rural sanitary authority" and "and if a rural sanitary authority with the consent of the county council of the county in which the land is situate" to be "omitted": see H. T. P. Act, 1919, s. 39, Sched. II.

(15) *Post*, pp. 1094, 1125.

(16) *Post*, p. 1135.

(17) *Post*, pp. 1120, 1153.

(18) *Post*, p. 1095.

(19) *Post*, p. 1129.

(19a) *Post*, pp. 1135, 1136.

(20) See H. W. C. Act, 1903, s. 11, *post*, p. 1091. See also H. T. P. Act, 1919, ss. 12 (2) (b) and 15 (1) (b), *post*, pp. 1135, 1136.

(21) See s. 111, *post*, Vol. II., p. 1827.

(21a) *Post*, p. 1175.

(22) Repealed by H. T. P. Act, 1919, s. 50, Sched. V. See now s. 15 (1) (c) (d) of that Act, *post*, p. 1136.

(2.) The local authority may make such reasonable charges for the tenancy or occupation of the lodging-houses provided under this part of this Act as they may determine by regulations.

Sect. 61.

Sect. 62.—(1.) The local authority may make bye-laws for the management, use, and regulation of the lodging-houses, and it shall be obligatory on the local authority, except in the case of a lodging-house which is occupied as a separate dwelling, by such bye-laws to make sufficient provision for the several purposes expressed in the sixth schedule to this Act.

Bye-laws for regulation of lodging-houses.

(2.) A printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging-houses shall be put up and at all times kept in every room therein.

Note.

Sched. VI. is headed : “ Byelaws to be made in all cases (except where a lodging-house is used as a separate dwelling).” The “ purposes expressed ” in the Schedule are : “ For securing that the lodging-houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the local authority. For securing the due separation at night of men and boys above eight years old from women and girls. For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances. For determining the duties of the officers, servants, and others appointed by the local authority.”

Bye-laws.

The bye-laws are to be made by the local authorities and confirmed by the Minister of Health in the same manner as their other bye-laws : see sect. 84.

With regard to the application of penalties for breach of the bye-laws, see sect. 71.

Working men’s lodgings with cubicles in the upper storeys and common rooms on the ground floor, erected under the present Act, were held not to be “ separate dwellings ” so as to be exempt from inhabited house duty as houses used for the sole purpose of providing separate dwellings within sect. 26 (2) of the Customs and Inland Revenue Act, 1890, or sect. 11 of the Revenue Act, 1903.¹

Inhabited house duty.

Further as to inhabited house duty on workmen’s dwellings, see sect. 35 of the Act of 1909.^{1a}

Sect. 63. [*Disqualification of tenants of lodging-houses on receiving parochial relief.*²]

Sect. 64. [*When lodging-houses are considered too expensive they may be sold.*³]

EXPENSES AND BORROWING OF LOCAL AUTHORITIES.

Sect. 65. All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed— * * * 4

Payment of expenses.

(ii.) in the case of an urban sanitary authority, as part of the general expenses of their execution of the Public Health Acts; * * * 5

Note.

With regard to the expenses of urban district councils, see sect. 207 of the Public Health Act, 1875; with regard to those of rural district councils, see sects. 229 and 230 of that Act;⁶ and with regard to those of metropolitan borough councils, see sect. 3 of the Housing of the Working Classes Act, 1900.⁷

Expenses.

Under sect. 9 of the Housing Act, 1921,⁹ “ a local authority within the meaning of ” the present Part “ may, subject to the approval of the Minister, contribute to the expenses of any local savings committee established for their area or any part of their area.”

Local savings committees.

Such authorities may also contribute towards the provision of certain small holdings.¹⁰

Small holdings.

(1) 53 Vict. c. 8, s. 26 (2), quoted *post*, p. 1109; 3 Edw. VII. c. 46, s. 11; *London C.C. v. Cook*, *post*, p. 1110. See also *Seaman’s Case*, *ante*, p. 541 (18); *Farmer v. Cotton’s Trustees*, L. R. 1915 A. C. 922; 84 L. J. P. C. 137; 113 L. T. 657.

(1a) *Post*, p. 1109.

(2) Repealed by H. T. P. Act, 1909, ss. 46, 75, Sched. VI.

(3) Repealed by H. T. P. Act, 1919, s. 50, Sched. V. See now s. 15 of the Act, *post*, p. 1136.

(4) Sub-sect. (i), as to London, repealed by Housing, etc., Act, 1923, s. 24, Sched. III.

(5) Sub-sect. (iii), as to R. D. C.s, repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See now s. 31 of that Act, *post*, p. 1108.

(6) *Ante*, pp. 561, 606, 608.

(7) *Post*, p. 1088.

(9) 11 & 12 Geo. V. c. 19, s. 9.

(10) See Land Settlement (Facilities) Act, 1919, s. 20 (3), *post*, Vol. II., p. 1545.

Sect. 66.

Borrowing for
purposes of
Part. III.

Sect. 66. The London County Council and the [Common Council of the City of London ¹¹] may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as they may borrow for the purposes of Part I. of this Act, and a sanitary authority may borrow for the purpose of the execution of this part of this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general [or *special* ¹²] expenses.

Note.

Borrowing
powers.

With regard to borrowing powers, see sect. 233 and following sections of the Public Health Act, 1875.¹³

Application
of section.

As to "local bonds," see sect. 7 of the Housing (Additional Powers) Act, 1919.¹⁴
The present section is applied by the enactments cited below.¹⁵

LOANS TO AND POWERS OF COMPANIES, SOCIETIES, AND INDIVIDUALS.

Loans by Public
Works Com-
missioners.

Sect. 67.—(1.) In addition to the powers conferred upon them by any other enactment, the Public Works Loan Commissioners may, out of the funds at their disposal, advance on loan to any such body or proprietor as hereinafter mentioned; namely,—

(a.) any railway company or dock or harbour company, or any other company, society, or association established for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, or for trading or manufacturing purposes (in the course of whose business, or in the discharge of whose duties persons of the working classes are employed);

(b.) any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired;

and any such body or proprietor may borrow from the Public Works Loan Commissioners such money as may be required for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes.

(2.) Such loans shall be made in manner provided by the Public Works Loans Act, 1875, subject to the following provisions:—

(a.) Any such advance may be made whether the body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act; but nothing in this Act shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up.

(b.) The period for the repayment of the sums advanced shall not exceed [forty] years.

(c.) No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple, or an estate for a term of years absolute, whereof not less than [fifty] years shall be unexpired at the date of the advance.

(d.) The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed [one moiety] of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such advances so to be made from time to time.

(3.) For the purpose of constructing or improving or facilitating or encouraging the construction or improvement of dwellings for the working classes, every such body as aforesaid is hereby authorised to purchase, take, and hold land, and if not already a body corporate, shall, for the purpose of holding such land under this part of this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

(11) See *ante*, p. 5 (8).

(12) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See now s. 31 of that Act, *post*, p. 1108.

(13) *Ante*, p. 613.

(14) *Post*, p. 1152.

(15) H. T. P. Act, 1919, ss. 4 (2), 18 (3), 22 (3), *post*, pp. 1133, 1138, 1139; H. Act, 1923, ss. 1 (6), 5 (4), *post*, pp. 1176, 1178.

Note.

Sect. 67, n.

With regard to the advance of money by the Public Works Loan Commissioners, see the Public Works Loans Act, 1875,¹⁶ and sect. 3 of the Housing, Town Planning, etc., Act, 1909.¹⁷

Loans.

The present section is extended, as to the periods mentioned in subsect. (2) (b) and (c), and other matters, by sects. 20, 21, and 22 (3) of the Housing, Town Planning, etc., Act, 1919;¹⁸ and by sects. 2 (6), 5 (4), and 10 (2) (c) of the Housing, etc., Act, 1923.¹⁹ As to loans for garden cities, see sect. 10 of the Housing (Additional Powers) Act, 1919,²⁰ and the Note thereto.

The words "one moiety," in subsect. (2) (d) of the present section, must be read as "two thirds" in the case of loans to public utility societies.²¹

Mortgages.

And by sect. 4 of the Public Works Loans Act, 1922,²² "in the application of" the present section "to any company established for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, which does not trade for profit, or whose constitution forbids the issue of any share or loan capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury," subsect. (2) (d) of the present section "shall have effect as if the words 'seventy-five per centum' were substituted for the words 'one moiety': Provided that the Public Works Loans Commissioners shall, in any such case, require, in addition to a mortgage of any land or dwellings, a further security of such value as they may think fit."

Under sect. 18 of the Housing, Town Planning, etc., Act, 1919,²³ local authorities may promote and assist the formation of societies having for their objects the erection or improvement of dwellings for the working classes. See also sect. 40 of that Act.²⁴

Provident societies.

The material Acts amending the Industrial and Provident Societies Act, 1893, are the Industrial and Provident Societies Act, 1894,²⁵ and the Industrial and Provident Societies Amendment Act, 1895.²⁶

As to the current rates of interest upon loans by the Public Works Loan Commissioners, see the Note to sect. 3 of the Act of 1909.²⁷

Rates of interest.

The Treasury may guarantee loans by public bodies, for undertakings involving capital expenditure, under sect. 1 of the Trade Facilities Act, 1921.^{27a}

Treasury guarantee.

Sect. 68. Any railway company, or dock or harbour company or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the working class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorised at any time to erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the working class employed by them.

Powers to companies.

Note.

Houses erected by a railway company for their workmen are not exempt from bye-laws as to new buildings.²⁹

Railway buildings.

Sect. 69. Any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for lodging-houses provided under this part of this Act, either without charge or on such other favourable terms as they think fit.³⁰

Power to water and gas companies to supply water and gas to lodging-houses.

Sect. 70. A lodging-house established in any district under this part of this Act, shall be at all times open to the inspection of the local authority of that district or of any officer from time to time authorised by such authority.

Inspection of lodging-houses.

(16) *Post*, Vol. II., p. 1725.

(17) *Post*, p. 1094.

(18) *Post*, p. 1138.

(19) *Post*, p. 1176.

(20) *Post*, p. 1153.

(21) See H. & T. P. Act, 1909, s. 4, *post*, p. 1095.

(22) 12 & 13 Geo. V. c. 33, s. 4.

(23) *Post*, p. 1137.

(25) 57 & 58 Vict. c. 8.

(24) *Post*, p. 1149.

(26) 58 & 59 Vict. c. 30.

(27) *Post*, p. 1095.

(27a) 11 & 12 Geo. V. c. 65, s. 1.

(29) See the last clause of P. H. Act, 1875, s. 157, *ante*, p. 373, and the *Barnsley Case*, *ante*, p. 399 (23).

(30) As to the supply of water to tenement houses in London, see L.C.C. (General Powers) Act, 1907 (7 Edw. VII. c. clxxv), s. 78, set out in 5 L. G. R. (Statutes) 135.

Sect. 71.

Application of penalties.

Sect. 71. Any fine for the breach of any bye-law under this part of this Act shall be paid to the credit of the funds out of which the expenses of this part of this Act are defrayed.

PART IV.

SUPPLEMENTAL.

Limit of area to be dealt with on official representation.

Sect. 72. Where an official representation made to the London County Council in pursuance of Part I. of this Act relates to not more than ten houses, the London County Council shall not take any proceedings on such representation, but shall direct the medical officer of health making the same to represent the case to the local authority under Part II. of this Act, and it shall be the duty of the local authority to deal with such case in manner provided by that part of this Act.¹

Provisions as to parts of Act under which reports are to be dealt with in county of London.

Sect. 73.—(1.) In either of the following cases: (a.) Where a medical officer of health has represented to any local authority in the county of London under Part II. of this Act that any dwelling-houses are in a condition so dangerous or injurious to health, as to be unfit for human habitation, or that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the county of London that it should be dealt with by a scheme under Part I. of this Act; or (b.) Where an official representation as mentioned in Part I. of this Act has been made to the London County Council in relation to any houses, courts, or alleys within a certain area, and that council resolve that the case of such houses, courts, or alleys is not of general importance to the county of London and should be dealt with under Part II. of this Act; such local authority or council may submit such resolution to [the Minister of Health] and thereupon the [Minister] may appoint an arbitrator, and direct him to hold a local inquiry, and such arbitrator shall hold such inquiry, and report to the [Minister] as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of Part I. of this Act, the case is either wholly or partially of any and what importance to the county of London, with power to such arbitrator to report that in the event of the case being dealt with under Part II. of this Act, the London County Council ought to make a contribution in respect of the expense of dealing with the case.

(2.) The [Minister], after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under Part II. of this Act, or under Part I. of this Act, and the medical officer of health or other proper officer shall forthwith make the representation necessary for proceedings in accordance with such decision.

Amendment of 45 & 46 Vict. c. 38, as regards erection of buildings for working classes.

Sect. 74.—(1.) The Settled Land Act, 1882, shall be amended as follows:— (a.) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose. (b) The improvements on which capital money [arising under the Settled Land Act, 1882,²] may be expended, enumerated in sect. 25 of the said Act, and referred to in sect. 30 of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans, whether employed on the settled land or not, include [the provision of dwellings available for the working classes, either by means of building new buildings or by means of the reconstruction, enlargement, or improvement of existing buildings, so as to make them available for the purpose, if that provision of dwellings is, in the opinion of the court, not injurious to the estate or is agreed to by the tenant for life and the trustees of the settlement.³]

(2.) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and

(1) See Sched. I. (4) of the Act of 1923, post, p. 1181.

(2) Added by H. T. P. Act, 1909 (9 Edw. VII. c. 44), s. 7 (1).

(3) Substituted for "any dwellings available for the working classes, the building of which in the opinion of the court is not injurious to the estate," by *ibid*

to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose. **Sect. 74.**

Note.

In addition to amending para. (b) of sub-sect. (1) of the present section, sect. 7 of the Act of 1909 enacts that "the provision by a tenant for life, at his own expense, of dwellings available for the working classes on any settled land shall not be deemed to be an injury to any interest in reversion or remainder in that land; provided that the powers conferred upon a tenant for life by this sub-section shall not be exercised by him without the previous approval in writing of the trustees of the settlement." ³ **Settled land.**

And by sect. 31 of the Housing, Town Planning, etc., Act, 1919,⁴ "The powers conferred upon a tenant for life by the Settled Land Acts, 1882 to 1890, shall include the following further powers:—(a) A power to make a grant in fee simple or absolutely, or a lease for any term of years, for a nominal price or rent or for less than the best price or rent which could be obtained for the purpose of the erection thereon of dwellings for the working classes or the provision of gardens to be held in connection therewith. Provided that no more than two acres in the case of land situate in an urban district or ten acres in the case of land situate in a rural district shall be granted as a site for such dwellings or gardens in any one parish without payment of the full price or rent for the excess, except under an order of the court; (b) A power, where money is required for the provision of dwellings available for the working classes, to raise the money on mortgage of the settled land or of any part thereof by conveyance of the fee simple or other the estate subject to the settlement or by creation of a term of years in the settled land or any part thereof or otherwise, and the money so raised shall be capital money for that purpose and may be paid or applied accordingly."

As to legal proceedings "with respect to any property required to be applied under any trusts for the provision of dwellings available for the working classes," see sect 9 of the Act of 1909.⁵

With regard to the Settled Land Acts, see the Note to sect. 31 of the Public Health Act, 1875.⁶ See also the extension of these Acts enacted by the Law of Property Act, 1922.⁷

By the Settled Land Act, 1890, "the provisions of sect. 11 of the Housing of the Working Classes Act, 1885, and of any enactment which may be substituted therefor [*i.e.*, the present section], shall have effect as if the expression 'working classes' included all classes of persons who earn their livelihood by wages or salaries: Provided that this section shall apply only to buildings of a rateable value not exceeding one hundred pounds per annum."⁸ Further, as to the meaning of "working classes," see the Note to sect. 1.⁹

Sub-sect. 1 (b) of the present section only applies where new buildings are to be erected, and dwellings of a kind suitable for the working classes but occupied at the time by persons not of that class, are not "available for" that class within the meaning of that sub-section.^{9a}

Meaning of "available."

Sect. 75. In any contract made after the 14th day of August, 1885, for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. In this section the expression "letting for habitation by persons of the working classes" means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by sect. 3 of the Poor Rate Assessment and Collection Act, 1869 . . . [*Scotland and Ireland*].

Condition to be implied on letting houses for the working classes.

Note.

It was held, with reference to the clause in the Housing of the Working Classes Act, 1885,¹⁰ which is re-enacted by the present section, that the enactment did **Implied condition.**

(3) 9 Edw. VII. c. 44, s. 7 (2).

(4) 9 & 10 Geo. V. c. 35, s. 31.

(5) *Post*, p. 1096.

(6) *Ante*, p. 102.

(7) *Post*, Vol. II., p. 2355.

(8) 53 & 54 Vict. c. 69, s. 18.

(9) *Ante*, p. 1045.

(9a) *In re Calverley's Settled Estates*, L. R. 1904, 1 Ch. 150; 73 L. J. Ch. 25; 89 L. T. 500.

(10) 48 & 49 Vict. c. 72, s. 12.

Sect. 75, n.

not merely give the tenant the option of repudiating the contract, but imported a promise by the landlord that the dwelling was reasonably fit for habitation.¹¹ Apart from the statute it is an implied condition on the letting of a *furnished* house that it is reasonably fit for habitation;¹² but this section creates that implied condition, although the house is not let furnished, provided that it is let at a rent not exceeding the limit mentioned.

A landlord who lets an unfurnished house in a dangerous condition, without undertaking to keep it in repair, is under no liability at common law to his tenant, or to a person using the premises, for personal injuries arising during the term from the defective state of the house.¹³

In contracts made subsequently to the 14th August, 1903, the implied condition is to take effect notwithstanding any agreement to the contrary between the parties.¹⁴

As to contracts made after the 3rd December, 1909, see sect. 14 of the Act of that year and the Note thereto.¹⁵

Composition for rates.

The Poor Rate Assessment and Collection Act, 1869,¹⁶ allows the owner to compound for poor rates "in case the rateable value of any hereditament does not exceed £20, if the hereditament is situate in the metropolis, or £13 if situate in any parish wholly or partly within the borough of Liverpool, or £10 if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or £8 if situate elsewhere."

Metropolis.

Compulsory repairs.

The "metropolis" here includes the city of London,¹⁷ and West Ham.¹⁸

Sect. 28 of the Housing, Town Planning, etc. Act, 1919,¹⁹ enables local authorities to enforce repairs.

Medical officer of health in county of London.

Sect. 76.—(1.) The London County Council may, with the consent of [the Minister of Health] at any time appoint one or more legally qualified practitioner or practitioners, with such remuneration as they think fit, for the purpose of carrying into effect any part of this Act.

(2.) Any medical officer of health appointed to the London County Council, and any officer appointed under this section by the London County Council, shall be deemed to be a medical officer of health of a local authority within the meaning of this Act.

Sect. 77. [Power to local authority to enter and value premises.²⁰]

Compensation to tenants for expense of removal.

Sect. 78. Where a building or any part of a building purchased by the local authority in pursuance of a scheme under Part I. or Part II. of this Act is not closed by a closing order, and is occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such building or part for the purpose of pulling down the building, may make to the said tenant a reasonable allowance on account of his expenses in removing.²¹

Duties of medical officer of health.

Sect. 79.—(1.) Anything which under Part I. or Part II. of this Act is authorised or required to be done by or to a medical officer of health may be done by or to any person authorised to act temporarily as such medical officer of health.

(2.) Every representation made by a medical officer of health in pursuance of this Act shall be in writing.

Accounts and audit.

Sect. 80.—(1.) * * * ²²

(2.) Such accounts shall be audited in the like manner and with the like power to the officer auditing the same, and with the like incidents and consequences, as the accounts of the local authority are for the time being required to be audited by law.²³

(11) *Walker v. Hobbs & Co.* (1889), L. R. 23 Q. B. D. 458; 59 L. J. Q. B. 93; 61 L. T. 688; 54 J. P. 199.

(12) *Smith v. Marrable; Wilson v. Finch-Hatton*, ante, p. 248 (3) (4).

(13) *Lane v. Cox*, L. R. 1897, 1 Q. B. 415; 66 L. J. Q. B. 193; 76 L. T. 135; 45 W. R. 261. See also ante, p. 206, and post, pp. 1099, 1100.

(14) See H. W. C. Act, 1903, s. 12, post, p. 1091.

(15) *Post*, p. 1099.

(16) 32 & 33 Vict. c. 41, s. 3.

(17) *Ibid.*, s. 20, and 18 & 19 Vict. c. 120, s. 250.

(18) See *Manning v. Simpson* (1898, Bow C. Ct.), 62 J. P. 137.

(19) *Post*, p. 1143.

(20) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See, now, s. 36 of that Act, post, p. 1110.

(21) As to similar compensation after closing orders, see H. T. P. Act, 1909, s. 17 (5), post, p. 1101.

(22) As to separate accounts of receipts and expenditure under each part of Act, repealed by Housing, etc., Act, 1923, s. 24, Sched. III. See, now, s. 15 (c) of that Act and Note, post, p. 1180. See also H. W. C. Act, 1900, s. 4, post, p. 1088.

(23) See P. H. Act, 1875, ss. 246-248, ante, p. 633. As to keeping accounts under the present Act separate, see H., etc., Act, 1923, Sched. I. (8), post, p. 1181.

Sect. 81. For the purposes of this Act, a local authority acting under this Act may appoint . . . ²⁴ so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee : Provided that a committee so appointed shall [consist as to a majority of its members of the appointing local authority, and shall²⁵] in no case be authorised to borrow any money [or²⁵] to make any rate . . . ,²⁶ and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

Sect. 81.

Power of local authority to appoint committees.

Sect. 82. Where a local authority sell any land acquired by them for any of the purposes of this Act, the proceeds of the sale shall be applied for any purpose, including repayment of borrowed money, for which capital money may be applied,²⁷ and which is approved by the [Minister of Health].

Application of purchase-money.

Sect. 83. [Any loan advanced by the Public Works Loan Commissioners in pursuance of this Act or for labourers' dwellings in pursuance of the Public Works Loans Act, 1875, or any Act amending the same, shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may from time to time authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer.²⁸]

Rates of loans by Public Works Loan Commissioners.

Sect. 84. With respect to bye-laws authorised by this Act to be made:— (a.) Sects. 202 and 203 of the Metropolis Management Act, 1855, where such bye-laws are made by the London County Council, or any nuisance authority in the administrative county of London; and (b.) the provisions of the Public Health Act, 1875,²⁹ relating to bye-laws, where such bye-laws are made by a sanitary authority, shall apply to such bye-laws, and a fine or penalty under any such bye-law may be recovered on summary conviction.

Application of certain provisions as to bye-laws.

Sect. 85.—(1.) For the purposes of the execution of their [powers and³⁰] duties under this Act the [Minister of Health] may cause such local inquiries to be held as the [Minister sees] fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the [Minister] or confirming authority engaged in the inquiry [*not exceeding three guineas a day*³¹], shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the [Minister] or confirming authority may direct, and that [Minister] or authority may certify the amount of the costs incurred, and any sum so certified and directed by that [Minister] or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.

Local inquiries.

(2.) Sects. 293 to 296 and sect. 298 of the Public Health Act, 1875,³² shall apply for the purpose of any order to be made by the [Minister of Health] or any local inquiry which that [Minister causes] to be held in pursuance of any part of this Act.³³

Sect. 86.—(1.) An order in writing made by a local authority under this Act shall be under their seal and authenticated by the signature of their clerk or his lawful deputy.

Orders, notices, &c.

(2.) A notice, demand, or other written document proceeding from the local authority under this Act shall be signed by their clerk or his lawful deputy.³⁴

Sect. 87. Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority

Service of notice, &c., on the local authority.

(24) Words "out of their own number" to be "omitted": see H. T. P. Act, 1919, s. 39, Sched. II.

(25) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(26) Words "or to enter into any contract" to be "omitted": see H. T. P. Act, 1919, s. 39, Sched. II.

(27) See also H. T. P. Act, 1919, s. 15 (3), *post*, p. 1137.

(28) Wholly repealed by H. T. P. Act, 1909, s. 75, Sched. VI., and subsequently revived by P. W. Loans Act, 1914 (4 & 5 Geo. V. c. 33), s. 4, as respects loans by Commissioners, "to borrowers other than local

authorities." As to loans to local authorities, see H. T. P. Act, 1909, s. 3, and Note, *post*, p. 1094.

(29) See ss. 182-186, *ante*, p. 494.

(30) Added by H. T. P. Act, 1909, s. 46, Sched. II.

(31) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

(32) *Ante*, p. 734.

(33) Further as to inquiries, see H. T. P. Act, 1909, s. 26, *post*, p. 1107. The present section is applied by H. T. P. Act, 1909, s. 63, *post*, p. 1121.

(34) As to distinction between orders and notices, see Note to s. 35, *ante*, p. 1058.

Sect. 87.

Prohibition on persons interested voting as members of local authority.

Penalty for obstructing the execution of Act.

Punishment of offences and recovery of fines.

Powers of Act to be cumulative.

by delivering the same to their clerk, or leaving the same at his office with some person employed there.³⁵

Sect. 88.—(1.) A person shall not vote as member of a local authority or county council or any committee thereof upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. [or Part III.³⁶] of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested.

(2.) If any person votes in contravention of this section he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

Sect. 89. Where any person obstructs the medical officer of health, or any officer of the local authority, or of the confirming authority mentioned in Part I. of this Act [or any person authorised to enter dwelling-houses, premises, or buildings in pursuance of this Act ³⁷], in the performance of anything which such officer [authority or person ³⁸] is by this Act required or authorised to do, [he ³⁹] shall, on summary conviction, be liable to a fine not exceeding twenty pounds.⁴⁰

Sect. 90. Offences under this Act punishable on summary conviction may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Acts.

Sect. 91. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed, and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that a local authority shall not, by reason of any local Act relating to a place within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under any part of this Act.

Note.

Cumulative powers.

The provision in the present section as to the powers being “cumulative” was held to prevent the suggested repeal of certain powers in a local Act.⁴¹

Definition of local authority, districts, local rate.

Sect. 92. In this Act, unless the context otherwise requires, “district,” “local authority,” and “local rate,” mean respectively the areas, bodies of persons, and rates specified in the table contained in the first schedule to this Act. . .⁴²

Definitions:

- “Land.”
- “Sanitary district.”
- “Sanitary authority.”
- “Urban and rural sanitary authority.”
- “Contributory place.”
- “Superior court.”
- “County of London.”

Sect. 93. In this Act, unless the context otherwise requires—
The expression “land” includes any right over land :
The expression “sanitary district” means the district of a sanitary authority :
The expression “sanitary authority” means an urban sanitary authority or a rural sanitary authority :
The expressions “urban sanitary authority” and “rural sanitary authority” and “contributory place” have respectively the same meanings as in the Public Health Act, 1875 :⁴³
The expression “superior court” means the Supreme Court :
The expression “county of London,” except where specified to be the administrative county of London, means the county of London exclusive of the city of London.

PARTS V. AND VI.

APPLICATION OF ACT TO SCOTLAND AND IRELAND.⁴⁴

* * * * *

(35) See also H. W. C. Act, 1903, s. 13, *post*, p. 1091; and H., etc., Act, 1923, s. 15 (d) and Note, *post*, p. 1180.
(36) Added by H. T. P. Act, 1909, s. 46, Sched. II.
(37) Added by H. T. P. Act, 1909, s. 46, Sched. II. As to such right of entry, see s. 36 of that Act, *post*, p. 1110.
(38) Substituted for “or authority” by H. T. P. Act, 1909, s. 46, Sched. II.
(39) Substituted for “such person” by *ibid*.

(40) For cases relating to obstruction of officers, see the Note to P. H. Act, 1875, s. 306, *ante*, p. 750.
(41) See the *Manchester Case*, cited in the Note to H. T. P. Act, 1909, s. 17, *post*, p. 1104 (20). See also cases cited, *ante*, p. 804 (16).
(42) As to adoption of Part III., repealed by H. T. P. Act, 1909, s. 75, Sched. VI.
(43) See ss. 5, 6, *ante*, pp. 42, 43.
(44) Namely, ss. 94-97 (S.) and 98-101 (I.).

PART VII.

Sect. 102.

REPEAL AND TEMPORARY PROVISIONS.

Sect. 102. [*The Acts mentioned in the seventh schedule to this Act are hereby repealed to the extent in the third column of that schedule specified. Provided that—*] (1.) Where the Labouring Classes Lodging Houses Acts, 1851 to 1885, have been adopted in any district, that adoption shall be deemed to be an adoption of Part III. of this Act, and this Act shall apply accordingly;

Repeal of Acts.

(2.) Any officer appointed under any enactment hereby repealed shall continue and be deemed to be appointed under this Act;
(3.) Any dwelling-houses acquired by the local authority under the Artizans Dwellings Acts, 1868 to 1885, and vested in them at the commencement of this Act, shall be held by such local authority as if they had been acquired under the provisions of Part III. of this Act, and any land or premises other than dwelling-houses so acquired and held by them at the commencement of this Act shall be held as if the same had been acquired as a site of an obstructive building in pursuance of Part II. of this Act, but may with the consent of the authority authorised by the said part of this Act to consent to the sale of land so acquired be appropriated for the purposes of Part III. of this Act.

Note.

The first portion of the present section and Sched. VII., both of which are repealed by the Statute Law Revision Act, 1908, but not so as to revive the repealed enactments, repealed the following Acts, wholly except where otherwise indicated (Scottish and Irish Acts are omitted) :—

Repeals.

- 1851—14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses).
1866—29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses).
1867—30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses).
1868—31 & 32 Vict. c. 130 (Artizans and Labourers Dwellings).
1875—38 & 39 Vict. c. 36 (Artizans and Labourers Dwellings Improvement).
1879—42 & 43 Vict. c. 63 (Artizans and Labourers Dwellings Improvement).
1879—42 & 43 Vict. c. 64 (Artizans and Labourers Dwellings Act (1868) Amendment).
1879—42 & 43 Vict. c. 77 (Public Works Loans), s. 6.
1880—43 Vict. c. 8 (Artizans and Labourers Dwellings Act, 1868) Amendment Act (1879), s. 22, Explanation).
1882—45 & 46 Vict. c. 54 (Artizans Dwellings).
1885—48 & 49 Vict. c. 72 (Housing of the Working Classes). The whole Act except sects. 3, 7—9, and 10 (so far as it relates to bye-laws authorised by those sections).

Of the unrepealed sections of the Housing of the Working Classes Act, 1885, sect. 3 is a provision respecting the sites of certain Metropolitan prisons; sect. 7 is set out in the Note to sect. 299 of the Public Health Act, 1875;⁽⁴⁵⁾ sect. 8 in the Note to sect. 90 of that Act;⁽⁴⁶⁾ and sect. 9 in the Note to sect. 91 of the same Act.⁽⁴⁷⁾ The unrepealed portion of sect. 10, except so far as it relates only to the Metropolis, is quoted with sects. 8 and 9.

Housing Act of 1885.

Sect. 103. The provisions of this Act relating to compensation, to the power of the local authority to enter and value premises, to the compensation of tenants for expense of removal, shall be applicable in the case of all improvement schemes which have been confirmed by Act of Parliament during the session in which this Act is passed.

Temporary provisions.

FIRST SCHEDULE.

Sections 54, 92.

Note.

The present Schedule contains three columns headed respectively “ District,” “ Local Authority,” and “ Local Rate.” The first “ district ” mentioned is “ urban sanitary district,” the “ local authority ” being “ the urban sanitary authority,” and the “ local rate ” being “ the rate out of which the general expenses of the execution of the Public Health Acts are defrayed.” The second “ district ” mentioned is “ the City of London,” the “ local authority ” being “ the [Common

Districts, authorities and rates.

(45) *Ante*, p. 741.

(46) *Ante*, p. 171.

(47) *Ante*, p. 174.

Sched. I.

Council^{1]}” and the “local rate” being “the [general rate^{2]}.” These are headed “Throughout Act.” The third “district” mentioned, “for the purpose of Parts I. and III.,” is “the County of London,” the “local authority” being “the County Council of London,” and the “local rate” being “the county fund and the amount payable shall be deemed to be required for special county purposes.” The fourth, fifth, and sixth “districts” mentioned, “for the purposes of Part II.,” are now the metropolitan boroughs, the “local authority” being the metropolitan borough councils, and the “local rate” being “the general rate leviable by such [council] under the Metropolis Management Act, 1855.” The seventh district mentioned, “for the purposes of Parts II. and III.,” is “rural sanitary district,” the “local authority” being “the rural sanitary authority,” and the “local rate” being “the rate out of which the ‘general’ or ‘special’ expenses, as the case may be, of the execution of the Public Health Acts are defrayed.”

See also sect. 3 (1) of the Act of 1900.³

The remainder of the present Schedule relates to Scotland and Ireland.

As to the meaning of the expression “local authority for the purposes of Part III.” of the present Act, see the Note to sect. 1 of the Housing, Town Planning, etc., Act, 1919,⁴ and as to Parts I. and II. see Sched. I. (4) of the Act of 1923.⁵

Loans under local Acts.

At the end of the Schedule there is the following “Note” :—“In any case in the United Kingdom where an urban sanitary authority does not levy a borough rate or any general district rate, but is empowered by a local Act or Acts to borrow money and to levy a rate or rates throughout the whole of their district for purposes similar to those or to some of those for which a general district rate is leviable, it shall be lawful for such sanitary authority to defray the expenses incurred in the execution of Part III. of this Act by means of money to be borrowed, and a rate or rates to be levied, under such local Act or Acts.”

Section 20.

SECOND SCHEDULE.

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACTS.

* * * * *

Repeal.

Note.

The whole of the present Schedule, except paragraphs (10) and (12), was repealed by the Housing, etc. Act, 1923;⁶ and, by Sched. I. (2) of that Act,⁷ these two paragraphs are to “apply in the case of schemes made under Part II. of the” present Act as well as to those made under Part I. That Schedule contains provisions for the “assimilation of procedure under Parts I. and II.” of the present Act.

The present Schedule is referred to in sect 7 (1) of the Acquisition of Land (Assessment of Compensation) Act, 1919,⁸ but that enactment does not appear to affect the repeal enacted by the Act of 1923, though the point is obscure.

(10.) Such award as aforesaid⁹ shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority.

[The title in the case of a person claiming a fee simple interest in any lands included in any such award as aforesaid shall commence twenty years previous to the date of the claim except there has been an absolute conveyance on sale within twenty years and more than ten years previous to the claim when the title shall commence with such conveyance. Provided that the local authority shall not be prevented if they think fit from requiring at their own expense any further abstract or evidence of title respecting any lands included in any such award as aforesaid in addition to the title hereinbefore mentioned.^{10]}

(1) Substituted for “Commissioners of Sewers” by H. T. P. Act, 1919, s. 39, Sched. II.

(2) Substituted for “sewer rate and the consolidated rate levied by such commissioners, or either of such rates,” by H. T. P. Act, 1919, s. 39, Sched. II.

(3) *Post*, p. 1088.

(4) *Post*, p. 1132.

(5) *Post*, p. 1181.

(6) See s. 24, Sched. III.

(7) *Post*, p. 1181.

(8) *Post*, Vol. II., p. 2337.

(9) Namely, the arbitrator’s award under s. 41 of the present Act as amended: see *ante*, p. 1063.

(10) Substituted for words relating to publication of notice of deposit of award, and of notices requiring abstracts of title, etc., by H. T. P. Act, 1919, s. 39, Sched. II.

Note.

Sched. II.
Title to land.

By Sched. I. (2) of the Housing, etc. Act, 1923,¹¹ "so much of" the present paragraph "as relates to the date of the commencement of the title to land shall apply in the case both of land taken compulsorily and of land purchased by agreement." See also the Note which precedes the present paragraph.

* * * * *

(12.) Notwithstanding anything in sect. 92 of the Lands Clauses Consolidation Act, 1845,¹² the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory. . . .¹³

THIRD AND FOURTH SCHEDULES.

* * * * *

Note.

Schedules III. and IV. were repealed by sect. 75 and Sched. VI. of the Act of 1909, that Act having altered the procedure with regard to closing orders, see sects. 17 and 41 and the Notes thereto.¹⁴

Repeal.

[FIFTH SCHEDULE.

FORM MARKED A.

Section 36.

The Housing of the Working Classes Act, 1890.

County of . . . Parish of . . . No.

Charging Order.

The . . .¹⁵ being the local authority under the above-mentioned Act, do, by this Order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to of the sum of pounds payable yearly on the day of for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

SCHEDULE.¹⁶

FORM MARKED B.

Section 37.

Form of Assignment of Charge. To be endorsed on Charging Order.

Dated the day of

I, the within-named in pursuance of the Housing of the Working Classes Act, 1890, and in consideration of pounds this day paid to me, hereby assign to the within-mentioned charge.

(Signed)]

Note.

The present Schedule was repealed by sect. 75 and Sched. IV. of the Act of 1909; and sects. 36 (4) and 37 (5) of the present Act,¹⁷ which enacted the Schedule, have been repealed by the Act of 1923, but as there are still charging orders the present Schedule is printed for guidance, though the power to prescribe a form may hereafter be exercised under sect. 41 of the Act of 1909.

Repeal.

SIXTH SCHEDULE.¹⁸

SEVENTH SCHEDULE.

Note.

For the enactments repealed by the present schedule and sect. 102, see the Note to that section.

Repeals.

(11) *Post*, p. 1181.

(12) *Post*, Vol. II., p. 1586.

(13) Words "The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided with respect to appeals to a jury in respect of compensation for land by this schedule, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal

shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given," to be "omitted": see H. T. P. Act, 1919, s. 39, Sched. II.

(14) *Post*, pp. 1101, 1112. As to Sched. III., see *ante*, p. 1054 (3).

(15) Insert description of local authority.

(16) Insert description of premises charged.

(17) *Ante*, pp. 1058, 1059.

(18) Quoted in Note to s. 62, *ante*, p. 1071.

THE SMALL DWELLINGS ACQUISITION ACT, 1899.

62 & 63 VICT. c. 44.

An Act to empower Local Authorities to advance Money for enabling Persons to acquire the Ownership of Small Houses in which they reside.

[9th August, 1899.]

Power of local authority to advance money to residents in houses for the purchase of houses.

Sect. 1.—(1.) A local authority for any area may, subject to the provisions of this Act, advance money to a resident in any house within the area for the purpose of enabling him to acquire the ownership of that house; provided that¹ an advance shall not be made for the acquisition of the ownership of a house where in the opinion of the local authority the market value of the house exceeds [twelve hundred pounds²].

(2.) Every such advance shall be repaid with interest within such period not exceeding thirty years from the date of the advance as may be agreed upon.

(3.) * * * ³

(4.) The repayment may be made either by equal instalments of principal or by an annuity of principal and interest combined, and all payments on account of principal or interest shall be made either weekly or at any periods not exceeding a half year, according as may be agreed.

(5.) The proprietor of a house in respect of which an advance has been made may at any of the usual quarter days, after one month's written notice, and on paying all sums due on account of interest, repay to the local authority the whole of the outstanding principal of the advance, or any part thereof being ten pounds or a multiple of ten pounds, and where the repayment is made by an annuity of principal and interest combined, the amount so outstanding and the amount by which the annuity will be reduced where a part of the advance is paid off, shall be determined by a table annexed to the instrument securing the repayment of the advance.

Note.

The present Act, Part III. of the Housing, Town Planning, etc., Act, 1919,⁴ and Part III. of the Housing, etc., Act, 1923,⁵ "may be cited together as the Small Dwellings Acquisition Acts, 1899 to 1923."

By sect. 22 of the Housing, etc., Act, 1923,⁶ the present Act "shall have effect subject to the following amendments:—

(a) An advance under that Act may be made to a person intending to construct a house, and in such case the limitation in that Act requiring that the person to whom the advance is made must be resident in the house,⁷ shall be construed as requiring that the person should be a person intending to reside in the house when constructed:

(b) The limit on the market value of houses in respect of which advances may be made under that Act shall be increased from eight hundred to twelve hundred pounds:

(c) The statutory condition requiring the proprietor of a house in respect of which an advance has been made to reside in the house shall have effect for a period of three years from the date when the advance is made, or from the date on which the house is completed, whichever is the later, but no longer, and compliance with this condition may at any time be dispensed with by the local authority:

(d) The market value of the ownership of any house in respect of which an advance is to be made under that Act shall be ascertained by means of a valuation duly made on behalf of the local authority, and the amount of any such advance shall not exceed ninety per cent. of the market value as so ascertained:

(e) Where an advance is made in respect of a house in course of construction, the advance may be made by instalments from time to time as the building of the house progresses, so that the total advance does not at any time before the

(1) As to limitations on advances, repealed partly by H. T. P. Act, 1919, s. 49, and partly by Housing, etc., Act, 1923, s. 24, Sched. III.

(2) Changed from £400 to £800 by H. T. P. Act, 1919, s. 49 (a), and from £800 to £1,200 by Housing, etc., Act, 1923, s. 22 (b), *infra*. As to meaning of "ownership," see sect. 10 (2) (3), *post*, p. 1087.

(3) As to rate of interest, repealed by 11 & 12 Geo. V. c. 19, s. 11 (4), Sched. See, now, Note to present section, *post*, p. 1084 (10).

(4) See s. 52 (4), *post*, p. 1150.

(5) See s. 25 (6), *post*, p. 1183.

(6) 13 & 14 Geo. V. c. 24, s. 22.

(7) For definition of "resident," see s. 10 (1), *post*, p. 1087.

Small Dwellings Acquisition Acts.
Advances.

completion of the house exceed fifty per cent. of the value of the work done up to that time on the construction of the house including the value of the interest of the person to whom the advance is made in the site thereof : Sect. 1, n.

(f) A person shall not, by reason only of the fact that an advance is made to him under that Act, be disqualified from being elected as or being a member of the local authority by whom the advance is made or any committee of such local authority."

By sect. 49 of the Housing, Town Planning, etc., Act, 1919,⁷ "the following amendments shall be made in the " present Act . . .⁸ :—“(d) A receipt under seal in the form set out in Part I. of the Fourth Schedule to this Act (with such variations and additions (if any) as may be thought expedient) endorsed on, or written at the foot of, or annexed to, a mortgage for money advanced under the Act which states the name of the person who pays the money and is executed by a local authority shall, without any re-conveyance, re-assignment or release, operate as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, and shall have such further operation as is specified in Part II. of that Schedule : Provided that (a) nothing in this provision shall affect the right of any person to require the re-conveyance, re-assignment, surrender, release, or transfer to be executed in lieu of a receipt; and (b) the receipt shall not be liable to stamp duty and shall be granted free of cost to the person who pays the money."

**Endorsed
receipts.**

Parts I. and II. of Sched. IV. of the Act of 1919,⁹ headed respectively "Form of Endorsed Receipt" and "Effect of Endorsed Receipt," are as follows :—

I. "The local authority of _____ hereby acknowledge that they have this day of _____ 19____, received the sum of £ _____ representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by an indenture of further charge dated, &c., or otherwise as required] together with all interest and costs, the payment having been made by _____ of [&c.] and _____ of [&c.] out of money in their hands properly applicable for the discharge of the mortgage [or otherwise as required]. In witness &c."

II. "(1) Any such receipt shall operate—(a) In the case of land in fee simple comprised in the mortgage, as a conveyance or re-conveyance (as the case may be) of the land to the person (if any) who immediately before the execution of the receipt was entitled in fee simple to the equity of redemption, or otherwise to the mortgagor in fee simple to the uses (if any) upon the trusts subject to the powers and provisions which at that time are subsisting or capable of taking effect with respect to the equity of redemption or to uses (if any) which correspond as nearly as may be with the limitations then affecting the equity of redemption; (b) In the case of other property, as an assignment or re-assignment (as the case may be) thereof to the extent of the interest which is the subject-matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption :

Provided that (except as hereinafter mentioned) where, by the receipt, the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, then, unless it is otherwise expressly provided, the receipt shall operate as if the mortgage had been a statutory mortgage and the benefit thereof had, by deed expressed to be made by way of statutory transfer of mortgage, been transferred to him; but this provision shall not apply where the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, unless it is expressly provided that the receipt is to operate as a transfer.

(2) Nothing in this Schedule shall confer on a mortgagor a right to keep alive a mortgage, paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt shall not operate as a transfer.

(3) In any such receipt the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee.

(4) Where a mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient if the receipt refers either to all the

(7) 9 & 10 Geo. V. c. 35, s. 49.

(8) As to s. 49 (a), see footnote (2), *ante*, p. 1082. The amendments effected by (b)

and (c) (as to rates of interest) are now spent: see footnote (10), *post*, p. 1084.

(9) 9 & 10 Geo. V. c. 35, Sched. IV.

Sect. 1, n.

deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

Rate of interest.

(5) In this schedule the expressions ' mortgage ' ' mortgage money ' ' mortgagor ' and ' mortgagee ' have the same meanings as in the Conveyancing Act, 1881."

By sect. 5 of the Housing Act, 1921,¹⁰ " the rate of interest on advances under " the present section " shall, as regards advances made and expenses incurred after the commencement of this Act,¹¹ be such rate as the Minister may, with the approval of the Treasury, from time to time by order fix, and different rates of interest may be fixed for different purposes and in different cases." By Order of the 14th August, 1923, the rate was fixed at 5 per cent.¹²

Procedure for obtaining advance.

Sect. 2. Before making an advance under this Act in respect of a house a local authority shall be satisfied—(a.) that the applicant for the advance is resident or intends to reside in the house, and is not already the proprietor within the meaning of this Act of a house to which the statutory conditions apply; and (b.) that the value of the ownership of the house is sufficient; and (c.) that the title to the ownership is one which an ordinary mortgagee would be willing to accept; and (d.) that the house is in good sanitary condition and good repair; and (e.) that the repayment to the local authority of the advance is secured by an instrument vesting the ownership (including any interest already held by the purchaser) in the local authority subject to the right of redemption by the applicant, but such instrument shall not contain anything inconsistent with the provisions of this Act.

Conditions affecting house purchased by means of advance.

Sect. 3.—(1.) Where the ownership of a house has been acquired by means of an advance under this Act, the house shall, until such advance with interest has been fully paid, or the local authority have taken possession or ordered a sale under this Act, be held subject to the following conditions (in this Act referred to as the statutory conditions), that is to say:—(a.) Every sum for the time being due in respect of principal or of interest of the advance shall be punctually paid: (b.) The proprietor of the house shall reside in the house: (c.) The house shall be kept insured against fire to the satisfaction of the local authority, and the receipts for the premiums produced when required by them: (d.) The house shall be kept in good sanitary condition and good repair: (e.) The house shall not be used for the sale of intoxicating liquors, or in such a manner as to be a nuisance to adjacent houses: (f.) The local authority shall have power to enter the house by any person, authorised by them in writing for the purpose, at all reasonable times for the purpose of ascertaining whether the statutory conditions are complied with.

(2.) The proprietor of the house may with the permission of the local authority (which shall not be unreasonably withheld) at any time transfer his interest in the house, but any such transfer shall be made subject to the statutory conditions.

(3.) Where default is made in complying with the statutory condition as to residence, the local authority may take possession of the house, and where default is made in complying with any of the other statutory conditions, whether the statutory condition as to residence has or has not been complied with, the local authority may either take possession of the house, or order the sale of the house without taking possession.

(4.) In the case of the breach of any condition other than that of punctual payment of the principal and interest of the advance, the authority shall, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor, call on the proprietor to comply with the condition, and if the proprietor—(a.) within fourteen days after the delivery of the notice gives an undertaking in writing to the authority to comply with the notice; and (b.) within two months after the delivery of the notice complies therewith, shall not take possession or order a sale, as the case may be.

(5.) In the case of the bankruptcy of the proprietor of the house, or in the case of a deceased proprietor's estate being administered in bankruptcy under sect. 125 of the Bankruptcy Act, 1883,¹ the local authority may either take possession of the house or order the sale of the house without taking possession, and shall do so except in pursuance of some arrangement to the contrary with the trustee in bankruptcy.

(10) 11 & 12 Geo. V. c. 19, s. 5.

(11) Royal Assent, 1st July, 1921.

(12) S. R. O. No. 940 (set out in 21 L. G. R. (Orders) 167), modifying S. R. O. 1921

(No. 1385), and S. R. O. 1922 (No. 439).

(1) 46 & 47 Vict. c. 52, s. 125. Now repealed and replaced by 4 & 5 Geo. V. c. 59, s. 130. See also s. 7 (3), *post*, p. 1086.

Sect. 4.—(1.) Where the ownership of a house has been acquired by means of an advance under this Act, the person who is the proprietor shall be personally liable for the repayment of any sum due in respect of the advance until he ceases to be proprietor, by reason of a transfer made in accordance with this Act.

Sect. 4.
Provision as to personal liability and powers of proprietor.

(2.) The provisions of this Act requiring the permission of the local authority to the transfer of the proprietor's interest in a house under this Act shall not apply to any charge on that interest made by the proprietor, so far as the charge does not affect any rights or powers of the local authority under this Act.

Sect. 5.—(1.) Where a local authority take possession of a house, all the estate, right, interest, and claim of the proprietor in or to the house shall, subject as in this section mentioned, vest in and become the property of the local authority, and that authority may either retain the house under their own management or sell or otherwise dispose of it as they think expedient.

Recovery of possession and disposal of house.

(2.) Where a local authority take possession of a house they shall, save as hereinafter mentioned, pay to the proprietor either—(a.) such sum as may be agreed upon; or (b.) a sum equal to the value of the interest in the house at the disposal of the local authority, after deducting therefrom the amount of the advance then remaining unpaid and any sum due for interest; and the said value, in the absence of a sale and in default of agreement, shall be settled by a county court judge as arbitrator, or if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge, and the Arbitration Act, 1889,² shall apply to any such arbitration.

(3.) The sum so payable to the proprietor, if not paid within three months after the date of taking possession, shall carry interest at the rate of three per cent. per annum from the date of taking possession.

(4.) All costs of or incidental to the taking possession, sale, or other disposal of the house (including the costs of the arbitration, if any) incurred by the local authority, before the amount payable to the proprietor has been settled either by agreement or arbitration, shall be deducted from the amount otherwise payable to the proprietor.

(5.) Where the local authority are entitled under this Act to take possession of a house, possession may be recovered (whatever may be the value of the house) by or on behalf of the local authority either under sects. 138 to 145 of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be recovered as if the local authority were the landlord and the proprietor of the house were the tenant.

Note.

The warrant for possession, under the Act of 1838,³ cannot be enforced before twenty-one days after its issue, and its issue cannot be postponed for ten days on condition that the tenant gives up possession in the meantime.⁴

Warrant for possession.

Sect. 6.—(1.) Where a local authority order the sale of a house without taking possession, they shall cause it to be put up for sale by auction, and out of the proceeds of sale retain any sum due to them on account of the interest or principal of the advance, and all costs, charges, and expenses properly incurred by them in or about the sale of the house, and pay over the balance (if any) to the proprietor.

Procedure as to ordering sale.

(2.) If the local authority are unable at the auction to sell the house for such a sum as will allow of the payment out of the proceeds of sale of the interest and principal of the advance then due to the authority, and the costs, charges, and expenses aforesaid, they may take possession of the house in manner provided by this Act, but shall not be liable to pay any sum to the proprietor.

Sect. 7.—(1.) An advance may be made to an applicant who intends to reside in a house, as if he were resident, if he undertakes to begin his residence therein within such period not exceeding six months from the date of the advance, as the local authority may fix, and in that case the statutory condition requiring residence shall be suspended during that period.

Suspension of condition as to residence.

(2.) The local authority may allow a proprietor to permit, by letting or otherwise, a house to be occupied as a furnished house by some other person during a period not exceeding four months in the whole in any twelve months, or during

(2) 52 & 53 Vict. c. 49. As to this Act, see ante, pp. 484 et seq.

(4) *Reg. v. Hopkins* (1900, Q. B. D.), 64 J. P. 454.

(3) 1 & 2 Vict. c. 74.

Sect. 7.

absence from the house in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, and the condition requiring residence shall be suspended while the permission continues.

(3.) Where the proprietor of a house subject to statutory conditions dies, the condition requiring residence shall be suspended until the expiration of twelve months from the death, or any earlier date at which the personal representatives transfer the ownership or interest of the proprietor in the course of administration; and where the proprietor of any such house becomes bankrupt, or his estate is administered in bankruptcy under sect. 125 of the Bankruptcy Act, 1883,⁵ and in either case an arrangement under this Act is made with the trustee in bankruptcy, the condition as to residence shall, if the local authority think fit, be suspended during the continuance of the arrangement.⁶

List of
advances.

Sect. 8.—(1.) A local authority shall keep at their offices a book containing a list of any advances made by them under this Act, and shall enter therein with regard to each advance—(i.) a description of the house in respect of which the advance is made; (ii.) the amount advanced; (iii.) the amount for the time being repaid; (iv.) the name of the proprietor for the time being of the house; and (v.) such other particulars as the local authority think fit to enter.

(2.) The book shall be open to inspection at the office of the local authority during office hours free of charge.

Local authorities and rates.

Sect. 9.—(1.) A local authority for the purpose of this Act shall be the council of any county or county borough; and if the council of any urban district not being a county borough, or of any rural district, pass a resolution undertaking to act under this Act, that council shall, subject in the case of the council of a district containing a population according to the last census for the time being of less than ten thousand to the consent of the county council, be the local authority in that district for the purpose of this Act to the exclusion of any other authority: Provided that, if the council of any district are dissatisfied with any refusal or failure of the county council to give their consent, they may appeal to the [Minister of Health], and the [Minister] may, if [he thinks] fit, give [his] consent, and the consent so given shall have the same effect as the consent of the county council.

(2.) Where the council of an urban or rural district becomes the local authority for the purposes of this Act, all the powers, rights, and liabilities of the county council in respect of advances already made by them under this Act for the purchase of the ownership of any house in the district shall vest in the council of the urban or rural district, subject to the payment by that council to the county council of the outstanding principal and interest of any such advance.

(3.) All expenses of a local authority in the execution of this Act shall be paid in the case of a county out of the county rate, and in the case of a county borough, out of the borough fund or borough rate, and in the case of any urban or rural district out of any fund or rate applicable to the general purposes of the Public Health Acts;⁷ but no sum shall be raised in any urban or rural district the council of which becomes a local authority for the purposes of this Act on account of the expenses of a county council under this Act.

(4.) If in any local financial year the expenses payable by a council and not reimbursed by the receipts under this Act exceed in a county a sum equal to one halfpenny, and in a county borough or urban or rural district a sum equal to one penny in the pound upon the rateable value of the county, county borough, or district, deducting in the case of a county the rateable value of any urban or rural district in the county, the council of which have become a local authority under this Act, no further advance under this Act shall be made by that council, until the expiration of five years after the end of that financial year or if those expenses at that date exceed one halfpenny or one penny in the pound, as the case may be, on the rateable value for the time being, until they fall below such sum.

(5.) A local authority may borrow for the purposes of this Act in like manner as they may borrow, in the case of a county council for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough for the purpose of sect. 106 of the Municipal Corporations Act, 1882, and in the case of an urban or rural district council for the purpose of the Public Health Acts,⁸ and those Acts shall apply accordingly with the necessary modifications.

(5) See footnote (1), *ante*, p. 1084.

(6) See also H., etc., Act, 1923, s. 22 (a) and (c), quoted in Note to s. 1, *ante*, p. 1082.

(7) See P. H. Act, 1875, ss. 209, 210 (urban

districts), 229, 230 (rural districts), *ante*, pp. 566, 606.

(8) See P. H. Act, 1875, ss. 233, 234, *ante*, p. 613.

(6.) Money borrowed under this Act shall not, in the case of a county council, be reckoned as part of the total debt of a county for the purposes of sect. 69 (2) of the Local Government Act, 1888, and shall not, in the case of an urban or rural district council, be reckoned as part of their debt for the purpose of the limitation on borrowing under sect. 234 (2) of the Public Health Act, 1875.

(7.) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875, lend any money which may be borrowed by a local authority for the purposes of this Act.

(8.) Any capital money received or retained by a local authority in payment or discharge of any advance under this Act, or in respect of the sale or other disposal of any house taken possession of under this Act, shall be applied, with the sanction of the [Minister of Health], either in repayment of debt or for any other purpose to which capital money may be applied.

(9.) Separate accounts shall be kept by every local authority of their receipts and expenditure under this Act.

(10.) In the application of this Act to the county of London any sanitary authority—(a.) shall have the same powers as an urban district council, and the expenses of such authority shall be paid out of the general rate or in the case of the City of London out of the consolidated rate; and (b.) may borrow in like manner as they can borrow for the purposes of the Metropolis Management Acts, 1855 to 1893; and those Acts shall apply with the necessary modifications.

Sect. 10.—(1.) A person shall not be deemed for the purposes of this Act to be resident in a house unless he is both the occupier of and resident in that house.

Sect. 9.
Local authorities and rates—
continued.

Residence and
ownership.

(2.) For the purposes of this Act “ownership” shall be such interest or combination of interests in a house as, together with the interest of the purchaser of the ownership, will constitute either a fee simple in possession or a leasehold interest in possession of at least sixty years unexpired at the date of the purchase.

(3.) Where the ownership of a house is acquired by means of an advance under this Act, the purchaser of the ownership, or, in the case of any devolution or transfer, the person in whom the interest of the purchaser is for the time being vested, shall be the proprietor of the house for the purposes of this Act.

Sects. 11 to 15. [Scotland and Ireland].

Sect. 16. This Act may be cited as the Small Dwellings Acquisition Act, 1899.

Short title.

Scheds. * * * 9

(9) The Schedules contain forms for certificates to be given by clerks to local authorities in Scotland under s. 11 of the present Act.

THE HOUSING OF THE WORKING CLASSES ACT, 1900.

63 & 64 VICT. c. 59.

An Act to amend Part III. of the Housing of the Working Classes Act, 1890.
[8th August, 1900.]

Exercise of powers outside district.

Sect. 1. Where any council, other than a rural district council, have adopted Part III. of the Housing of the Working Classes Act, 1890 (in this Act referred to as "the principal Act"), they may, for supplying the needs of their district, establish or acquire lodging houses for the working classes under that Part outside their district.¹

Sect. 2. [*Adoption of Part III. of Act by rural district council.*]

Note.

Repeals.

The present section was repealed by sect. 75 and Sched. VI. of the Act of 1909, Part III. of the principal Act being no longer "adoptive."¹

Subsect. (3) of the present section repealed the following portions of the principal Act, which were mentioned in the Schedule :—The proviso to sect. 54, sect. 55, and, in sect. 65, the words from "and save where" to "bear such expenses," and the words "at the time of the publication of the certificate" and "who publish the same." The Schedule was repealed by the Statute Law Revision Act, 1908, but not so as to revive the repealed enactments.

Provisions as to metropolitan borough councils.

Sect. 3.—(1.) Any expenses incurred by the council of a metropolitan borough under Part III. of the principal Act, whether within or without the borough, shall be defrayed as part of the ordinary expenses of the council, and in that Act the expressions "district," "local authority," and "local rate" shall, for the purposes of Part III. of the Act, include a metropolitan borough, the council of the borough, and the general rate of the borough.

(2.) Where the council of a metropolitan borough adopt Part III. of the principal Act, the power of the council to borrow for the purposes of that Part shall be exercisable in the like manner and subject to the like conditions as the power of the council to borrow for the purposes of Part II. of that Act.¹

Account.

Sect. 4. Where land acquired by a council under Part III. of the principal Act is appropriated for the purpose of re-housing persons displaced by the council under the powers of any other Part of that Act or of any other enactment, the receipts and expenditure in respect of that land (including all costs in respect of the acquisition and laying out of the land), and of any buildings erected thereon, may be treated as receipts and expenditure under that Part or enactment, but shall be accounted for under a separate head.

Short title and extent.

Sect. 5. [*Leases by local authority for building lodging houses.*²]

Sect. 6. [*Powers of county council to act on default of rural council.*³]

Sect. 7. [*Arbitration as to acquisition of land.*⁴]

Sect. 8.—(1.) This Act may be cited as the Housing of the Working Classes Act, 1900, and the Housing of the Working Classes Acts, 1890 to 1894, and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1900.⁵

SCHEDULE.

Note.

Repeals.

For the enactments repealed by the present Schedule and sect. 2, see the Note to that section.

(1) Part III. is no longer adoptive: see footnote (4), ante, p. 1069.

(2) Repealed by H. T. P. Act, 1919, s. 50, Sched. V. See, now, s. 15 of that Act, post, p. 1136.

(3) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See, now, ss. 12 and 13 of that Act, post, p. 1098.

(4) Repealed by *ibid.* See, now, s. 2, post, p. 1094.

(5) As to citation of Housing Acts, see Note to H. W. C. Act, 1890, s. 1, ante, p. 1043. Sub-sect. (2) relates to Scotland and Ireland.

THE HOUSING OF THE WORKING CLASSES ACT, 1903.

3 EDW. VII. c. 39.

An Act to amend the Law relating to the Housing of the Working Classes.
[14th August, 1903.]

General Amendments of Law.

Sect. 1.—(1.) The maximum period which may be sanctioned as the period for which money may be borrowed by a local authority for the purposes of the Housing of the Working Classes Act, 1890 (in this Act referred to as “ the principal Act ”), or any Acts amending it, shall be eighty years, and as respects money so borrowed eighty years shall be substituted for sixty years in sect. 234 of the Public Health Act, 1875. Maximum term for repayment of loans.

(2.) Money borrowed under the principal Act or any Acts (including this Act) amending it (in this Act collectively referred to as the Housing Acts) shall not be reckoned as part of the debt of the local authority for the purposes of the limitation on borrowing under sect. 234 (2) and (3) of the Public Health Act, 1875.

Note.

As to loans for the improvement of unhealthy areas,¹ the improvement of unhealthy dwelling-houses,² and the provision of working-class lodging-houses,³ see the enactments referred to below. Loans.

The provisions of the Public Health Act, 1875,⁴ with respect to loans are applied to loans raised for these purposes.

Sect. 2.—(1.) His Majesty may by Order in Council assign to the Local Government Board any powers and duties of the Secretary of State under the Housing Acts, or under any scheme made in pursuance of those Acts, and the powers of the Secretary of State under any local Act, so far as they relate to the housing of the working classes, and any such powers and duties so assigned shall become powers and duties of the Local Government Board. Transfer of powers and duties of Home Office to Local Government Board.

(2.) Sect. 11 of the Board of Agriculture Act, 1889,⁵ shall apply with respect to the powers and duties transferred under this section as it applies with respect to the powers and duties transferred under that Act, with the substitution of the Local Government Board for the Board of Agriculture and of the date of the transfer under this section for the date of the establishment of the Board of Agriculture.

Note.

By an Order in Council of the 27th February, 1905, “ all the powers and duties of the Secretary of State under the Housing Acts or under any scheme made in pursuance of those Acts, and the powers of the Secretary of State under any local Act, so far as they relate to the housing of the working classes ” were transferred to the Local Government Board (now Minister of Health) as from the 1st March, 1905. The Ministry of Health Act, 1919, will be found elsewhere.⁶ Order in Council.

The functions of the Secretary of State under the principal Act were entirely confined to London.

Sect. 3. Where under the powers given after the date of the passing of the * Act by any local Act or provisional order, or order having the effect of an Act, any land is acquired, whether compulsorily or by agreement, by any authority, company, or person, or where after the date of the passing of this Act any land is so acquired compulsorily under any general Act (other than the Housing Acts), the provisions set out in the Schedule to this Act shall apply with respect to the provision of dwelling accommodation for persons of the working class. Re-housing obligations when land is taken under statutory powers.

* *Sic.*

(1) See s. 25, *ante*, p. 1053.
(2) See s. 43, and Act of 1894, cited in Note, *ante*, p. 1065.
(3) See s. 66, *ante*, p. 1072.
(4) See ss. 233 *et seq.*, *ante*, p. 613.
(5) 52 & 53 Vict. c. 30, s. 11. This enact-

ment deals with the construction of documents referring to bodies whose powers were transferred to the Board of Agriculture, now Minister of Agriculture and Fisheries: see *post*, Vol. II., p. 2344.
(6) *Post*, Vol. II., p. 2305.

Sect. 3, n.

Note.

Standing Orders.

The Standing Orders of Parliament require a statement to be deposited with respect to the persons of the working class residing in an area proposed to be taken under a Bill containing, reviving, or extending power to take land, when thirty or more of such persons reside in the area.⁶

Re-housing schemes.

Further as to re-housing schemes, see sect. 40 of the principal Act, and sect. 8 (3) of the Act of 1923.⁷

Amendments as to Schemes.

Provisions on failure of local authority to make a scheme.

Sect. 4.—(1.) If, on the report made to the confirming authority on an inquiry directed by them under sect. 10 of the principal Act, that authority are satisfied that a scheme ought to have been made for the improvement of the area to which the inquiry relates, or of some part thereof, they may, if they think fit, order the local authority to make such a scheme, either under Part I. of the principal Act, or, if the confirming authority so direct, under Part II. of that Act, and to do all things necessary under the Housing Acts for carrying into execution the scheme so made, and the local authority shall accordingly make a scheme or direct a scheme to be prepared as if they had passed the resolution required under sect. 4 or sect. 39 of the principal Act, as the case may be, and do all things necessary under the Housing Acts for carrying the scheme into effect.

Any such order of the confirming authority may be enforced by mandamus.

(2.) Any [four or more local government electors in ⁸] the district shall have the like appeal under sect. 16 of the principal Act as is given to the [four or more local government electors ⁸] who have made the complaint to the medical officer of health mentioned in that section.

Note.

Representations and complaints.

As to representations and complaints, see sects. 4, 5, 10, 16, 38, and 39 (8) of the principal Act, and sects. 10 and 11 of the Act of 1909.

Amendment of procedure for confirming improvement scheme.

Sect. 5.—(1.) * * * ⁹

(2.) The order of a confirming authority under sect. 8 (4) of the principal Act shall, notwithstanding anything in that section, take effect without confirmation by Parliament. . . .¹⁰

(3.) For the purposes of the principal Act, the making of an order by a confirming authority, which takes effect under this section without confirmation by Parliament, shall have the same effect as the confirmation of the order by Act of Parliament, and any reference to a provisional order, made under sect. 8 of the principal Act, shall include a reference to an order which so takes effect without confirmation by Parliament.

Note.

As to confirmation of reconstruction schemes, see sect. 39 of the principal Act, and the Note thereto.¹¹

Amendment as to scheme of reconstruction.

Sect. 6. [*Power to modify schemes in certain cases.*^{11a}]

Sect. 7. Where a scheme for reconstruction under Part II. of the principal Act is made, neighbouring lands may be included in the area comprised in the scheme if the local authority under whose direction the scheme is made are of opinion that that inclusion is necessary for making their scheme efficient, but the provision of sect. 41 (2), as to the exclusion of any additional allowance in respect of compulsory purchase, shall not apply in the case of any land so included.

Amendments as to Closing Orders, Demolition, etc.

Sect. 8. [*Amendment of procedure for closing orders.*¹²]

Sect. 9. Where the amount realised by the sale of materials under sect. 34 of the principal Act is not sufficient to cover the expenses incident to the taking

Power to recover cost of demolition.

(6) See *post*, Vol. II., Part V., under heading "COMPULSORY PURCHASE, Housing."

(7) *Ante*, p. 1062, and *post*, p. 1179.

(8) See footnote (9), *ante*, p. 1047.

(9) Words amending s. 7 of principal Act, repealed by H. T. P. Act, 1919, s. 50, Sched. V.

(10) Words limiting non-necessity for confirmation, repealed by H. T. P. Act, 1909, ss. 24 (1), 75, Sched. VI. For s. 24 (2), see

Note to s. 39 of principal Act, *ante*, p. 1062.

(11) *Ante*, p. 1061.

(11a) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See s. 25 of that Act, *post*, p. 1107.

(12) Repealed by *ibid.* As to closing orders now, see H. T. P. Act, 1909, s. 17, *post*, p. 1101.

down and removal of a building, the local authority may recover the deficiency from the owner of the building as a civil debt in manner provided by the Summary Jurisdiction Acts, or under the provisions of the Public Health Acts relating to private improvement expenses.¹³

Sect. 10. Where default is made as respects any dwelling-house in obeying a closing order . . .¹⁴, possession of the house may be obtained (without prejudice to the enforcement of any penalty under that provision), whatever may be the value or rent of the house, by or on behalf of the owner or local authority, either under sects. 138 to 145 of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be obtained as if the owner or local authority were the landlord.

Any expenses incurred by a local authority under this section may be recovered from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

Miscellaneous.

Sect. 11.—(1.) Any power of the local authority under the Housing Acts, or under any scheme made in pursuance of any of those Acts, to provide dwelling accommodation or lodging-houses, shall include a power to provide and maintain, with the consent of the [Minister of Health], and, if desired, jointly with any other person, in connection with any such dwelling accommodation or lodging-houses, any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the [Minister of Health] will serve a beneficial purpose in connection with the requirements of the persons for whom the dwelling accommodation or lodging-houses are provided, and to raise money for the purpose, if necessary, by borrowing.¹⁵

(2.) The [Minister of Health] may, in giving [his] consent to the provision of any land or building under this section, by order apply, with any necessary modifications, to such land or building any statutory provisions which would have been applicable thereto if the land or building had been provided under any enactment giving any local authority powers for the purpose.

Sect. 12. Sect. 75 of the principal Act (which relates to the condition to be implied on letting houses for the working classes) shall, as respects any contract made after the passing of this Act, take effect notwithstanding any agreement to the contrary, and any such agreement made after the passing of this Act shall be void.

Sect. 13. * * * 16

(2.) Any document referred to in sect. 87 of the principal Act shall be deemed to be sufficiently served upon the local authority if addressed to that authority or their clerk at the office of that authority and sent by post in a registered letter.¹⁷

Special Provisions as to London.

Sect. 14. The council of a metropolitan borough may, if they think fit, pay or contribute towards the payment of any expenses of the London County Council under sect. 46 (5) of the principal Act in connection with a scheme of reconstruction, and borrow any money required by them for the purpose under subsect. (2) of the said section; but an order under subsect. (6) shall not be necessary except in cases of disagreement between the county council and the council of the borough.¹⁸

Sect. 15. [Provisions consequential on extension of period for repayment of loans.¹⁹]

Sect. 16. [*Substitution of Secretary of State for Local Government Board.*²⁰]

Supplemental.

Sect. 17.—(1.) This Act may be cited as the Housing of the Working Classes Act, 1903, and the Housing of the Working Classes Acts, 1890 to 1900, and this Act,

(13) As to the recovery of private improvement expenses, see P. H. Act, 1875, ss. 213-215, 251, 257, and 261, *ante*, pp. 594, 649, 673, and 699.

(14) Reference to repealed s. 32 of Act of 1890, repealed by H. T. P. Act, 1909, s. 75, Sched. VI. See now s. 17 of that Act, *post*, p. 1101.

(15) See *Conron's Case*, *post*, p. 1136 (22).

(16) As to service on owners, repealed by Housing, etc., Act, 1923, s. 24, Sched. III. See s. 15 of that Act and Note, *post*, p. 1181.

(17) As to right to prove non-receipt in fact, see the *Westminster Case*, *ante*, p. 710 (18).

(18) As to mode of contribution, see H. T. P. Act, 1909, s. 33, *post*, p. 1109. Further as to London, see H. W. C. Act, 1890, s. 46, *ante*, p. 1066.

(19) Eighty years substituted for sixty in 32 & 33 Vict. c. 102, s. 27, and "such sum as will be sufficient, with compound interest, to repay the money borrowed within such period, not exceeding 80 years, as may be sanctioned by the L.C.C.," substituted for "£2 per cent." in 18 & 19 Vict. c. 120, s. 190.

(20) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

Sect. 9.

Recovery of possession from occupying tenants in pursuance of closing orders.

Powers in connection with provision of dwelling accommodation or lodging-houses.

Condition in contracts for letting houses for the working classes.

Service of notices.

Agreements between London County Council and metropolitan borough councils.

Short title and extent.

Sect. 17. may be cited together as the Housing of the Working Classes Acts, 1890 to 1903.²⁰

(2.) This Act shall not extend to [*Scotland or* ²¹] Ireland.

SCHEDULE.

Sections 3, 16.

(1.) If in the administrative county of London or in any borough or urban district, or in any parish not within a borough or urban district, the undertakers have power to take under the enabling Act working-men's dwellings occupied by thirty or more persons belonging to the working class, the undertakers shall not enter on any such dwellings in that county, borough, urban district, or parish, until the [Minister of Health has] either approved of a housing scheme under this schedule or [has] decided that such a scheme is not necessary.

For the purposes of this schedule a house shall be considered a working-man's dwelling if wholly or partially occupied by a person belonging to the working classes, and for the purpose of determining whether a house is a working-man's dwelling or not, and also for determining the number of persons belonging to the working classes by whom any dwelling-houses are occupied, any occupation on or after the fifteenth day of December next before the passing of the enabling Act, or, in the case of land acquired compulsorily under a general Act without the authority of an order, next before the date of the application to the [Minister of Health] under this schedule, for [his] approval of or decision with respect to a housing scheme, shall be taken into consideration.

(2.) The housing scheme shall make provision for the accommodation of such number of persons of the working class as is, in the opinion of the [Minister of Health], taking into account all the circumstances, required, but that number shall not exceed the aggregate number of persons of the working class displaced; and in calculating that number the [Minister of Health] shall take into consideration not only the persons of the working class who are occupying the working-men's dwellings which the undertakers have power to take, but also any persons of the working class who, in the opinion of the [Minister of Health], have been displaced within the previous five years in view of the acquisition of land by the undertakers.

(3.) Provision may be made by the housing scheme for giving undertakers who are a local authority, or who have not sufficient powers for the purpose, power for the purpose of the scheme to appropriate land or to acquire land, either by agreement or compulsorily under the authority of a provisional order, and for giving any local authority power to erect dwellings on land so appropriated or acquired by them, and to sell or dispose of any such dwellings, and to raise money for the purpose of the scheme as for the purposes of Part III. of the principal Act, and for regulating the application of any money arising from the sale or disposal of the dwellings; and any provisions so made shall have effect as if they had been enacted in an Act of Parliament.

(4.) The housing scheme shall provide that any lands acquired under that scheme shall, for a period of twenty-five years from the date of the scheme, be appropriated for the purpose of dwellings for persons of the working class, except so far as the [Minister of Health dispenses] with that appropriation; and every conveyance, demise, or lease of any such land shall be endorsed with notice of this provision, and the [Minister of Health] may require the insertion in the scheme of any provisions requiring a certain standard of dwelling-house to be erected under the scheme, or any conditions to be complied with as to the mode in which the dwelling-houses are to be erected.

(5.) If the [Minister of Health does] not hold a local inquiry with reference to a housing scheme, [he] shall, before approving the scheme, send a copy of the draft scheme to every local authority, and shall consider any representation made within the time fixed by the [Minister] by any such authority.

(6.) The [Minister of Health] may, as a condition of [his] approval of a housing scheme, require that the new dwellings under the scheme, or some part of them, shall be completed and fit for occupation before possession is taken of any working-men's dwellings under the enabling Act.

(7.) Before approving any scheme the [Minister of Health] may if [he thinks] fit require the undertakers to give such security as the [Minister considers] proper for carrying the scheme into effect.

(20) As to citation of Housing Acts, see Note to H. W. C. Act, 1890, s. 1, *ante*, p. 1043.

(21) Repealed by H. T. P. Act, 1909, s. 75, Sched. VI.

(8.) The [Minister of Health] may hold such inquiries as [he thinks] fit for the purpose of [his] duties under this schedule, and sect 87 (1) and (5) of the Local Government Act, 1888 (which relate to local inquiries),²² shall apply for the purpose, and where the undertakers are not a local authority shall be applicable as if they were such an authority. Sched.

(9.) If the undertakers enter on any working-men's [dwellings²³] in contravention of the provisions of this schedule, or of any conditions of approval of the housing scheme made by the [Minister of Health], they shall be liable to a penalty not exceeding five hundred pounds in respect of every such dwelling :

Any such penalty shall be recoverable by the [Minister of Health] by action in the High Court and shall be carried to and form part of the Consolidated Fund.

(10.) If the undertakers fail to carry out any provision of the housing scheme, the [Minister of Health] may make such order as [he thinks] necessary or proper for the purpose of compelling them to carry out that provision, and any such order may be enforced by mandamus.

(11.) The [Minister of Health] may, on the application of the undertakers, modify any housing scheme which has been approved by [him] under this schedule, and any modifications so made shall take effect as part of the scheme.

(12.) For the purposes of this schedule—

(a.) The expression “undertakers” means any authority, company, or person who are acquiring land compulsorily or by agreement under any local Act or provisional order or order having the effect of an Act, or are acquiring land compulsorily under any general Act :

(b.) The expression “enabling Act” means any Act of Parliament or order under which the land is acquired :

(c.) The expression “local authority” means the council of any administrative county and the district council of any county district, or, in London, the council of any metropolitan borough, in which in any case any houses in respect of which the re-housing scheme is made are situated, or in the case of the city the common council :

(d.) The expression “dwelling” or “house” means any house or part of a house occupied as a separate dwelling :

(e.) The expression “working class” includes mechanics, artisans, labourers, and others working for wages; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any cases does not exceed an average of [three pounds²⁴] a week, and the families of any of such persons who may be residing with them.²⁵

(22) *Post*, Vol. II., p. 1951.

(23) Substituted for “dwelling” by Housing, etc., Act, 1923, s. 16, Sched. II.

(24) Substituted for 30s. by Housing, etc.,

Act, 1923, s. 16, Sched. II.

(25) Further as to the meaning of “working class,” see *ante*, pp. 1045, 1046.

THE HOUSING, TOWN PLANNING, ETC. ACT, 1909.

9 EDW. VII. c. 44.

An Act to amend the Law relating to the Housing of the Working Classes, to provide for the making of Town Planning schemes, and to make further provision with respect to the appointment and duties of County Medical Officers of Health, and to provide for the establishment of Public Health and Housing Committees of County Councils.

[3rd December, 1909.]

PART I.

HOUSING OF THE WORKING CLASSES.

FACILITIES FOR ACQUISITION OF LANDS AND OTHER PURPOSES OF THE HOUSING ACTS.

Part III. of the principal Act to take effect without adoption.
Provisions as to acquisition of land under Part. III. of the principal Act.

Sect. 1. Part III. of the Housing of the Working Classes Act, 1890 (in this Part of this Act referred to as the principal Act),¹ shall, after the commencement of this Act, extend to and take effect in every urban or rural district or other place for which it has not been adopted, as if it had been so adopted.

Sect. 2.—(1) A local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the principal Act, by means of an order submitted to the [Minister of Health] and confirmed by the [Minister] in accordance with the First Schedule to this Act.

(2) The procedure under this section for the compulsory purchase of land shall be substituted for the procedure for the same purpose under sect. 176 of the Public Health Act, 1875, as applied by sect. 57 (1) of the principal Act.²

(3) A local authority may, with the consent of and subject to any conditions imposed by the [Minister of Health], acquire land by agreement for the purposes of Part III. of the principal Act, notwithstanding that the land is not immediately required for those purposes.

Note.

Acquisition of land.

The power to purchase land compulsorily under sect. 176 of the Public Health Act, 1875, could only be obtained by provisional order of the Local Government Board, which needed confirmation by Parliament. Under the present section such confirmation is unnecessary (except in certain cases, *e.g.*, commons and open spaces under sect. 73 of the present Act): see Sched. I., *post*. The Housing (Compulsory Purchase) Regulations of 1919 prescribe the procedure to be followed.³ Sect. 45 of the present Act contains exemptions of certain lands from compulsory purchase. The power given by subsect. (3) to acquire land in anticipation of necessities is a new provision which will be found useful in practice. Purchases by agreement are still governed by sect. 57 of the principal Act and sects. 175 to 178 of the Public Health Act, 1875,⁴ so far as they relate to such purchases.

Entry.

As to the power of entry on land acquired, see sect. 10 of the Housing, Town Planning, etc., Act, 1919.⁵

Loans by Public Works Loan Commissioners to local authorities.

Sect. 3. Where a loan is made by the Public Works Loan Commissioners to a local authority for any purposes of the Housing Acts—

(a) The loan shall be made at the minimum rate allowed for the time being for loans out of the Local Loans Fund; and

(b) If the [Minister of Health makes] a recommendation to that effect, the period for which the loan is made by the Public Works Loan Commissioners may exceed the period allowed under the principal Act or under any other Act limiting the period for which the loan may be made, but the period shall not exceed the period recommended by the [Minister of Health], nor in any case eighty years; and

(c) As between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest.

(1) See ss. 53-71, *ante*, p. 1069. (4) *Ante*, p. 464.
(2) *Ante*, p. 1069. (5) *Post*, p. 1134.
(3) Set out *post*, Vol. II., Part V., under “COMPULSORY PURCHASE, Housing.”

Note.

Sects. 1 and 15 of the Act of 1903⁶ fixed eighty years as the maximum period for repayment of loans to local authorities for the purpose of the Housing Acts instead of sixty years as fixed by sect. 234 of the Public Health Act, 1875,⁷ and the Metropolitan Board of Works Loans Act, 1869. The present section deals with loans by the Public Works Loan Commissioners to local authorities, the maximum period for repayment of which was previously, under sect. 5 of the principal Act, fifty years. The last Treasury minute, dated the 6th August, 1915, states as to loans by the commissioners for the purposes of the Housing Acts that the rate in the case of local authorities will be $4\frac{1}{2}$ per cent. for any period. The same minute also fixed in respect of loans for the like purposes to "companies and private persons" rates varying according to the period for repayment and to whether the profits were or were not limited as provided by the Treasury minute of the 14th November, 1890, namely: with profits so limited $4\frac{1}{2}$ for thirty years' loans and $4\frac{3}{4}$ for forty years' loans, and with profits not so limited 5 for thirty years' loans and $5\frac{1}{4}$ for forty years' loans.⁸ Further, as to rates of interest, see the Note to sect. 28 of the Housing, Town Planning, etc., Act, 1919.⁹

Loans by the commissioners to societies or companies are governed by sect. 67 of the principal Act,¹⁰ and sect. 4 of the present Act, as regards the conditions and restrictions on borrowing and the period for repayment—see the Notes to these sections.

The present section was modified, with regard to loans for the recoupment of losses, by sect. 7 (4) of the Housing, Town Planning, etc., Act, 1919, now repealed by the Act of 1923 (subject to saving effected by sect. 6 of that Act) and replaced by sects. 1 to 6.¹¹

Sect. 3, n.

Loans.

Recouping losses.

Sect. 4.—(1) Where a loan is made by the Public Works Loan Commissioners under sect. 67 (2) (d), of the principal Act, to a public utility society, the words "two thirds" shall be substituted for the words "one moiety."

(2) * * * ¹²

Sect. 5.—(1) Any purchase money or compensation payable in pursuance of the Housing Acts by a local authority in respect of any lands, estate, or interest of another local authority which would, but for this section, be paid into court in manner provided by the Lands Clauses Acts or by paragraph (20) of the Second Schedule to the principal Act may, if the [Minister of Health consents], instead of being paid into court, be paid and applied as the [Minister determines].

(2) Any such decision of the [Minister] as to the payment and application of any such purchase money or compensation shall be final and conclusive.

Loans by Public Works Loan Commissioners to public utility societies.

Payment of purchase or compensation money (which would otherwise be paid into court) on direction of [Minister of Health].

Note.

For the meaning of the expression "Housing Acts" see the Note to sect. 1 of the principal Act.¹³ The present section is applied to town planning by sect. 60 (1) of the present Act. Sect. 69 of the Lands Clauses Consolidation Act, 1845,¹⁴ provides for payment into court of moneys mentioned in the present section where the amount exceeds £200. Sched. II (20) of the principal Act has been repealed.¹⁵

Payments.

Sect. 6. [*Provision of public streets in connection with exercise of powers under Part III. of the principal Act.*¹⁶]

Sect. 7. [*Expenditure of money for housing purposes in case of settled land.*¹⁷]

Sect. 8. A local authority may accept a donation of land or money or other property for any of the purposes of the Housing Acts, and it shall not be necessary to enrol any assurance with respect to any such property under the Mortmain and Charitable Uses Act, 1888.¹⁸

Donations for housing purposes.

Note.

The present section, besides relieving local authorities from the necessity of enrolling an assurance of land under the Mortmain and Charitable Uses Act, removes any doubt that may have existed as to their right to accept gifts of

Gifts.

(6) *Ante*, pp. 1089, 1091.(7) *Ante*, p. 616.

(8) 13 L. G. R. (Orders) 209.

(9) *Post*, p. 1147.(10) *Ante*, p. 1072.(11) *Post*, p. 1175.(12) Repealed by H. T. P. Act, 1919, s. 50, Sched. V. For new definition of "public utility society," see s. 40 of that Act, *post*,

p. 1149.

(13) *Ante*, p. 1043.(14) *Post*, Vol. II., p. 1579.(15) See Note, *ante*, p. 1080.(16) Repealed by H. T. P. Act, 1919, s. 50, Sched. V. See, now, s. 15 (1) (a) (b) of that Act, *post*, p. 1136.(17) Quoted *ante*, p. 1075.

(18) 51 & 52 Vict. c. 42.

Sect. 8, n.

Mortmain and charitable uses.

money or other property to be laid out in land for the purposes of the Housing Acts.

The Working Classes Dwellings Act, 1890,¹⁹ enacts that "Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and . . . [Ireland], shall not apply to any assurance, by deed or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place. Provided as follows:—(i.) The quantity of land which may be assured by will under this section shall not exceed five acres; and (ii.) The deed or will containing the assurance must, within six months in the case of a deed after the execution thereof, or in the case of a will after the probate thereof be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales, and . . . [Ireland]. For the purposes of this Act, the expression "populous place" means the administrative county of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character."

By sect. 2 of the same Act,²⁰ "This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act." And, by sect. 3 (2),²¹ "expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888."

As to the Mortmain Acts, see the Note to sect. 13 of the Public Libraries Act, 1892.²²

Provisions with respect to money applicable under trusts for housing purposes.

Sect. 9.—(1) If in any case it appears to the [Minister of Health] that the institution of legal proceedings is requisite or desirable with respect to any property required to be applied under any trusts for the provision of dwellings available for the working classes, or that the expediting of any such legal proceedings is requisite or desirable, the [Minister] may certify the case to the Attorney-General, and the Attorney-General, if he thinks fit, shall institute any legal proceedings or intervene in any legal proceedings already instituted in such manner as he thinks proper under the circumstances.

(2) Before preparing any scheme with reference to property required to be applied under any trusts for the provision of dwellings available for the working classes, the court or body who are responsible for making the scheme shall communicate with the [Minister of Health] and receive and consider any recommendations made by the [Minister] with reference to the proposed scheme.

Note.

Trusts.

The present section will enable a local authority who may suspect that any trusts relating to the provision of dwellings for the working classes are not being faithfully administered to bring the case before the Minister of Health, and he may approach the Attorney-General with a view to legal proceedings by him to enforce the trust. The Local Government Board in their Memorandum of the 31st December, 1909, suggested this course.²³

POWERS OF ENFORCING EXECUTION OF HOUSING ACTS.

Power of [Minister of Health] on complaint to enforce exercise of powers.

Sect. 10.—(1) Where a complaint is made to the [Minister of Health]—

- (a) as respects any rural district by the council of the county in which the district is situate, or by the parish council or parish meeting of any parish comprised in the district, or by any [justice of the peace acting for the district, or by any four or more local government electors in ²⁴] the district; or
- (b) as respects any county district, not being a rural district, by the council of the county in which the district is situated, or by [any justice of the peace acting for the district, or by any four or more local government electors in ²⁴] the district; or
- (c) as respects the area of any other local authority by [any justice of the peace acting for the area, or by any four or more local government electors in ²⁴] the area;

(19) 53 & 54 Vict. c. 16, s. 1.

(20) *Ibid.*, s. 2.

(21) *Ibid.*, s. 3 (2). The above short title is given by s. 3 (1).

(22) *Post*, Vol. II., p. 1407.

(23) 8 L. G. R. (Orders) 46.

(24) Substituted for "four inhabitant householders of" by Housing, etc., Act, 1923, s. 16, Sched. II. See also footnote (9), *ante*, p. 1047.

that the local authority have failed to exercise their powers under Part II. or Part III. of the principal Act in cases where those powers ought to have been exercised, the [Minister] may cause a public local inquiry to be held, and if, after holding such an inquiry, the [Minister is] satisfied that there has been such a failure on the part of the local authority, the [Minister] may declare the authority to be in default, and may make an order directing that authority, within a time limited by the order, to carry out such works and do such other things as may be mentioned in the order for the purpose of remedying the default.

(2) Before deciding that a local authority have failed to exercise their powers under Part III. of the principal Act, the [Minister] shall take into consideration the necessity for further accommodation for the housing of the working classes in such district, the probability that the required accommodation will not be otherwise provided, and the other circumstances of the case, and whether, having regard to the liability which will be incurred by the rates, it is prudent for the local authority to undertake the provision of such accommodation.

(3) Where an order originally made under this section on the council of a county district is not complied with by that council, the [Minister of Health] may, if [he thinks] fit, with the consent of the county council, instead of enforcing that order against the council of the county district, make an order directing the county council to carry out any works or do any other things which are mentioned in the original order for the purpose of remedying the default of the district council.

(4) Where the [Minister makes] an order under this section directing a county council to carry out any works or do any other thing, the order may, for the purpose of enabling the county council to give effect to the order, apply any of the provisions of the Housing Acts or of sect. 63 of the Local Government Act, 1894,²⁵ with such modifications or adaptations (if any) as appear necessary or expedient.

(5) An order made by the [Minister of Health] under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

(6) Any order made by the [Minister of Health] under this section may be enforced by mandamus.

Note.

The present section deals with complaints of defaults under Parts II. and III. of the principal Act. Defaults as to Part I. and also portions of Part II. are further dealt with by sect. 11 of the present Act, under which the Minister of Health may act without previous complaint. See also sects. 4 to 6 of the Housing, Town Planning, etc. Act, 1919.²⁶ Any order of the Minister of Health under the present section may be enforced by *mandamus*, but probably only the Minister can institute the proceedings. An alternative remedy for default is provided by subsect. (3) in the case of a "county district," and if a county council act the expense of their so doing may be thrown upon the district the authority of which is in default under sect. 63 of the Local Government Act, 1894,²⁷ by virtue of its incorporation under the authority of subsect. (4) in any order to the county council. Certain of the previously existing powers to compel local authorities to proceed are unrepealed—see sects. 31, 38, and 45 of the principal Act, as to unhealthy dwellings and obstructive buildings, and sect. 39 (8) of the principal Act and sect. 10 of the Act of 1903,²⁸ as to reconstruction schemes. The right given to a parish council by sect. 6 (2) of the Local Government Act, 1894,²⁹ to complain as to unhealthy dwellings and obstructive buildings is also unrepealed.

Sect. 10.

Power of [Minister of Health] on complaint to enforce exercise of powers—*continued.*

Complaints

Sect. 11.—(1) Where it appears to the [Minister of Health] that a local authority have failed to perform their duty under the Housing Acts of carrying out an improvement scheme under Part I. of the principal Act, or have failed to give effect to any order as respects an obstructive building, or to a reconstruction scheme, under Part II. of that Act, or have failed to cause to be made the inspection of their district required by this Act, the [Minister] may make an order requiring the local authority to remedy the default and to carry out any works or do any other things which are necessary for the purpose under the Housing Acts within a time fixed by the order.

(2) Any order made by the [Minister of Health] under this section may be enforced by mandamus.

Power of [Minister of Health] to order schemes, &c., to be carried out within a limited time.

(25) *Post*, Vol. II., p. 2097.

(26) *Post*, p. 1133.

(27) *Post*, Vol. II., p. 2097.

(28) *Ante*, p. 1091.

(29) *Post*, Vol. II., p. 2001.

Sect. 11, n.
Complaints.

Note.

The present section enables the Minister of Health on his own initiative to make an order upon a local authority who are in default as to carrying out an improvement scheme made under Part I. of the principal Act, and as to obstructive buildings (sect. 38 of that Act), reconstruction schemes (sect. 39 of that Act), or inspection of their district (sect. 17 of the present Act) under Part II. of the principal Act. Other powers as to default in relation to improvement schemes are contained in sect. 13 of the principal Act,³⁰ and sect. 4 of the Act of 1903,³¹ and with regard to reconstruction schemes in sect. 39 (8) of the principal Act.³²

Powers of county council to act in default of rural district council under Part III. of the principal Act.

Sect. 12. Where a complaint is made to the council of a county by the parish council or parish meeting of any parish comprised in any rural district in the county, or by any [justice of the peace acting for the district, or by any four or more local government electors in ³³] that district, the county council may cause a public local inquiry to be held, and if, after holding such an inquiry, the county council are satisfied that the rural district council have failed to exercise their powers under Part III. of the principal Act in cases where those powers ought to have been exercised, the county council may resolve that the powers of the district council for the purposes of that Part be transferred to the county council with respect either to the whole district or to any parish in the district, and those powers shall be transferred accordingly, and subject to the provisions of this Act, sect. 63 of the Local Government Act, 1894, shall apply as if the powers had been transferred under that Act.

Note.

Complaints.

Under the present section, the county council can only act upon complaint made to them, but under sect. 13 they may act on their own initiative—see the Note to that section. The effect of the application of sect. 63 of the Local Government Act, 1894,³⁵ is to enable the county council to throw the cost of their action upon the district council in default.

Power of county council to exercise powers of rural district council under Part III. of the principal Act.

Sect. 13.—(1) Where the council of a county are of opinion that for any reason it is expedient that the council should exercise, as respects any rural district in the county, any of the powers of a local authority under Part III. of the principal Act, the council, after giving notice to the council of the district of their intention to do so, may apply to the [Minister of Health] for an order conferring such powers on them.

(2) Upon such an application being made, the [Minister] may make an order conferring on the county council as respects the rural district all or any of the powers of a local authority under Part III. of the principal Act, and thereupon the provisions of the Housing Acts relating to those powers (including those enabling the Public Works Loan Commissioners to lend, and fixing the terms for which money may be lent and borrowed) shall apply as if the council were a local authority under Part III. of the principal Act: Provided that the expenses incurred by the county council under any such order shall be defrayed as expenses for general county purposes.

(3) Where, under any such order, the county council have executed any works in a rural district they may transfer the works to the council of that district on such terms and subject to such conditions as may be agreed between them.

Note.

County councils.

The expenses of county councils acting upon an order under the present section cannot as under the preceding section be thrown upon the district or be contributed to by the district, but are a general county charge. Subsect. (3) enables the county council to make a transfer to a district council without charging the expense of the transferred works upon the district—see also sect. 10 of the present Act. An order under the present section can be made even though the local authority of the rural district is not in default. The powers include the acquisition of land as if the purposes of Part III. were purposes of the Public Health Act, 1875, providing or contracting for the purchase or leasing of lodging houses for the

(30) *Ante*, p. 1051.
(31) *Ante*, p. 1090.
(32) *Ante*, p. 1062.

(33) See footnote (24), *ante*, p. 1096.
(35) *Post*, Vol. II., p. 2097.

working classes, and the appropriation of lodging houses so purchased or taken on lease and any other land which may be for the time being vested in them or at their disposal—see sect. 57 of the principal Act,³⁶ and the further powers given by sect. 11 of the Act of 1903,³⁷ and the laying out of streets or roads under sect. 15 of the Housing, Town Planning, etc., Act, 1919.³⁸

Sect. 13, n.

Sect. 14. In any contract made after the passing of this Act,³⁹ for letting for habitation a house or part of a house at a rent not exceeding—

Extension of section 75 of the principal Act.

- (a) in the case of a house situate in the administrative county of London, forty pounds;
- [(b) *in the case of a house situate in a borough or urban district with a population according to the last census for the time being of fifty thousand or upwards, twenty-six pounds;*⁴⁰]

(c) in the case of a house situate elsewhere [*sixteen* ⁴⁰] pounds;

there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation, but the condition aforesaid shall not be implied when a house or part of a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for occupation, and the lease is not determinable at the option of either party before the expiration of that term.

Note.

By sect. 39 (2) of the Housing, Town Planning, etc., Act, 1919,⁴¹ the present section “shall be deemed to be part of Part II. of the principal Act.”

Application of section.

The present section applies only to contracts of letting made after the 3rd December, 1909. It will not, therefore, apply to tenancies then existing so long as they continue. Sect. 75 of the principal Act, however, to which the marginal note refers, remains in force, and will apply in such cases if they are as regards rental within its scope. Cases decided under that section and the limits of rental thereunder are set out in the Note thereto.⁴²

Having regard to the provision of sect. 47 (1) of the present Act, it would appear that, apart from the exemption provided for, there can be no contracting out of the present section, as sect. 12 of the Act of 1903 doubtless applies, as it applied to sect. 75 of the principal Act.⁴³

As to the exemption contained in the latter part of the present section, it is probable that a covenant by the tenant to keep a house in tenantable repair would be held to be equivalent to a “term” that the tenant should put it into a condition “reasonably fit for occupation.” “Reasonably fit for human habitation” in the present section, as in sect. 75 of the principal Act, means fit in all respects and not merely from a sanitary point of view.⁴⁴

See further the Note to the next section, the powers in which would not be affected by contracting out, if that is allowable.

The present section, like sect. 75 of the principal Act, does not apply to cases in which the letting is not at a rent. Cases, therefore, of occupation by virtue of a service or employment would not be within its terms.

Where the rates on a house are paid to the owner with the rent, and the rent without the rates comes to less than the prescribed amounts, it would appear that the present section is applicable, though the two together may exceed those amounts.

Meaning of rent.

A jury found (1) that a house, to which the present section and sect. 15 applied, was let to the plaintiff’s husband alone; (2) that the tenancy commenced after December 3rd, 1909; (3) that the house was reasonably fit for human habitation at the commencement of the tenancy, but not on January 31st, 1912, when the wife fell through some defective stairs; (4) that a notice of the state of repair was given to the landlord; and (5) damages £100. It was held that the wife of the

Damages.

(36) *Ante*, p. 1069.
(37) *Ante*, p. 1091.
(38) *Post*, p. 1136.
(39) As to contracts made before 3rd Dec., 1909, see H. W. C. Act, 1890, s. 75, *ante*, p. 1075.
(40) By H., etc., Act, 1923 (13 & 14 Geo. V. c. 24), s. 10 (1); the present section and s. 15 are to “have effect as respects letting

for habitation after the passing of this Act [31st July, 1923], as though” para. (b) “had been omitted,” and as though for “16” in para. (c) “26 had been substituted.”
(41) *Post*, p. 1149.
(42) *Ante*, p. 1075.
(43) See s. 12, *ante*, p. 1091.
(44) *Walker v. Hobbs*, *ante*, p. 1076 (11). See also *post*, p. 1100 (54).

Sect. 14, n.

tenant had no cause of action against the landlord for the breach of his statutory duty.⁴⁵

In dismissing a similar action in respect of injuries to the infant daughter of a tenant of a small tenement, Lush, J., said "All that the Act of 1909 does is to enact that if the contract between the landlord and tenant contains no warranty (I think the word 'condition' is used in that sense in sects. 14 and 15 of the Act of 1909) that the house is reasonably fit for human habitation, and no undertaking on the part of the landlord that it shall be kept in a state reasonably fit for human habitation, these two terms shall be implied. But the character and quality of the obligation which is imported by the statute are none the less contractual, although the contract is derived from and owes its existence to the statute. Therefore the obligation on the part of the landlord in the present case is purely a contractual one. That is all that the statute has effected. Now, it was decided⁴⁶ that no action lies for the breach of the contractual obligation at the suit of a stranger to the contract, and that decision seems to me to dispose of the contentions which have been placed before us on behalf of the appellant."⁴⁷

Rats.

The condition implied by the present section is not broken by an invasion of rats from outside, but, *semble*, it would be if they started breeding in the house.⁴⁸

Bugs.

A condition that a tenant should keep the premises in as good repair and condition as they were at the time of letting was implied from correspondence, and held to have been broken by the tenant allowing the house to become infested with bugs.⁴⁹ Further, as to implied conditions with regard to furnished and unfurnished houses, see the Notes to sects. 128 and 257 of the Public Health Act, 1875,⁵⁰ and sect. 75 of the principal Act.⁵¹

Infectious disease.

A furnished house recently occupied by a person suffering from an infectious disease may not be let to another person if an appreciable risk is involved.⁵²

Smells.

On going into occupation, a tenant observed a foul smell and was unable to ascertain its cause. He left and obtained rescission and repayment of rent paid in advance on the ground that the premises were unfit for occupation.⁵³

Meaning of good repair.

For observations by McCardie, J., as to the meaning of such expressions as "good," "proper," "substantial," "sufficient," "necessary," and "tenantable" repair, see the case cited below.⁵⁴

Condition as to keeping houses let to persons of the working classes in repair.

Sect. 15.—(1) The last foregoing section shall, as respects contracts to which that section applies, take effect as if the condition implied by that section included an undertaking that the house shall, during the holding, be kept by the landlord in all respects reasonably fit for human habitation.

(2) The landlord or the local authority, or any person authorised by him or them in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any house, premises or building to which this section applies for the purpose of viewing the state and condition thereof. * * * ⁵⁵

(7) In this section the expression "landlord" means any person who lets to a tenant for habitation the house under any contract referred to in this section, and

(45) *Middleton v. Hall* (1912, K. B. D.), 108 L. T. 804; 77 J. P. 172; 11 L. G. R. 660n. See also *Lucy v. Bawden*, L. R. 1914, 2 K. B. 318; 83 L. J. K. B. 523; 110 L. T. 580. In *Fairman v. Perpetual Investment Building Soc.*, L. R. 1923 A. C. 74; 92 L. J. K. B. 50; 128 L. T. 386; 87 J. P. 21, a lodger injured by obvious defect in common staircase failed to recover damages. But see *Dunster v. Hollis*, L. R. 1918, 2 K. B. 795; 88 L. J. K. B. 331; 120 L. T. 109; 17 L. G. R. 42.

(46) In *Cavalier v. Pope*, ante, p. 206 (5).

(47) *Ryall v. Kidwell & Son*, L. R. 1914, 3 K. B. 135, at p. 143; 83 L. J. K. B. 1140; 111 L. T. 240; 78 J. P. 377; 12 L. G. R. 997. See also *Kennedy v. Shotts Iron Co.*, 1913 S. C. (S.) 1143; *Gaunt v. McIntyre*, 1914 S. C. (S.) 43; 51 Sc. L. R. 30; 5 Glen's Loc. Gov. Case Law 158; *Grant v. Fleming & Co.*, 1914 S. C. (S.) 228; 51 Sc. L. R. 187; 4 Glen's Loc. Gov. Case Law 159; *Allen or McIlwaine v. Stewart*, 1914 S. C. (S.) 934.

(48) *Stanton v. Southwick*, L. R. 1920, 2 K. B. 642; 89 L. J. K. B. 1066; 123 L. T. 651; 84 J. P. 207; 18 L. G. R. 425.

(49) *Jones v. Joseph* (1918, K. B. D.), 87 L. J. K. B. 510; W. N. 52.

(50) *Ante*, pp. 248 (3)-(6), 686 (8)-(11).

(51) *Ante*, p. 1075.

(52) *Collins v. Hopkins*, L. R. 1923, 2 K. B. 617; 92 L. J. K. B. 820; 21 L. G. R. 773. See also *ante*, p. 206.

(53) *Brooke v. Strange* (1910, Avory, J.), 1 Glen's Loc. Gov. Case Law, 88.

(54) *Calthorpe v. McOscar*, L. R. 1923, 2 K. B. 573; 39 T. L. R. 527.

(55) Sub-ss. (3), (4), (5), (6), and (8) were repealed by Housing, etc., Act, 1923, s. 24, Sched. III.; and by s. 16 and Sched. II. of that Act, sub-s. (5) of the present section is no longer applied for the purposes of H. T. P. Act, 1919, s. 26 (4): see amendment to that sub-section, *post*, p. 1141. By s. 10 (2) of the Act of 1923, *post*, p. 1144, sub-ss. (3) to (6) are repealed as "virtually superseded" by H. T. P. Act, 1919, s. 28, *post*, p. 1143, and the last-mentioned section is modified; and see s. 10 (i) in footnote (40), *ante*, p. 1099.

includes his successors in title; and the expression "house" includes part of a house. * * *⁵⁶ Sect. 15.

(9) Any remedy given by this section for non-compliance with the undertaking implied by virtue of this section shall be in addition to and not in derogation of any other remedy available to the tenant against the landlord, either at common law or otherwise.

Note.

By sect. 39 (2) of the Housing, Town Planning, etc., Act, 1919,¹ the present section "shall be deemed to be part of Part II. of the principal Act."

It appears that a contractual liability upon a landlord to keep premises in repair during a tenancy may be implied in the case of weekly lettings, where the landlord usually does the repairs and defects are brought to his notice,² and this may involve liability if accident or illness results to a party to the contract.

Further as to this subject, see the Note to sect. 257 of the Public Health Act, 1875.^{2a}

Notwithstanding the language of sub-sect. (7) of the present section, the Divisional Court held, in an unreported case,³ that a house agent who had in fact let a house was not the "landlord" for the purpose of the present section, and was not liable for breach of the implied undertaking mentioned in the section, even though he withheld the owner's name.

The Local Government Board considered that a mortgagee in possession might be treated as the "landlord," and that he might also in certain cases be treated as the "successor in title" of a landlord.

As to the income tax (Sched. A.) "allowance for repairs," see the Finance Act, 1923.^{3a} Income tax.

Sect. 16. [*Extension of power of making bye-laws with respect to lodging-houses for the working classes.*⁴]

AMENDMENT OF PROCEDURE FOR CLOSING ORDERS AND DEMOLITION ORDERS.

Sect. 17.—(1) It shall be the duty of every local authority within the meaning of Part II. of the principal Act to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and for that purpose it shall be the duty of the local authority, and of every officer of the local authority, to comply with such regulations and to keep such records as may be prescribed by the [Minister]. Duty of local authority as to closing of dwelling-house unfit for human habitation.

(2) If, on the representation of the medical officer of health, or of any other officer of the authority, or other information given, any dwelling-house appears to them to be in such a state, it shall be their duty to make an order prohibiting the use of the dwelling-house for human habitation (in this Act referred to as a closing order) until in the judgment of the local authority the dwelling-house is rendered fit for that purpose.

(3) Notice of a closing order shall be forthwith served on every owner of the dwelling-house in respect of which it is made, and any owner aggrieved by the order may appeal to the [Minister of Health] by giving notice of appeal to the [Minister] within fourteen days after the [notice⁵] is served upon him.

(4) Where a closing order has become operative, the local authority shall serve notice of the order on [the occupier⁶] of the dwelling-house in respect of which the order is made, and, within such period as is specified in the notice, not being less than fourteen days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable on summary conviction to be ordered to quit the dwelling-house within such time as may be specified in the order.

(5) Unless the dwelling-house has been made unfit for habitation by the wilful act or default of the tenant or of any person for whom as between himself and the owner or landlord he is responsible, the local authority may make to every such tenant such reasonable allowance on account of his expense in removing as may be determined by the local authority with the consent of the owner of the dwelling-house, or, if the owner of the dwelling-house fails to consent to the

(56) See footnote (55), *ante*, p. 1100.

(1) *Post*, p. 1149.

(2) *Broggi v. Robins* (1898, Day, J.), 14 T. L. R. 439; reversed on appeal because of absence of notice (1899, C. A.), 15 T. L. R. 224.

(2a) *Ante*, pp. 685, 686.

(3) *Fisk v. Trumble*, 15th Jan., 1913.

(3a) 13 & 14 Geo. V. c. 14, s. 28.

(4) Repealed by H. T. P. Act, 1919, s. 50, Sched. V. See now s. 26 of that Act, *post*, p. 1141.

(5) Substituted for "order" by H. T. P. Act, 1919, s. 39, Sched. II.

(6) Substituted for "every occupying tenant" by H. T. P. Act, 1919, s. 39, Sched. II.

Sect. 17.

Duty of local authority as to closing of dwelling-house unfit for human habitation—*continued.*

sum determined by the local authority, as may be fixed by a court of summary jurisdiction, and the amount of the said allowance shall be recoverable by the local authority from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

(6) The local authority shall determine any closing order made by them if they are satisfied that the dwelling-house, in respect of which the order has been made, has been rendered fit for human habitation.

If, on the application of any owner of a dwelling-house, the local authority refuse to determine a closing order, the owner may appeal to the [Minister of Health] by giving notice of appeal to the [Minister] within fourteen days after the application is refused.

(7) A room habitually used as a sleeping place, the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room [or more than three feet below the surface of any ground within nine feet of the room⁷], shall for the purposes of this section be deemed to be a dwelling-house so dangerous or injurious to health as to be unfit for human habitation, if the room either—

(a) is not on an average at least seven feet in height from floor to ceiling; or

(b) does not comply with such regulations as the local authority with the consent of the [Minister of Health] may prescribe for securing the proper ventilation and lighting of such rooms, and the protection thereof against dampness, effluvia, or exhalation: Provided that if the local authority, after being required to do so by the [Minister of Health], fail to make such regulations, or such regulations as the [Minister approves], the [Minister] may [himself] make them, and the regulations so made shall have effect as if they had been made by the local authority with the consent of the [Minister]:

Provided that a closing order made in respect of a room to which this subsection applies shall not prevent the room being used for purposes other than those of a sleeping place; and that, if the occupier of the room after notice of an order has been served upon him fails to comply with the order, an order to comply therewith may, on summary conviction, be made against him.

This subsection shall not come into operation until the 1st day of July, 1910, and a closing order made in respect of any room to which this subsection applies shall not be treated as a closing order in respect of a dwelling-house for the purposes of the next succeeding section.

Note.

New procedure.

The present section and sect. 18 contain an entirely new procedure in regard to closing and demolition orders in substitution for that contained in the repealed sects. 32 and 33 of the principal Act.⁸

Inspection.

The provisions as regards inspection are a re-enactment, but the duty of keeping records is new. The regulations of the Local Government Board are set out elsewhere.⁹

Under sect. 11 of the present Act, the duty of inspection may be enforced by *mandamus*.

An inspection under the present section may also serve the purpose of sect. 92 of the Public Health Act, 1875.¹⁰

Meaning of dwelling-house.

Sect. 49 (1) of the present Act altered the definition of dwelling-house contained in section 29 of the principal Act by omitting from that definition the words "means any inhabited building and." The effect is that a dwelling-house not at the time inhabited may clearly be the subject of a closing order. This had been questioned under the previous law.¹¹

Closing orders.

Closing orders under the repealed sections of the principal Act were made by a magistrate. They are now made by the local authority. Forms were prescribed by the Local Government Board, and are now under revision. The current forms should be obtained from the Ministry of Health. The Board suggested that, before making an order, although under no obligation so to do under the present section, the local authority should give due notice to all persons interested in the house, whether such persons are within the definition of "owner" or not. Such persons can then make any representations they may desire to make, whereas when an order has been made only the "owner" can appeal.

(7) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(8) Set out *ante*, pp. 1056, 1057, for reasons there stated.

(9) *Post*, Vol. II., Part V., under heading "HOUSING, Inspection."

(10) *Ante*, p. 191.

(11) See *Robertson's Case*, *ante*, p. 1055 (5).

It was held that, when a closing order had been made under a bye-law, this did not prevent proceedings for a closing order (then by the justices) under the Housing Acts.¹²

If default is made in obeying a closing order, possession of the premises may be recovered by the local authority or the owner under sect. 10 of the Act of 1903.¹³

Except in cases within sub-sect. (7), it would seem that the closing order must relate to the whole house, and not to particular parts of it, even though only those parts are complained of, and a separate order should be made in the case of each house where several houses of the same owner are being dealt with at the same time. As to tenement houses, see the cases cited below.¹⁴ On appeal, an order must be quashed or confirmed as a whole.

A separate representation must be made in addition to the report of inspection. The representation should be in writing, and should be accompanied by particulars of the work necessary to be done to make the house fit for habitation if that appears feasible, or, at any rate, of the defects that make it unfit, though this is not required by the section. This information should be given to the owner.

Notice of the closing order must be served on every "owner" interested. As to the persons included in the expression "owner," see sect. 29 of the principal Act.¹⁵

In the case of an owner, the time within which an appeal to the Minister must be made is now fourteen days from service of the notice. Under sect. 35 of the principal Act, as amended by sect. 46 of the present Act, any person aggrieved by an order of the local authority, if not entitled to appeal to the Minister, may appeal to quarter sessions. As the only person who can appeal to the Minister is the "owner" defined as above mentioned, and this definition excludes certain lessees, it appears that such lessees have the right of appeal to quarter sessions. In such cases the notice of appeal must be given within one month from the service of notice of the order. Further as to appeals, see *infra*.

When the time for giving notice of appeal has expired, and no notice of appeal has been given, or an appeal has failed, or a counter-notice has been served under sect. 28 of the Housing, Town Planning, etc., Act, 1919, the order becomes operative, and the tenants must be served with notice of the order, as mentioned in sub-sect. (4). If the tenant does not quit, he may "on summary conviction" be ordered to do so. The effect of this is that he will in case of default be liable to a penalty of £1 per day, or to imprisonment for not exceeding two months, for disobedience to an order of a court of summary jurisdiction under sect. 34 (2) of the Summary Jurisdiction Act, 1879.¹⁶ As an alternative, he may be proceeded against under sect. 10 of the Act of 1903.¹⁷

It is to be observed that there is no limit in sub-sect. (4) of the present section to the time which may be specified in the order of the justices. In the *Poole Case*,¹⁸ the time specified was twelve months, and proceedings to test the validity of such order are pending.¹⁹

There appears to be nothing to prevent an owner from letting to a new tenant a house in respect of which a closing order has been made if he does so before such order becomes operative. But such new tenant will then be the occupier to be served with notice, and required to quit, when the order becomes operative.

Sect. 21 of the present Act takes away the power of a court of summary jurisdiction to enlarge the time for the execution of works under a closing order, or for the demolition of a dwelling-house.

An appeal lies to the Minister against a refusal to determine a closing order.

Sub-sect. (5) of the present section contains a new provision of importance, namely, that there is no power to make an allowance to a tenant whose wilful act or default has made the house unfit for habitation.

The procedure for enforcing an order under sub-sect. (7) is proceedings before justices under sect. 34 of the Summary Jurisdiction Act, 1879. The Local Government Board stated in their Memorandum of the 31st December, 1909, that the subject-matter of sub-sect. (7) is of considerable importance. Basement rooms are within the provision, whether they are tenement dwellings or part of an ordinary dwelling-house. Basement sleeping rooms which are of the stipulated height may still be dealt with if they infringe regulations made under the authority of paragraph (b) of the sub-section. For model regulations, see elsewhere.²⁰

Sect. 17, n.

Parts of houses, and several houses of same owner.

Representation preceding closing order.

Notice of closing order on "owners."

Time for appeal.

Tenants to quit on order becoming operative.

Allowance to tenant.

Basement rooms.

(12) *Slight v. Portsmouth Cpn.*, ante, p. 496 (50).

(13) *Ante*, p. 1091.

(14) *Post*, pp. 1104 (24), 1105 (27).

(15) *Ante*, p. 1054.

(16) 42 & 43 Vict. c. 49, s. 34 (2).

(17) *Ante*, p. 1091.

(18) *Post*, p. 1146 (28) (32).

(19) See Addenda et Corrigenda.

(20) *Post*, Vol. II., Part V., under heading "HOUSING, Underground Rooms."

- Sect. 17, n.** Reference may also be made to sects. 71-75 of the Public Health Act, 1875, which deal with cellar dwellings.¹⁸
- Unfitness due to extraneous circumstances.** A local authority's inspector of nuisances certified that certain dwelling-houses were unfit for human habitation on the ground that, by reason of the proximity of adjacent buildings, there was lack of ventilation, and the local authority made a closing order under a local Act.¹⁹ It was held (1) that the fact that the cause of the unfitness was something extraneous to the houses did not render the order *ultra vires*; and (2) that the fact that the local authority had chosen this remedy, instead of one in respect of which they would have had to pay compensation, did not render the order *mala fide*.²⁰
- Mala fides.** With regard to the second point,²¹ Lord Dunedin said:—"They may under colour of exercising a jurisdiction really want to attain another end. That is *mala fides*. Such a proceeding is negatived in this case."
- Inspection of documents.** A rule *nisi* for *mandamus* directing a local authority to disclose to one of its members the report of the medical officer of health on which a closing order was made, and certain documents in connection with an appeal by the owner of the house to the Local Government Board, was refused on the ground that the applicant was a witness for the owner in legal proceedings against the respondents, and not actuated solely in the public interests.²²
- Notice of closing order.** Where a closing order had become operative by reason of a counter-notice under sect. 28 of the Housing, Town Planning, etc., Act, 1919, a rule *nisi* for a writ of *mandamus* directing the local authority to serve notice of the order on the occupier under sub-sect. (4) of the present section was discharged on the ground that, after the rule had been obtained, an appeal to the Minister of Health against the counter-notice had been lodged by the local authority.²³ Further as to the effect of closing orders, see the Note to sect. 28 and sect. 32 of that Act.
- Appeal by special case.** In a Scottish case²⁴ a local authority made a closing order in respect of a house (consisting, on the ground floor, of two one-room and kitchen flats; on the first floor, of one one-room and kitchen and one two-room and kitchen flats; and in the roof, of two attic rooms) alleged to be unfit for human habitation. The owner appealed to the sheriff (corresponding to the Minister of Health in England), who heard the parties and gave the owner leave to call evidence, at a future hearing, that the premises were not unfit for human habitation. The owner then applied to the sheriff to state a case, but he refused to do so on the ground that sect. 39 (1) (a) of the present Act did not require a case to be stated, unless the sheriff (or in England the Minister of Health) considered that injustice might be done by refusing to state one. It was held that this refusal was illegal; but all the facts and contentions being before the court in the application to the sheriff and his reply, and the parties consenting, the court dealt with the case on its merits, and determined the following points of law—(a) that the local authority may make a closing order under the present section without having first exercised their power, under sect. 15 (3) of the present Act,²⁵ to require the execution of works "necessary to make the house in all respects reasonably fit for human habitation," the powers given by the sections being separate; (b) that the owner had been told sufficiently clearly in the medical officer's detailed report why the house was alleged to be closeable; (c) that, as the closing order followed the prescribed form (No. V.) exactly, it was not bad because it did not sufficiently specify the grounds for making it (but it was suggested by the court that this form should be amended in this respect); (d) that the local authority were not bound to hear the owner in opposition to the order before making it; (e) that the statutory grounds for making the order, namely, that the premises are "dangerous" and "injurious to health," are not separate grounds, but that the second expression is explanatory of the first; and (f) that the expression "dwelling-house" includes a block of separate dwelling-houses.²⁶
- (18) *Ante*, p. 160.
 (19) 30 Vict. c. xxxvi., s. 41.
 (20) *Hall v. Manchester Cpn.* (1915, H. L.), 84 L. J. Ch. 732; 113 L. T. 465; 79 J. P. 385; 13 L. G. R. 1105.
 (21) 13 L. G. R., at p. 1111. See also *Merrick's Case*, *post*, p. 1106 (40), and *Shoosmith's Case*, *ante*, p. 300 (13).
 (22) *Rex (Woodward) v. Hampstead B.C.* (1917), 116 L. T. 213; 81 J. P. 65; 15 L. G. R. 309. The owner was Mr. Arlidge. Further as to inspection of documents, see *post*, Vol. II., p. 2092.
 (23) *Rex v. Poole Cpn.*, *post*, p. 1146 (28).
 (24) *Kirkpatrick v. Maxwelltown Town Council*, 1912 S. C. (S.) 288; 49 Sc. L. R. 261; 3 Glen's Local Gov. Case Law 157.
 (25) Now repealed, see footnote (55), *ante*, p. 1100.
 (26) As to (d), see *post*, p. 1105 (28), and, as to (f), see *ante*, p. 1055 (6).

But in another Scottish case²⁷ an order closing premises therein described as "a dwelling-house," but in fact consisting of eighteen separate tenement dwellings, was held bad, as it purported to close all eighteen until every one had been rendered habitable.

In *Kirkpatrick's Case, supra*,²⁸ Lord Johnston said:—As to "whether the expressions 'dangerous and injurious to health' are truly alternative . . . on examining the Housing of the Working Classes Act, 1890, to which the Act of 1909 is intimately related, I find that the same expression is used in the class of sections beginning with section 30, and in that Act there is no possible question that the expressions are not alternative but merely cumulative, and I am, therefore, satisfied that the same intention was in the minds of the Legislature in dealing with the matter under this Act of 1909." *Per* Lord Dunedin, L.P., as to the same point: "I am clearly of opinion that they are not separate grounds. I think the second ground is merely exegetical of the first. . . . There is not a trace in this Act of the local authority having anything to do with structural danger . . . the expression applies to sanitary conditions alone."²⁹

Further as to appeals to the Minister of Health against closing and demolition orders, see sect. 39 of the present Act.

As to closing orders under bye-laws, see the case cited below.³⁰

Nothing in the Rent Restrictions Acts is to affect the provisions of the present section, or prevent a local authority obtaining possession of a house required under the Housing Acts.³¹

A closing order having been made by a local authority under sub-sect. (2) of the present section, notice of the order having been served on the occupier (a weekly tenant at a rent of thirteen shillings a week), and the occupier having refused to go, he was forcibly ejected under a warrant of justices. The owner then repaired the cottage, and let it to another tenant, after he had refused an application by the ejected tenant to be again accepted as tenant. The ejected tenant then forcibly re-took possession, and refused to go. It was held that he was a trespasser, and not protected by the Rent Act. A contention that a closing order under the present section did not impliedly determine tenancies which had not been otherwise lawfully determined was overruled.³²

Sect. 18.—(1) Where a closing order in respect of any dwelling-house has remained operative for a period of three months, the local authority shall take into consideration the question of the demolition of the dwelling-house, and shall give every owner of the dwelling-house notice of the time (being some time not less than one month after the service of the notice) and place at which the question will be considered, and any owner of the dwelling-house shall be entitled to be heard when the question is so taken into consideration.

(2) If upon any such consideration the local authority are of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, or that the continuance of any building, being or being part of the dwelling-house, is a nuisance or dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, they shall order the demolition of the building.

(3) If any owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, and the local authority consider that it can be so rendered fit for human habitation, the local authority may, if they think fit, postpone the operation of the order for such time, not exceeding six months, as they think sufficient for the purpose of giving the owner an opportunity of executing the necessary works. [And if and when the necessary works are completed to their satisfaction, the local authority shall determine the closing and demolition orders relating to the dwelling-house.³³]

(4) Notice of an order for the demolition of a building shall be forthwith served on every owner of the building in respect of which it is made, and any owner aggrieved by the order may appeal to the [Minister of Health] by giving notice

Sect. 17, n.

Dangerous and injurious.

Byelaws.

Rent Acts.

Order for demolition.

(27) *McDiarmid v. Glasgow Housing Committee*, 1917 S. C. (S.) 361.

(28) 1912 S. C. (S.), at p. 299; 3 Glen's Loc. Gov. Case Law, at p. 159.

(29) *Ibid.*, at p. 297; *ibid.*, at p. 159.

(30) *Slight's Case, ante*, pp. 496 (50), 1103 (12).

(31) See H. T. P. Act, 1919, s. 35, *post*, p. 1148.

(32) *Blake v. Smith*, L. R. 1921, 2 K. B. 685; 90 L. J. K. B. 1140; 125 L. T. 287; 19 L. G. R. 544.

(33) Added by H. T. P. Act, 1919, s. 39, Sched. II.

Sect. 18.

Order for
demolition—
continued.

of appeal to the [Minister] within twenty-one days after the [notice ³⁴] is served upon him [or where the operation of the order has been postponed for any period within fourteen days after the expiration of that period.³⁵]

Note.**Demolition.**

The present section supersedes sect. 33 of the principal Act. As to when a closing order becomes "operative," see the Note to sect. 17. A magistrate no longer has power to extend the time for works for demolition of a building: see sect. 47 of the principal Act, as amended by sect. 21 of the present Act.^{35a}

As a closing order must, under the present section, be operative for three months before demolition can be considered, and one month's notice must be given of intention to consider it, the owner has four months in which to remedy defects or to show diligence in so doing. If he makes default, the local authority must order demolition of the building.³⁶ But if the owner, in the manner mentioned in sub-sect. (3), justifies postponement of the operation of the order, the local authority may postpone its operation for a period not exceeding six months. The local authority has no option as to making the order; but the Minister of Health may, on an appeal under sect. 39 of the present Act, decide as he thinks equitable, *e.g.*, if the dwelling-house is no longer to be used for human habitation, he may determine the demolition order.³⁶

It was held, under the repealed sect. 33 of the principal Act, that, to enable the local authority to make a demolition order under that section, where a court of summary jurisdiction had made a closing order under sect. 32, the continuance of the building must be dangerous or injurious to health, not only at the date of the resolution of the local authority declaring that it is expedient to order its demolition, but also at the date when the order is made.³⁷

Sect. 34 of the principal Act, as amended,³⁸ indicates the steps to be taken when a demolition order has been made and become operative, namely, when it has not been successfully appealed against or its operation not been postponed under sub-sect. (3) of the present section. As to such appeals, see sect. 39 of the present Act and the Note thereto.

It is to be noted that a closing order may become operative under sect. 28 of the Housing, Town Planning, etc., Act, 1919, as well as under the present section.

An owner who is not in possession may obtain a justices' order authorising him to enter to enable him to execute works under a closing or demolition order: see sect. 47 of the principal Act.³⁹

As to appeals to quarter sessions by a person who, owing to not being within the definition of owner, cannot appeal to the Minister of Health, but is nevertheless "aggrieved," see the Note to sect. 17 of the present Act and sect. 35 of the principal Act as amended.

Alternative powers.

An order directing a local authority to demolish some houses under local Acts which provided for compensation, instead of under the Housing Acts without compensation, was refused, though adjacent houses of the plaintiff had been demolished under the former powers, and the latter powers were only exercised after she had refused the compensation offered. *Eve, J.*, held that the authority were not "acting in bad faith or endeavouring under colour of the exercise of statutory powers to evade a liability which they would otherwise be under."⁴⁰ The action was also held barred by the Public Authorities Protection Act, 1893.⁴¹

Duty to make order.

After a closing order had remained operative for three months, the owner made structural alterations to convert the house into a warehouse, but the local authority made a demolition order. The owner appealed to the Local Government Board. On a case stated by the Board, it was held (1) that the local authority were bound to order demolition under sub-sect. (2) of the present section, but (2) that the Board had power, under sect. 39 of the present Act, to take into consideration the fact that the owner did not intend to use the house again for human habitation, and to quash or vary the order on that ground.⁴²

(34) Substituted for "order" by H. T. P. Act, 1919, s. 39, Sched. II.

(35) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(35a) *Ante*, p. 1068.

(36) See *Lancaster's Case*, *infra* (42).

(37) *Vale v. Southall Norwood U.D.C.* (1896), 60 J. P. 134.

(38) *Ante*, p. 1057.

(39) *Ante*, p. 1067.

(40) *Merrick v. Liverpool Cpn.*, L. R. 1910, 2 Ch. 449, at p. 463; 79 L. J. Ch. 751; 103 L. T. 399; 74 J. P. 445; 8 L. G. R. 966. See also the *Manchester Case*, *ante*, p. 1104 (20).

(41) See *post*, Vol. II., p. 1989 (9).

(42) *Lancaster v. Burnley Cpn.*, L. R. 1915, 1 K. B. 259; 84 L. J. K. B. 181; 112 L. T. 159; 79 J. P. 123; 12 L. G. R. 1319.

In considering an application for postponement of a demolition order under sub-sect. (3) of the present section, the local authority must exercise their discretion "judicially." To decide on the *ex parte* evidence of the medical officer of health that the houses cannot be repaired, without considering the owner's offer to submit plans and specifications, which she is advised will render them habitable, is not such an exercise of their discretion. An injunction was accordingly granted restraining a local authority that had so acted from carrying out the order until they had heard and determined the application for postponement according to law.⁴³ In consequence of this order, the local authority's housing committee inspected the premises, considered the plans and specifications with the owner's architect, heard the owner's solicitor, and again refused to postpone the order. They also refused to give the owner any reasons why her proposals were insufficient, and sequestration proceedings were taken for breach of the order to hear and determine the application according to law. It was contended that she was entitled to know in what respect her plans were insufficient, so that she might alter them, and that she ought to have "a fair opportunity to correct or contradict any relevant statement" prejudicial to her case.⁴⁴ It was held, however, that there was no obligation on the authority to disclose their reasons, or say in what respect the tendered plans were insufficient.⁴⁵

Sect. 18, n.

Duty to postpone order.

Sect. 19. [Power to redeem annuities charged by charging order under sect. 36 of the principal Act.⁴⁶]

Sect. 20. [Provision as to priority of charges under sect. 37 of the principal Act.⁴⁷]

Sect. 21. [Restriction on power of court of summary jurisdiction to extend time.⁴⁸]

AMENDMENTS WITH RESPECT TO IMPROVEMENT AND RECONSTRUCTION SCHEMES.

Sect. 22. [Amendment of sect. 4 of the principal Act as to official representation.¹]

Sect. 23. [Amendment of the principal Act as to contents of schemes.²]

Sect. 24. [Amendment of 3 Edw. 7, c. 39, s. 5.³]

Sect. 25. The [Minister of Health] may, in the exercise of [his] power under sect. 15 or sect. 39 (9) of the principal Act, permit the local authority to modify their scheme, not only by the abandonment of any part of the scheme which it may appear inexpedient to carry into execution, but also by amending or adding to the scheme in matters of detail in such manner as appears expedient to the [Minister].

Modification of schemes.

Note.

Under sects. 15 and 39 (9) of the principal Act,⁵ modifications could only be made in the direction of abandonment of portions of the scheme; and such modifications had, under provisions in sects. 15 (2) and 39 (9), to be laid before Parliament, and in certain cases needed Parliamentary confirmation. Under the present section, modifications may take the form of including matters in the scheme which were originally not included, and the modifications need not be submitted to Parliament, for sect. 15 (2) and the portion of sect. 39 (9) which formerly rendered this necessary are repealed. The Minister of Health has power, under sect. 85 of the principal Act,⁶ to hold a local inquiry into the matter of such modifications, and persons affected can be heard thereat.

Modifications.

Sect. 26. Any inspector or officer of the [Minister of Health], or any person employed by the [Minister], may be directed to make any inspection or inquiry which is required for the purposes of sect. 16 of the principal Act (which relates to inquiries made on the default of a medical officer), and sect. 85 of that Act

Inquiries by [Ministry of Health] inspectors as to unhealthy areas.

(43) *Broadbent v. Rotherham Cpn.* (No. 1), L. R. 1917, 2 Ch. 31; 86 L. J. Ch. 501; 117 L. T. 120; 81 J. P. 193; 15 L. G. R. 467; see also *Rex v. Lisnaskea Guardians*, 1918 Ir. K. B. 258.

(44) Citing *Arlidge's Case*, post, p. 1112 (13).

(45) *Broadbent v. Rotherham Cpn.* (No. 2) (1918), 87 L. J. Ch. 308; 118 L. T. 745; 82 J. P. 141; 16 L. G. R. 357. But see *Rex v. Housing Appeal Tribunal*, post, p. 1112 (15a).

(46) Quoted in Note to s. 36 of principal Act, ante, p. 1058.

(47) Quoted in Note to s. 37 of principal Act, ante, p. 1059.

(48) Quoted in footnote to s. 47 (3) of principal Act, ante, p. 1068 (36).

(1) Quoted in footnote to s. 4 of principal Act, ante, p. 1047 (4).

(2) Quoted in Note to s. 6 of principal Act, ante, p. 1048. See also ante, p. 1062.

(3) For sub-sect. (1), see Act of 1903, s. 5, ante, p. 1090. For sub-s. (2), see Note to s. 39 of principal Act, ante, p. 1062.

(5) Ante, pp. 1052, 1062.

(6) Ante, p. 1077.

Sect. 26.

(which relates to inquiries by the [Minister of Health]),⁷ as amended by this Act, shall apply as respects any inspection or inquiry so held as it applies to local inquiries held under that section.

Amendment as to the vesting of water pipes, &c.

Sect. 27. An improvement scheme under Part I. of the principal Act may, with the consent of the person or body of persons entitled to any right or easement which would be extinguished by virtue of sect. 22 of the principal Act,⁸ provide for any exceptions, restrictions, or modifications in the application to that right or easement of that section, and that section shall take effect subject to any such exceptions, restrictions, or modifications.

Note.**Easements.**

The amendment effected by the present section enables the matters referred to in the section to be dealt with by the scheme. It was previously necessary to deal with them by the confirming Bill if they had to be dealt with, as was in some cases desirable, in order to prevent inconvenience, *e.g.*, water pipes of undertakers other than the local authority, which the owners desired to retain and the local authority did not wish to acquire. In a case in which a right of light was extinguished under sect. 22 of the principal Act, questions arose as to the measure of compensation, and it was held that the arbitrator could not take into account loss of trade profit and diminution in value of goodwill of premises deprived of the easement.⁹ Perhaps in some measure a hardship of that kind also might be met under the present section—at any rate, where it was possible to preserve the easement and so prevent the damage.

Amendment of s. 38 of the principal Act as to distribution of compensation money and as to betterment charges.

Sect. 28.—(1) The amount of any compensation payable under sect. 38 of the principal Act (which relates to obstructive buildings) shall, when settled by arbitration in manner provided by that section, be apportioned by the arbitrator between any persons having an interest in the compensation in such manner as the arbitrator determines.

(2) The power of the arbitrator to apportion compensation under the foregoing provision and to apportion any part of the compensation to be paid for the demolition of an obstructive building amongst other buildings under sect. 38 (8) may be exercised in cases where the amount to be paid for compensation has been settled, otherwise than by arbitration under the principal Act, by an arbitrator appointed for the special purpose, on the application of the local authority, by the [Minister of Health], and the provisions of that Act shall apply as if the arbitrator so appointed had been appointed as arbitrator to settle the amount to be paid for compensation.¹⁰

Explanation of ss. 21 (2) and 41 (3) of the principal Act.

Sect. 29. For removing doubts it is hereby declared that a local authority may tender evidence before an arbitrator to prove the facts under the headings (first) (secondly) (thirdly) mentioned in sect. 21 (2) and sect. 41 (3) of the principal Act, notwithstanding that the local authority have not taken any steps with a view to remedying the defects or evils disclosed by the evidence.¹¹

AMENDMENTS WITH RESPECT TO FINANCIAL MATTERS.

Sect. 30. [*Amendment as to application of money borrowed for the purpose of the Dwelling-house Improvement Fund.*¹²]

Expenses of rural district council under Part III. of the principal Act.

Sect. 31.—(1) The expenses incurred by a rural district council after the passing of this Act in the execution of Part III. of the principal Act shall be defrayed as general expenses of the council in the execution of the Public Health Acts, except so far as the [Minister of Health] on the application of the council [declares] that any such expenses are to be levied as special expenses charged on specified contributory places, or as general expenses charged on specified contributory places, in the district, in such proportions as the district council may determine, to the exclusion of other parts of the district, and a rural district council may borrow for the purposes of Part III. of the principal Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses.

(2) The district council shall give notice to the overseers of any contributory

(7) *Ante*, pp. 1052, 1077.

(8) *Ante*, p. 1053.

(9) *In re Harvey and London C.C.*, *ante*, p. 1053 (33).

(10) See s. 38 and Note, *ante*, p. 1059.

(11) Sect. 21 of the principal Act has been repealed. For s. 41, see *ante*, p. 1063.

(12) Repealed by Housing, etc., Act, 1923, s. 24, Sched. III.

place proposed to be charged of any apportionment made by them under this section, and the overseers, if aggrieved by the apportionment, may appeal to the [Minister of Health] by giving notice of appeal to the [Minister] within twenty-one days after notice has been so given of the apportionment.

Sect. 31.

Sect. 32. [Application of proceeds of land sold under Part III. of the principal Act.¹³]

Sect. 33. Any payment or contribution agreed or ordered to be made under sect. 46 (6) or (7) of the principal Act, as amended by sect. 14 of the Housing of the Working Classes Act, 1903 (which relate to payments or contributions by borough councils towards the expenses of the county council or by the county council towards the expenses of borough councils in London), may be made either by means of the payment of a lump sum or by means of an annual payment of such amount and for such number of years as may be agreed upon or ordered.

Mode in which contributions by London borough councils to the County Council or vice versa may be made.

Sect. 34. Sect. 133 of the Lands Clauses Consolidation Act, 1845 (relating to land tax and poor rate),¹⁴ shall not apply in the case of any lands of which a local authority becomes possessed by virtue of the Housing Acts.

Exemption from section 133 of 8 & 9 Vict. c. 18.

Note.

The present section exempts local authorities from the obligation to make good any deficiency in land tax and poor rate resulting from their acquiring land for the purposes of the "Housing Acts" (defined in sect. 51 of the present Act), and thereby putting it out of assessment. It had been decided in connection with an improvement scheme under the principal Act that local authorities were not so exempt.¹⁵

Deficiency in rates.

Sect. 35.—(1) The assessment to inhabited house duty of any house occupied for the sole purpose of letting lodgings to persons of the working classes, at a charge of not exceeding sixpence a night for each person, shall be discharged by the commissioners acting in the execution of the Acts relating to the inhabited house duties, upon the production of a certificate to the effect that the house is solely constructed and used to afford suitable accommodation for the lodgers, and that due provision is made for their sanitary requirements.

Exemption of lodging-houses for the working classes from inhabited house duty.

(2) The provisions of sect. 26 (2) of the Customs and Inland Revenue Act, 1890, in relation to the certificate mentioned therein, shall, so far as applicable, apply to the certificate to be produced under this section.

Note.

Inhabited house duty is levied under the House Tax Act, 1851,¹⁶ on the rental value of houses, according to a scale in the Schedule to the Act. A new scale of "annual values" was laid down by the Finance Act, 1923.¹⁷ Sect. 26 (2) of the Customs and Inland Revenue Act, 1890,¹⁸ provides as follows:—"A certificate of the medical officer of health for the district in which the house is situate or other medical practitioner appointed as hereinafter provided, shall be produced to" the Commissioners "to the effect that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. The medical officer of health of a district on request by the person who would be liable to pay the house duty on any house in the district, if the duty were not discharged as aforesaid, shall examine the house for the purpose of ascertaining whether such a certificate can properly be given, and if the house be constructed so as to afford such accommodation and due provision be made as aforesaid, shall certify the same accordingly: Provided that the authority, if they are of opinion that the duties that would devolve on the medical officer of health under this section could not be performed by him without interference with the due performance of his ordinary duties, may appoint some other legally qualified medical practitioner having the qualification required for office of medical officer of health of the district to make such examination and give such certificates as aforesaid."

Inhabited house duty.

Before the passing of the present Act, it was decided that a house containing cubicles with common rooms for use by the occupants thereof at the charge contained in the present section (6d. per night) was not entitled to exemption

(13) Repealed by H. T. P. Act, 1919, s. 50, Sched. V.

ante, p. 481 (16).

(16) 14 & 15 Vict. c. 36.

(14) *Post*, Vol. II., p. 1597.

(17) 13 & 14 Geo. V. c. 14, s. 15.

(15) *Shoreditch Vestry v. London C.C.*,

(18) 53 Vict. c. 8, s. 26 (2).

Sect. 35, n. | under provisions contained in the Revenue Act, 1903.¹⁹ The present section nullifies that decision.

GENERAL AMENDMENTS.

Power of entry. | **Sect. 36.** Any person authorised in writing stating the particular purpose or purposes for which the entry is authorised, by the local authority or the [Minister of Health], may at all reasonable times, on giving twenty-four hours' notice to the occupier and to the owner, if the owner is known, of his intention, enter any house, premises, or buildings—(a) for the purpose of survey or valuation, in the case of houses, premises, or buildings which the local authority are authorised to purchase compulsorily under the Housing Acts; and (b) for the purpose of survey and examination, in the case of any dwelling-house in respect of which a closing order or an order for demolition has been made; or (c) for the purpose of survey and examination, where it appears to the authority or [Minister] that survey or examination is necessary in order to determine whether any powers under the Housing Acts should be exercised in respect of any house, premises, or building.¹

Notice may be given to the occupier for the purposes of this section by leaving a notice addressed to the occupier, without name or further description, at the house, buildings, or premises.

Note.

Entry. | The repealed sect. 77 of the principal Act was only co-extensive with paragraph (a) of the present section. The powers given by paragraphs (b) and (c) are new. As to other powers of entry, see sect. 15 (2) of the present Act, and sect. 102 of the Public Health Act, 1875,² and, in the case of a county medical officer of health, sect. 68 (4) of the present Act.

Re-entry. | As to re-entry on land originally acquired under the Housing Acts and temporarily let for allotments, see sect. 1 (1) (d) of the Allotments Act, 1922.³

Power of [Minister of Health] to obtain a report on any crowded area. | **Sect. 37.** If it appears to the [Minister of Health] that owing to density of population, or any other reason, it is expedient to inquire into the circumstances of any area with a view to determining whether any powers under the Housing Acts should be put into force in that area or not, the [Minister of Health] may require the local authority to make a report to [him] containing such particulars as to the population of the district and other matters as [he directs], and the local authority shall comply with the requirement of the [Minister of Health], and any expenses incurred by them in so doing shall be paid as expenses incurred in the execution of such Part of the principal Act as the [Minister determines].

Note.

Reports. | The present section is complementary to sects. 10 and 11, under which powers are given to the Minister of Health to make orders enforcing the performance by local authorities of their duties under Parts I., II., and III. of the principal Act, or as to inspection under the present Act, but is wide enough to include also inquiry into any matters arising under the Housing Acts (defined in sect. 51 of the present Act), although the marginal note refers to "crowded areas" only.

Joint action by local authorities. | **Sect. 38.** Where, upon an application made by one of the local authorities concerned, the [Minister of Health is] satisfied that it is expedient that any local authorities should act jointly for any purposes of the Housing Acts, either generally or in any special case, the [Minister] may by order make provision for the purpose, and any provisions so made shall have the same effect as if they were contained in a provisional order made under sect. 279 of the Public Health Act, 1875,⁴ for the formation of a united district.

Note.

Joint action. | As orders under sect. 279 of the Public Health Act, 1875, are of no effect until confirmed by Parliament, it may be doubted whether the present section is to be construed as giving the order of the Minister the same force as if it had been

(19) *London C.C. v. Cook*, L. R. 1906, 1 K. B. 278; 75 L. J. K. B. 187; 93 L. T. 836; 4 L. G. R. 153. Further as to this case, see *ante*, p. 1071 (1). See also *ante*, p. 541.

(1) This right of entry is enforceable sum-

marily: see *Arlidge v. Scruse*, *ante*, p. 1068 (42).

(2) *Ante*, p. 201.

(3) *Post*, Vol. II., p. 2374.

(4) *Ante*, p. 725.

so confirmed. If that is the effect, it is to be assumed that a corporate joint board will be formed to deal with the matters within the scope of the order as in cases under sect. 279, and that the local authorities will cease to have jurisdiction in the matters dealt with.⁵ This would be rather singular seeing that the order can be made on the application of one local authority only, and another local authority or other local authorities might conceivably have objections and yet could have no opportunity of petitioning Parliament; whereas in the case of a provisional order for formation of a united district, though the authorities concerned must concur in applying for the order, they have under sect. 297 the opportunity of opposing if they object to any of its provisions.

Perhaps, having regard to these points and other questions that may arise, the Minister will not make such orders except where there is agreement between the authorities concerned. Cases may certainly occur of contiguous areas which would be better dealt with upon a common scheme and in which therefore the co-operation of authorities may be desirable.

As to the general effect of provisional orders made under sect. 279 of the Public Health Act, 1875, see that section and sects. 280 to 284 of that Act, and, as to the procedure in making and obtaining confirmation of such orders, see sects. 297 and 298 of that Act and the Notes to those sections.⁶

Sect. 39.—(1) The procedure on any appeal under this Part of this Act, including costs, to the [Minister of Health] shall be such as the [Minister] may by rules determine, and on any such appeal the [Minister] may make such order in the matter as [he thinks] equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the [Minister thinks] just.

Provided that—(a) the [Minister of Health] may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and (b) the rules shall provide that the [Minister of Health] shall not dismiss any appeal without having first held a public local inquiry [unless the appellant fails to prosecute his appeal with due diligence.⁷]

(2) Any notice, order, or apportionment as respects which an appeal to the [Minister of Health] is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The [Minister of Health] may, before considering any appeal which may be made to [him] under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by [him] with reference to appeals.

Note.

Appeals to the Minister of Health may be made under sects. 15 (6), 17 (3) (6), 18 (4), and 31 (2) of the present Act. See also sect. 28 of the Housing, Town Planning, etc., Act, 1919, and Note.^{7a} Rules made by the Minister have been set out.⁸ These rules deal with the question of costs. As to local inquiries, see sect. 85 of the principal Act.⁹ The time within which an appeal may be made is, in the case of appeals in respect of closing orders under sect. 17 (3) (6), fourteen days, and in all other cases twenty-one days. Cases stated by the Minister are heard by the Divisional Court, and the decision of that Court is final.¹⁰

A motion to stay an action on the ground that it was not maintainable because the only remedy, if any, was an appeal under the present section, was dismissed as premature, no pleadings having been delivered.¹¹

As to the jurisdiction of the Minister on appeals against closing and demolition orders, see the cases cited below.¹² It is wider than that of the local authority.

Sect. 38, n.
Joint action
—continued.

Appeals to
[Minister of
Health].

Appeals.

**Exclusiveness
of remedy.**

**Jurisdiction
of Minister.**

(5) See P. H. Act, 1875, s. 281, *ante*, p. 726.

(6) *Ante*, pp. 736 *et seq.*

(7) Added by H. T. P. Act, 1919, s. 39, Sched. II.

(7a) *Post*, pp. 1143, 1144.

(8) *Post*, Vol. II., Part V., under heading "HOUSING, Appeals."

(9) *Ante*, p. 1077.

(10) See the *Tabernacle Building Soc. Case*, *ante*, p. 490 (25), and *Shrewsbury v. Shrews-*

bury (1907, C. A.), 23 T. L. R. 224.

(11) *Wright v. Prescott U.D.C.* (1916), 86 L. J. Ch. 221; 15 L. T. 772; 81 J. P. 43; 15 L. G. R. 41. See also *post*, Vol. II., p. 1987 (13), as to this case; and further as to the exclusiveness of statutory remedies, see *ante*, p. 742.

(12) *Lancaster's Case*, *ante*, p. 1106 (42); *White's Case*, *post*, p. 1113 (22); *Rush's Case*, *post*, p. 1146 (30).

Sect. 39, n.
Hearing of
appeals.

A local authority made a closing order, and the owner appealed to the Local Government Board. The Board, after sending an inspector to inspect the premises and hold a local inquiry, and considering his report by some official at their office, dismissed the appeal. A rule *nisi* for *certiorari* quashing the order of the Board was obtained on the ground that the appeal had not been determined according to law because (1), in the absence of a general order of the Board empowering someone other than the Board to hear the appeal, the Board only could hear the appeal, and an affidavit had been filed on behalf of the Board stating that someone in the Board's office not named had given the Board's decision; (2) the Board had refused to let the appellant see the inspector's report to the Board; and (3) the Board were bound to hear the appellant personally, if he desired to be so heard. The Court of Appeal made the rule absolute, but it was discharged by the House of Lords.¹³ *Per* Lord Haldane, C.,¹⁴ "When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same." *Per* Lord Parmoor,¹⁵ the respondents' "claim is inconsistent with the ordinary system of procedure when the determining authority is a large administrative department."

Rule 7 (1) of the Regulation of Building (Appeal Procedure) Rules, 1920, made under the repealed sect. 5 (2) of the Housing (Additional Powers) Act, 1919 (as to "luxury buildings"), provided that "if, after considering the notice of appeal and the statement of the local authority in reply, and any further particulars which may have been furnished by either party, the appeal tribunal are of opinion that the case is of such a nature that it can be properly determined without a hearing, they may dispense with a hearing, and may determine the appeal summarily." A local authority prohibited the building of a picture house under the repealed sect. 5, and the company appealed. The tribunal dismissed the appeal on the written notice of appeal and the reply. It was held that the tribunal should have given the company an opportunity of answering the statements in reply, and rules for *mandamus* and *certiorari* were made absolute.^{15a}

The expression "any stage of the proceedings" in proviso (a) to subsect. (1) of the present section does not enable the Minister to state a case after he has given his decision.¹⁶

Sect. 40. Notwithstanding anything contained in the principal Act it shall not be obligatory upon a local authority to sell and dispose of any lands or dwellings acquired or constructed by them for any of the purposes of the Housing Acts.¹⁷

Sect. 41.—(1) The [Minister of Health] may by order prescribe the form of any notice, advertisement, or other document, to be used in connection with the powers and duties of a local authority or of the [Minister] under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable.

(2) The [Minister of Health] may dispense with the publication of advertisements or the service of notices required to be published or served by a local authority under the Housing Acts, if [he is] satisfied that there is reasonable cause for dispensing with the publication or service.

(3) Any such dispensation may be given by the [Minister of Health] either before or after the time at which the advertisement is required to be published or the notice is required to be served, and either unconditionally or upon such conditions as to the publication of other advertisements or the service of other notices or otherwise as the [Minister thinks] fit, due care being taken by the [Minister] to prevent the interests of any person being prejudiced by the dispensation.

(13) *Local Government Board v. Arlidge*, L. R. 1915 A. C. 120; 84 L. J. K. B. 72; 111 L. T. 905; 79 J. P. 97; 12 L. G. R. 1109. But see *Board of Education v. Rice*, L. R. 1911 A. C. 179; 80 L. J. K. B. 796; 104 L. T. 689; 75 J. P. 393; 9 L. G. R. 652, where a *mandamus* was granted on the ground that the Board had not determined the proper questions.

(14) L. R. 1915 A. C., at p. 132.

(15) *Ibid.*, at p. 142.

(15a) 9 & 10 Geo. V. c. 99, s. 5 (2). *Rex (Alhambra Picture Houses, Ltd.) v. Housing*

Appeal Tribunal, L. R. 1920, 3 K. B. 334; 89 L. J. K. B. 1133; 123 L. T. 673; 84 J. P. 252; 18 L. G. R. 571.

(16) *Johnston v. Glasgow Cpn.*, 1912 S. C. (S.) 300; 49 Sc. L. R. 267; 3 Glen's Loc. Gov. Case Law 159. But see *Palmer & Co.'s Case*, ante, p. 490 (26).

(17) A duty to sell was imposed by the repealed s. 12 (5) of the principal Act. As to powers of sale, see ss. 12 (2) and 38 (11) of that Act, and H. T. P. Act, 1919, ss. 12 (2) and 15.

Sale and
disposal of
dwellings.

Power to
prescribe forms
and to dispense
with advertise-
ments and
notices.

Stating case.

Note.

A closing order which had become operative did not contain the note appended to the form prescribed by the Local Government Board to the effect that the owner could appeal to the Board against the order. It was held that the note was a material part of the form, and that the local authority must be restrained from proceeding further with their order.¹⁸

As to the service of notices, etc., on owners, etc., see sect. 15 of the Housing, etc., Act, 1923.¹⁹ As to service on local authorities, see sect. 87 of the principal Act.²⁰ As to authentication, see sect. 86 of that Act.

Sect. 41, n.**Form of notice.****Service, &c.**

Sect. 42. Where under the Housing Acts, any scheme or order or any draft scheme or order is to be published in the *London Gazette*, or notice of any such scheme or order or draft scheme or order is to be given in the *London Gazette*, it shall be sufficient in lieu of such publication or notice to insert a notice giving short particulars of the scheme, order, or draft, and stating where copies thereof can be inspected or obtained in two local newspapers circulating in the area affected by the scheme, order, or draft, or to give notice thereof in such other manner as the [Minister of Health determines].

Provision as to publication in *London Gazette*.

Sect. 43. Notwithstanding anything in any local Act or byelaw in force in any borough or district, it shall not be lawful to erect any back-to-back houses intended to be used as dwellings for the working classes, and any such house commenced to be erected after the passing of this Act shall be deemed to be unfit for human habitation for the purposes of the provisions of the Housing Acts.

Prohibition of back-to-back houses.

Provided that nothing in this section—(a) shall prevent the erection or use of a house containing several tenements in which the tenements are placed back to back, if the medical officer of health for the district certifies that the several tenements are so constructed and arranged as to secure effective ventilation of all habitable rooms in every tenement; or (b) shall apply to houses abutting on any streets the plans whereof have been approved by the local authority before the 1st day of May, 1909, in any borough or district in which, at the passing of this Act, any local Act or byelaws are in force permitting the erection of back-to-back houses.

Note.

The effect of the present section is that, except in the cases mentioned in the proviso, it will be the duty of the local authority to make closing orders under sect. 17 and to proceed to cause the houses to be demolished under sect. 18, subject of course to the appeal to the Minister of Health given by those sections, upon which the Minister may make such orders as he thinks equitable (see sect. 39 of the present Act). Presumably if the premises were applied to some other purpose than human habitation, demolition orders of the local authority could be varied or quashed unless other grounds existed for confirming the orders.²¹ As the Local Government Board for many years discountenanced back-to-back dwelling-houses the Minister of Health would be unlikely to favour the continued use of the premises as such unless they were capable of conversion into "through" dwelling-houses or had been already so converted. Many cases exist where such conversions have been carried out with quite satisfactory results.

Application of section.

The exception (a) in the proviso, it will be observed, is confined to tenement houses where the ventilation is effective. The exception (b) is in favour of cases in which the plans of the "street" have been approved before the date mentioned and the erection of the houses is permitted by local Act or byelaws. It is difficult to understand why in the latter case also a certificate should not have been required as to the effectiveness of the ventilation, as the local Act or byelaws may not have contained any modern provisions in this respect.

On a case stated by the Local Government Board under sect. 39 with regard to ten dwellings over ten garages, five facing one way and five the other, and one third of the space at the back of each pair being a ventilating shaft, it was held (1) that the shafts did not in law prevent the houses being "back to back," (2) that a chauffeur may be a member of the "working classes," and (3) that it was for the Board to determine as matters of fact these two questions.²²

Back-to-back houses.

(18) *Rayner v. Stepney B.C.*, L. R. 1911, 2 Ch. 312; 80 L. J. Ch. 678; 105 L. T. 362; 75 J. P. 468; 10 L. G. R. 307.

(19) *Post*, p. 1181.

(20) *Ante*, p. 1077.

(21) See *Lancaster's Case*, *ante*, p. 1106 (42).

(22) *White v. St. Marylebone B.C.*, L. R. 1915, 3 K. B. 249; 84 L. J. K. B. 2142; 113 L. T. 447; 79 J. P. 350; 13 L. G. R. 977. See also *Murrayfield Real Estate Co. v.*

Sect. 44.

Power to
[Minister of
Health] to
revoke un-
reasonable bye-
laws.

Sect. 44. If the [Minister of Health is] satisfied, by local inquiry or otherwise, that the erection of [any buildings ²³] within any borough or urban or rural district, is [, or is likely to be ²⁴] unreasonably impeded in consequence of any byelaws with respect to new streets or buildings in force therein, the [Minister] may require the local authority to revoke such byelaws or to make such new byelaws as [he] may consider necessary for the removal of the impediment. If the local authority do not within three months after such requisition comply therewith, the [Minister] may [himself] revoke such byelaws, and make such new byelaws as [he] may consider necessary for the removal of the impediment, and such new byelaws shall have effect as if they had been duly made by the local authority and confirmed by the [Minister].

Note.**Unreasonable byelaws.**

The power given to the Minister of Health by the present section is no doubt the result of the agitation which took place some years ago upon the subject of the impossibility for financial reasons of erecting houses for the working classes if stringent byelaws were to continue to govern their construction. The courts have power to declare byelaws unreasonable in certain circumstances, but their jurisdiction would not extend to the matter above mentioned. See the cases cited in the Note to sect. 182 of the Public Health Act, 1875.²⁵

See also the relaxation provisions in sects. 24 and 25 of the Housing, Town Planning, etc., Act, 1919,²⁶ and the provision as to housing scheme byelaws in sect. 12 of the Act of 1923.²⁷

Saving of sites
of ancient
monuments, &c.

Sect. 45. Nothing in the Housing Acts shall authorise the acquisition for the purposes of those Acts of any land which is the site of an ancient monument or other object of archaeological interest, or the compulsory acquisition for the purposes of Part III. of the Housing of the Working Classes Act, 1890, of any land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or which at the date of the order forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house.²⁸

Note.**Savings.**

The provisions of the present section are applied to town planning schemes by sect. 60 of the present Act.

Under sect. 57 of the principal Act,²⁹ a local authority may appropriate its own land for the purposes of Part III. of that Act, and by sects. 67 and 68 of the same Act encouragement is given to railway, dock, and harbour companies (among others) to provide dwellings for their employees by enabling them to borrow from the Public Works Loan Commissioners and also to purchase take and hold land for the purpose. It will be observed that the prohibition in the latter part of the present section relates to compulsory purchases only.

As to restrictions upon the acquisition of lands forming part of commons, open spaces, or allotments, or lands near Royal palaces or parks, see sects. 73 and 74 of the present Act.

Minor amend-
ments of Hous-
ing Acts.

Sect. 46. The amendments specified in the second column of the Second Schedule to this Act, which relate to minor details, shall be made in the provisions of the Housing Acts specified in the first column of that Schedule,³⁰ and sect. 63 of the principal Act (which relates to the disqualification of tenants of lodging-houses on receiving poor relief) shall be repealed.

DEFINITIONS.

Provisions of
this Part to be
deemed to be
part of the
appropriate
Part of the
principal Act.

Sect. 47.—(1) Any provisions of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained.¹

Edinburgh Magistrates, 1912 S. C. (S.) 217; 49 Sc. L. R. 148; 3 Glen's Loc. Gov. Case Law 160, where there was a common well containing a common staircase in the centre of a block of tenement dwellings, with four sets of rooms on each of three floors, two sets facing one way and two the other.

(23) Substituted for "dwellings for the working classes" by H. Act, 1923 (13 & 14 Geo. V. c. 24), s. 13.

(24) Added by *ibid.*

(25) *Ante*, p. 498.

(26) *Post*, p. 1139. (27) *Post*, p. 1179.

(28) Further as to ancient monuments, see the Act of 1913, *post*, Vol. II., p. 1528.

(29) *Ante*, p. 1069.

(30) The amendments thus made, namely, to ss. 23, 34, 35, 38 (1) (a) (7), 39 (8), 40, 85, 88, and 89 of the principal Act, have all been incorporated in those enactments.

(1) As to the effect of this sub-section, see *Scraser's Case*, *ante*, p. 1068 (42).

(2) Any reference in the Housing Acts to a closing order or to an order for the demolition of a building shall be construed as a reference to a closing order or an order of demolition under this Act.

Sect. 47.

Sect. 48. The expression "street" shall, unless the context otherwise requires, have the same meaning in Part I. of the principal Act as it has in Part II. of that Act, and shall include any court, alley, street, square, or row of houses.²

Amendment of definitions in Part I. of the principal Act.

Sect. 49. [Amendment of definitions for purpose of Part II. of the principal Act.³]

Sect. 50. [Definition of cottage.⁴]

Sect. 51. In this Part of this Act the expression "Housing Acts" means the principal Act, and any Act amending that Act, including this Act.⁵

Definition of Housing Acts.

Sects. 52 and 53. [Application of Part I. to Scotland.]

PART II.

TOWN PLANNING.

Note.

Twelve town planning schemes have been approved, namely, Quinton, Harborne, and Edgbaston (May 31, 1913), East Birmingham (Aug. 10, 1913; amended by scheme, May 13, 1918), Ruislip-Northwood (Sep. 7, 1914), Rochdale, Marland (Jan. 20, 1915), North Bromsgrove, Rubery (Dec. 13, 1915), Chesterfield, Chester Street (Sep. 4, 1916), Birmingham, North Yardley and Stechford (Apr. 4, 1921), Otley (Oct. 14, 1921), Leeds, Buckingham House (Oct. 14, 1921), Hunslet, Temple-newsham (Dec. 31, 1921), Wallasey, St. George's Mount (Jan. 11, 1922), and Luton (Nov. 29, 1922).

List of schemes approved.

Sect. 54.—(1) A town planning scheme may be made in accordance with the provisions of this Part of this Act as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands. [Provided that where a piece of land already built upon or a piece of land not likely to be used for building purposes is so situate with respect to any land likely to be used for building purposes that the general object of the scheme would be better secured by its inclusion in any town planning scheme made with respect to the last-mentioned land, the scheme may include such piece of land as aforesaid, and may provide for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect.⁶]

Preparation and approval of town planning scheme.

[(2) *The [Minister of Health] may authorise a local authority within the meaning of this Part of this Act to prepare such a town planning scheme with reference to any land within or in the neighbourhood of their area, if the authority satisfy the [Minister] that there is a *prima facie* case for making such a scheme, or may authorise a local authority to adopt, with or without any modifications, any such scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorised to prepare a scheme.*⁷]

[(3) *Where it is made to appear to the [Minister of Health] that a piece of land already built upon, or a piece of land not likely to be used for building purposes, is so situated with respect to any land likely to be used for building purposes that it ought to be included in any town planning scheme made with respect to the last-mentioned land, the [Minister] may authorise the preparation or adoption of a scheme including such piece of land as aforesaid, and providing for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect.*⁸]

(4) A town planning scheme prepared or adopted by a local authority shall not have effect, unless it is approved by order of the [Minister of Health], and the

(2) See definition in s. 29, *ante*, p. 1054, which has now been amended by the Act of 1923.

(3) See amendments incorporated in definitions of "dwelling-house" and "owner" in s. 29 of principal Act, *ante*, p. 1054.

(4) See s. 53 of principal Act, *ante*, p. 1069.

(5) See Note to s. 1 of principal Act, *ante*, p. 1043.

(6) Added by H. T. P. Act, 1919, s. 48, Sched. III.

(7) This sub-section is not repealed, but the words quoted in the Note to the present section are substituted for it by H. T. P. Act, 1919, s. 42.

(8) This sub-section is to be "omitted," see H. T. P. Act, 1919, s. 48, Sched. III.

Sect. 54.

Preparation and approval of town planning scheme—*cont.*

[Minister] may refuse to approve any scheme except with such modifications and subject to such conditions as [he thinks] fit to impose: * * * 9

(5) A town planning scheme, when approved by the [Minister of Health], shall have effect as if it were enacted in this Act.

(6) A town planning scheme may be varied or revoked by a subsequent scheme prepared or adopted and approved in accordance with this Part of this Act, and the [Minister of Health], on the application of the responsible authority, or of any other person appearing to [him] to be interested, may by order revoke a town planning scheme if [he thinks] that under the special circumstances of the case the scheme should be so revoked.

(7) The expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not, and the decision of the [Minister of Health], whether land is likely to be used for building purposes or not, shall be final.

Note.

Preparation and adoption of schemes.

By sect. 42 of the Housing, Town Planning, etc., Act, 1919,¹⁰ "it shall not be necessary for a local authority to obtain the authority of the [Minister of Health] to prepare or adopt a town planning scheme, and accordingly for subsect. (2) of sect. 54 of the Housing, Town Planning, etc., Act, 1909 (hereinafter referred to as the Act of 1909), the following provision shall be substituted:—

"(2) A local authority within the meaning of this Part of this Act may by resolution decide—(a) to prepare a town planning scheme with reference to any land within or in the neighbourhood of their area in regard to which a scheme may be made under this Act; or (b) to adopt, with or without any modifications, any town planning scheme proposed by all or any of the owners of any land with respect to which the local authority are themselves by this Act authorised to prepare a scheme: Provided that—(i) if any such resolution of a local authority extends to land not within the area of that local authority, the resolution shall not have effect until it is approved by the [Minister of Health], and the [Minister] may, in giving [his] approval, vary the extent of the land to be included within the area of the proposed town planning scheme; and (ii) where any local authorities are desirous of acting jointly in the preparation or adoption of a town planning scheme, they may concur in appointing out of their respective bodies a joint committee for the purpose, and in conferring with or without restrictions on any such committee any powers which the appointing councils might exercise for the purpose, and the provisions of sects. 57 and 58 of the Local Government Act, 1894,¹¹ in regard to joint committees, shall, with the necessary modifications, apply to any joint committee so appointed."

Schemes in historic place.

By sect. 21 of the Housing, etc., Act, 1923,¹² "Where it appears to the Minister that on account of the special architectural, historic or artistic interest attaching to a locality it is expedient that with a view to preserving the existing character and to protecting the existing features of the locality a town planning scheme should be made with respect to any area comprising that locality, the Minister may, notwithstanding that the land or any part thereof is already developed, authorise a town planning scheme to be made with respect to that area prescribing the space about buildings, or limiting the number of buildings to be erected, or prescribing the height or character of buildings, and, subject as aforesaid, the Town Planning Acts, 1909 to 1923, shall apply accordingly."

Contents of town planning schemes.

Sect. 55.—(1) The [Minister of Health] may prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the Fourth Schedule to this Act and the general provisions, or set of general provisions appropriate to the area for which a town planning scheme is made, shall take effect as part of every scheme, except so far as provision is made by the scheme as approved by the [Minister] for the variation or exclusion of any of those provisions.¹³

(9) Proviso, as to publication and laying before Parliament of town planning schemes, repealed by H. T. P. Act, 1919 (9 & 10 Geo. V. c. 35), s. 44.

(10) 9 & 10 Geo. V. c. 35, s. 42.

(11) *Post*, Vol. II., p. 2091.

(12) 13 & 14 Geo. V. c. 24, s. 21.

(13) See Note to Sched. IV. as to the "Model Clauses," *post*, p. 1127. These clauses have been set out, *post*, p. 1183.

(2) Special provisions shall in addition be inserted in every town planning scheme defining in such manner as may be prescribed by regulations under this Part of this Act the area to which the scheme is to apply, and the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority (in this Part of this Act referred to as the responsible authority), and providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions, and for suspending, so far as necessary for the proper carrying out of the scheme, any statutory enactments, byelaws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme : * * * ¹⁴

(3) Where land included in a town planning scheme is in the area of more than one local authority, or is in the area of a local authority by whom the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority and for certain purposes another local authority, or a joint body constituted specially for the purpose by the scheme, and all necessary provisions may be made by the scheme for constituting the joint body and giving them the necessary powers and duties :

Provided that, except with the consent of the London County Council, no other local authority shall, as respects any land in the county of London, prepare or be responsible for enforcing the observance of a town planning scheme under this Part of this Act, or for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority.

Sect. 56.—(1) The [Minister of Health] may make regulations for regulating generally the procedure to be adopted with respect to [the preparation or adoption of a town planning scheme,¹⁵] obtaining the approval of the [Minister] to a scheme so prepared or adopted, [the variation or revocation of a scheme,¹⁶] and any inquiries, reports, notices, or other matters required in connection with the preparation or adoption or the approval of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof [or the variation or revocation of the scheme.¹⁶]

Sect. 55.

Contents of
town planning
schemes—*cont.*

Procedure regu-
lations of the
[Minister of
Health].

(2) Provision shall be made by those regulations—

- (a) for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme [by such means ¹⁷] as may be provided by the regulations;
- (b) for securing that notice of the proposal to prepare or adopt the scheme should be given at the earliest stage possible to any council interested in the land; and
- (c) for dealing with the other matters mentioned in the Fifth Schedule to this Act.

[For securing that the council of the county in which any land proposed to be included in a town planning scheme is situated (1) shall be furnished with a notice of any proposal to prepare or adopt such a scheme and with a copy of the draft scheme before the scheme is made, and (2) shall be entitled to be heard at any public local inquiry held by the [Minister of Health] in regard to the scheme.¹⁸]

Note.

By sect. 43 (1) of the Housing, Town Planning, etc., Act, 1919,¹⁹ “ The power of the [Minister of Health] of making regulations under ” the present section “ shall include power to make regulations as to the procedure consequent on the passing of a resolution by a local authority to prepare or adopt a town planning scheme, and provision shall be made by those regulations for securing that a local authority after passing such a resolution shall proceed with all reasonable speed with the preparation or adoption of the town planning scheme, and shall comply

**Procedure
regulations.**

(14) Proviso repealed, see footnote (9), *ante*, p. 1116.

(15) Substituted for “ applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme ” by H. T. P. Act, 1919, s. 48, Sched. III.

(16) Added by H. T. P. Act, 1919, s. 48,

Sched. III.

(17) Substituted for “ at every stage of the proceedings, by means of conferences and such other means ” by H. T. P. Act, 1919, s. 48, Sched. III.

(18) Added by H. T. P. Act, 1919 (9 & 10 Geo. V. c. 35), s. 43 (2).

(19) 9 & 10 Geo. V. c. 35, s. 43 (1).

Sect. 56, n.

with any regulations as to steps to be taken for that purpose, including provisions enabling the [Minister of Health] in the case of default or dilatoriness on the part of the local authority to act in the place and at the expense of the local authority."

Model clauses.

The Ministry of Health (Town Planning) Regulations, 1921, and the Town Planning (General Interim Development) Order, 1922, will be found elsewhere.¹⁹

The model town planning clauses of 1923, as amended in 1924, follow the Act of 1923.²⁰

Power to enforce scheme.

Sect. 57.—(1) The responsible authority may at any time, after giving such notice as may be provided by a town planning scheme and in accordance with the provisions of the scheme—(a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or (b) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by a responsible authority under this section may be recovered from the persons in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, that question shall be referred to the [Minister of Health], and shall, unless the parties otherwise agree, be determined by the [Minister] as [arbitrator], and the decision of the [Minister] shall be final and conclusive and binding on all persons.

Compensation in respect of property injuriously affected by scheme, &c.

Sect. 58.—(1) Any person whose property is injuriously affected by the making of a town planning scheme shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the [Minister of Health], be entitled to obtain compensation in respect thereof from the responsible authority.

(2) A person shall not be entitled to obtain compensation under this section on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme, after the [date of the resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect as the case may be ²¹], or after such other time as the [Minister of Health] may fix for the purpose:

Provided that this provision shall not apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before [such date or other time as aforesaid ²²].

[Provided also that this provision shall not apply as respects any building erected, contract made, or other thing done in accordance with a permission granted in pursuance of an order of the [Minister of Health] allowing the development of estates and building operations to proceed pending the preparation or adoption and approval of the scheme, and the carrying out of works so permitted shall not prejudice any claim of any person to compensation in respect of property injuriously affected by the making of the scheme.²³]

(3) Where, by the making of any town planning scheme, any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the [Minister of Health]), shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase.

(4) Any question as to whether any property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid

(19) *Post*, Vol. II., Part V., under heading "TOWN PLANNING." (20) *Post*, p. 1183.

(21) Substituted for "time at which the application for authority to prepare the scheme was made" by H. T. P. Act, 1919, s. 48, Sched. III.

(22) Substituted for "the application was made" by H. T. P. Act, 1919, s. 48, Sched. III.

(23) Added by H. T. P. Act, 1919 (9 & 10 Geo. V. c. 35), s. 45. See first portion of Note to present section.

as compensation under this section or which the responsible authority are entitled to recover from a person whose property is increased in value, shall be determined [by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919²⁴], unless the parties agree on some other method of determination.

(5) Any amount due under this section as compensation to a person aggrieved from a responsible authority, or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt.

(6) Where a town planning scheme is revoked by an order of the [Minister of Health] under this Act, any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation in accordance with this section in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme.

Note.

By sect. 45 of the Housing, Town Planning, etc. Act, 1919,²⁵ "The [Minister of Health] may by special or general order provide that where a resolution to prepare or adopt a town planning scheme has been passed, or where before the passing of this Act the preparation or adoption of a town planning scheme has been authorised, the development of estates and building operations may be permitted to proceed pending the preparation or adoption and approval of the town planning scheme, subject to such conditions as may be prescribed by the order, and where such permission has been given the provisions of subsect. (2) of " the present section " shall have effect as if the " proviso quoted above " were added thereto."

By sect. 20 of the Housing, etc. Act, 1923,²⁶ "(1) The responsible authority may, at any time within one month after the date of an award of compensation in respect of property injuriously affected by the making of a town-planning scheme, give notice to the owner of that property of their intention to withdraw or modify all or any of the provisions of the scheme which gave rise to the claim for compensation. (2) Where such notice has been given, the responsible authority shall, within three months from the date of the notice, submit for the Minister's approval a varying scheme carrying into effect such withdrawal or modification as aforesaid, and upon approval by the Minister of the varying scheme, whether with or without modification, and payment by the authority of the owner's costs of and in connection with the arbitration, the award of the arbitrator shall be discharged without prejudice, however, to the right of the owner to make a further claim for compensation in respect of the said scheme as varied. (3) No award of compensation in respect of property injuriously affected by the making of a town-planning scheme shall be enforceable within one month from the date thereof, or if notice has been given by the authority under the preceding subsection, pending the Minister's decision on the varying scheme."

As to the liability as between vendor and purchaser,²⁷ and as between lessee and freeholder,²⁸ to a betterment charge, see the cases cited below.

Sect. 59.—(1) Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be paid in respect thereof if or so far as the provisions [are also contained in any public, general or local Act or order having the force of an Act of Parliament in force in the area or ²⁹] are such as would have been enforceable if they had been contained in byelaws made by the local authority.

(2) Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which . . .³⁰ prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the [Minister of

Sect. 58.

Development of estates pending schemes.

Withdrawal and modifications.

Betterment charges.

Exclusion or limitation of compensation in certain cases.

(24) Substituted for "by the arbitration of a single arbitrator appointed by the Local Government Board" by H., etc., Act, 1923 (13 & 14 Geo. V. c. 24), s. 18. For Act of 1919, referred to in amendment, see *post*, Vol. II., p. 2334.

(25) 9 & 10 Geo. V. c. 35, s. 45. For Interim Development Regulations, see footnote (19), *ante*, p. 1118.

(26) 13 & 14 Geo. V. c. 24, s. 20.

(27) *In re Farrer and Gilbert's Contract*,

L. R. 1914, 1 Ch. 125; 83 L. J. Ch. 171; 110 L. T. 23. See also *post*, p. 1177 (6).

(28) *Holborn & Frascati, Ltd. v. London C.C.* (1916), 35 L. J. Ch. 266; 114 L. T. 541; 80 J. P. 225; 14 L. G. R. 538.

(29) Added by H., etc., Act, 1923, s. 16, Sched. II.

(30) Words "with a view to securing the amenity of the area included in the scheme or any part thereof" to be "omitted," see H. T. P. Act, 1919, s. 48, Sched. III.

Sect. 59.

Health], having regard to the nature and situation of the land affected by the provisions, [considers] reasonable for the purpose.

(3) Where a person is entitled to compensation under this Part of this Act in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and under that other enactment, and shall not be entitled to any greater compensation under this Act than he would be entitled to under the other enactment.

Note.**Building line.**

A clause in a town planning scheme prescribed a building line. An owner's claim for compensation was held not to be barred by subsect. (1) of the present section, because the local authority had no express power to prescribe such a line, and could not justify the clause as an exercise of their power to make a byelaw regulating the space about buildings. Bankes, L.J., further held that there was no evidence that such a byelaw would be reasonable. It was also held that the claim was not barred by subsect. (2), because it was not one prescribing the "space about buildings."³¹ Bailhache, J., whose decision against the claimant on the above points was reversed by Bankes, L.J., and Eve, J. (Scrutton, L.J., dissenting), held that the claim was not barred by the fact that the claimant's builder had previously been convicted under sect. 3 of the Public Health (Buildings in Streets) Act, 1888, this conviction not rendering the matter *res judicata*.³²

Withdrawals.

As to the effect on compensation of the withdrawal or modification of town planning schemes under sect. 20 of the Act of 1923, see that enactment.³³

Acquisition by local authorities of land comprised in a scheme.

Sect. 60.—(1) The responsible authority may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be authorised to purchase any such land compulsorily in the same manner and subject to the same provisions (including any provision authorising the [Minister of Health] to give directions as to the payment and application of any purchase money or compensation) as a local authority may purchase or be authorised to purchase land situate in an urban district for the purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by sects. 2 and 45 of this Act.³⁴

(2) Where land included within the area of a local authority is comprised in a town planning scheme, and the local authority are not the responsible authority, the local authority may purchase or be authorised to purchase that land in the same manner as the responsible authority.

Powers of [Minister of Health] in case of default of local authority to make or execute town planning scheme.

Sect. 61.—(1) If the [Minister of Health is] satisfied on any representation, after holding a public local inquiry, that a local authority—(a) have failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a town planning scheme ought to be made; or (b) have failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted; or (c) have unreasonably refused to consent to any modifications or conditions imposed by the [Minister]; the [Minister] may, as the case requires, order the local authority to prepare and submit for the approval of the [Minister] such a town planning scheme, or to adopt the scheme, or to consent to the modifications or conditions so inserted:

Provided that, where the representation is that a local authority have failed to adopt a scheme, the [Minister of Health], in lieu of making such an order as afore-said, may approve the proposed scheme, subject to such modifications or conditions, if any, as the [Minister thinks] fit, and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the [Minister].

(2) If the [Minister of Health is] satisfied on any representation, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed, or any provisions thereof, or to execute any works which under the scheme or this Part of this Act the authority is required to execute, the [Minister] may order that authority to do all things necessary for enforcing the observance of the scheme or any provisions thereof

(31) *In re Ellis & Ruislip - Northwood U.D.C.* (C. A.), L. R. 1920, 1 K. B. 343; 88 L. J. K. B. 1258; 122 L. T. 98; 83 J. P. 273; 17 L. G. R. 607.

(32) 1919 W. N. 145; 17 L. G. R. 427.

(33) Quoted *ante*, p. 1119.

(34) See s. 57 of principal Act, and enactments there referred to, *ante*, p. 1069.

effectively, or for executing any works which under the scheme or this Part of this Act the authority is required to execute. **Sect. 61.**

(3) Any order under this section may be enforced by mandamus.

Note.

By sect. 46 of the Housing, Town Planning, etc. Act, 1919,³⁴ “ (1) The council of every borough or other urban district containing on the 1st day of January, 1923, a population according to the last census for the time being of more than twenty thousand shall, within [six³⁵] years after that date, prepare and submit to the [Minister of Health] a town planning scheme in respect of all land within the borough or urban district in respect of which a town planning scheme may be made under the Act of 1909. (2) Without prejudice to the powers of the council under the ” present Act, “ every scheme to which this section applies shall deal with such matters as may be determined by regulations to be made by the [Minister of Health]. (3) Every regulation so made shall be laid before both Houses of Parliament as soon as may be after it is made, and, if an address is presented by either House within twenty-one days on which that House has sat next after any such regulation is laid before it praying that the regulation may be annulled, His Majesty in Council may annul the regulation, but without prejudice to the validity of anything previously done thereunder.”

Compulsory town planning.

By sect. 47 of the same Act,³⁶ “ (1) Where the [Minister of Health is] satisfied after holding a public local inquiry that a town planning scheme ought to be made by a local authority as respects any land in regard to which a town planning scheme may be made under the ” present Act, “ the [Minister] may by order require the local authority to prepare and submit for [his] approval such a scheme, and, if the scheme is approved by the [Minister], to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, and for executing any works which under the scheme or under Part II. of the ” present Act, “ the authority are required to execute. (2) Any order made by the [Minister of Health] under this section shall have the same effect as a resolution of the local authority deciding to prepare a town planning scheme in respect of the area in regard to which the order is made. (3) If the local authority fail to prepare a scheme to the satisfaction of the [Minister] within such time as may be prescribed by the order, or to enforce the observance of the scheme or any provisions thereof effectively, or to execute any such works as aforesaid, the [Minister] may [himself] act, or in the case of a borough or other urban district the population of which is less than 20,000, or of a rural district, may, if the [Minister thinks] fit, by order, empower the county council to act in the place and at the expense of the local authority.”

Sect. 62. Where the [Minister of Health is] authorised by this Part of this Act or any scheme made thereunder to determine any matter, it shall, except as otherwise expressly provided by this Part of this Act, be at [his] option to determine the matter as [arbitrator] or otherwise, and, if [he elects] or [is] required to determine the matter as [arbitrator], the provisions of the Regulation of Railways Act, 1868,³⁷ respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the [Minister of Health] and the determination of the matters aforesaid.

Determination of matters by [Minister of Health].

Sect. 63. Sect. 85 of the Housing of the Working Classes Act, 1890 (which relates to inquiries by the [Minister of Health]),³⁸ as amended by this Act, shall apply for any purposes of this Part of this Act as it applies for the purpose of the execution of the powers and duties of the [Minister of Health] under that Act.

Inquiries by [Minister of Health].

Sect. 64. All general provisions made under this Part of this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893,³⁹ shall apply to such provisions as if they were statutory rules within the meaning of sect. 1 of that Act.

Laying general provisions before Parliament.

Sect. 65.—(1) For the purposes of this Part of this Act the expression “ local authority ” means the council of any borough or urban or rural district.

Definition of local authority, and expenses.

(34) 9 & 10 Geo. V. c. 35, s. 46.

(35) Substituted for “ three ” by H. Act, 1923 (13 & 14 Geo. V. c. 24), s. 19.

(36) 9 & 10 Geo. V. c. 35, s. 47.

(37) For ss. 30 to 32 of this Act, see Note

to L. G. Act, 1888, s. 63, *post*, Vol. II., p. 1943.

(38) *Ante*, p. 1079.

(39) *Ante*, p. 260.

Sect. 65.

(2) Any expenses incurred by a local authority under this Part of this Act, or any scheme made thereunder, shall be defrayed as expenses of the authority under the Public Health Acts, and the authority may borrow, for the purposes of this Part of this Act, or any scheme made thereunder [including the cost of the preparation or adoption of a scheme⁴⁰], in the same manner and subject to the same provisions as they may borrow for the purposes of the Public Health Acts.

(3) Money borrowed for the purposes of this Part of this Act, or any scheme made thereunder, shall not be reckoned as part of the debt of a borough or urban district for the purposes of the limitation on borrowing under sect. 234 (2) and (3) of the Public Health Act, 1875.⁴¹

Application
to London.

Sect. 66.—(1) This Part of this Act shall apply to the administrative county of London, and, as respects that county, the London County Council shall be the local authority.

(2) Any expenses incurred by the London County Council shall be defrayed out of the general county rate and any money may be borrowed by the Council in the same manner as money may be borrowed for general county purposes.

Sect. 67. [Application of Part II. to Scotland.]

PART III.

COUNTY MEDICAL OFFICERS, COUNTY PUBLIC HEALTH AND
HOUSING COMMITTEE, ETC.

Appointment,
duties, and ten-
ure of office of
county medical
officers.

Sect. 68.—(1) Every county council shall appoint a medical officer of health under sect. 17 of the Local Government Act, 1888.

(2) The duties of a medical officer of health of a county shall be such duties as may be prescribed by general order of the [Minister of Health] and such other duties as may be assigned to him by the county council.

(3) The power of county councils and district councils under the said section to make arrangements with respect to medical officers of health shall cease, without prejudice to any arrangement made previously to the date of the passing of this Act.

(4) The medical officer of health of a county shall, for the purposes of his duties, have the same powers of entry on premises as are conferred on a medical officer of health of a district by or under any enactment.

(5) A medical officer of health of a county shall be removable by the county council with the consent of the [Minister of Health] and not otherwise.

(6) A medical officer of health of a county shall not be appointed for a limited period only :

Provided that the county council may, with the sanction of the [Minister of Health], make any temporary arrangement for the performance of all or any of the duties of the medical officer of health of the county, and any person appointed by virtue of any such arrangement to perform those duties or any of them shall, subject to the terms of his appointment, have all the powers, duties, and liabilities of the medical officer of health of the county.

(7) A medical officer of health appointed after the passing of this Act under the said section as amended by this section shall not engage in private practice, and shall not hold any other public appointment without the express written consent of the [Minister of Health].

(8) An order under this section prescribing the duties of medical officers of health of a county shall be communicated to the county council and shall be laid before Parliament as soon as may be after it is made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after the order is laid before it praying that the order may be annulled, His Majesty in Council may annul the order and it shall thenceforward be void, but without prejudice to the validity of anything previously done thereunder.

Note.

County medi-
cal officers.

Under the unrepealed portion of sect. 17 of the Local Government Act, 1888,⁴² a county council "may if they see fit appoint and pay a medical officer of health or medical officers of health." Various incidental provisions, which the same section contained, are repealed by sect. 75 and Sched. VI. of the present Act, and

(40) Added by H. T. P. Act, 1919, s. 48,
Sched. III.

(41) *Ante*, p. 616.

(42) *Post*, Vol. II., p. 1907.

the present section and sect. 69 take their place. It will be observed that, except as regards London (see sect. 70), the appointment is now obligatory as regards one medical officer, and that power no longer exists to arrange with a district council for the services of such officer to be available in the district of that council, upon which it was unnecessary for the latter council to appoint a medical officer, but this latter change is without prejudice to arrangements already made at the passing of the present Act (3rd December, 1909).

As to the powers of entry referred to in subsect. (4), see sects. 15 (2) and 36 of the present Act, and sect. 191 of the Public Health Act, 1875,⁴³ which gives a medical officer all the powers of a sanitary inspector. Other sections of the latter Act also give to district councils and their officers powers of entry on to premises for the purpose of inspection. The general order of the Local Government Board as to the duties of a county medical officer of health, which was made in 1910, was revoked and replaced by the Sanitary Officers Order, 1922.⁴⁴

With regard to the qualifications of medical officers of health, see sect. 18 of the Local Government Act, 1888,⁴⁵ and Note.

Sect. 69.—(1) The clerk of a rural district council shall forward to the medical officer of health of the county a copy of any representation, complaint [information, or closing order⁴⁶], a copy of which it is the duty of the district council to forward to the county council under sect. 45 of the Housing of the Working Classes Act, 1890 (which relates to the powers of county councils).

(2) The medical officer of health of a [county⁴⁷] district shall give to the medical officer of health of the county any information which it is in his power to give, and which the medical officer of health of the county may reasonably require from him for the purpose of his duties prescribed by the [Minister of Health].

(3) If any dispute or difference shall arise between the clerk or the medical officer of health of a district council and the medical officer of health of a county council under this section, the same shall be referred to the [Minister of Health], whose decision shall be final and binding.

(4) If the clerk or medical officer of health of a district council fails to comply with the provisions of this section, he shall on information being laid by the county council, but not otherwise, be liable on summary conviction in respect of each offence to a fine not exceeding ten pounds.

Sect. 70. The foregoing provisions of this Part of this Act shall not apply to Scotland or, except sect. 68 (4), to the administrative county of London, and, in the application of the said subsection to London, the reference to a medical officer of health of a district shall be construed as a reference to the medical officer of health of a metropolitan borough.

Sect. 71.—(1) Every county council shall establish a public health and housing committee, and all matters relating to the exercise and performance by the council of their powers and duties as respects public health and the housing of the working classes (except the power of raising a rate or borrowing money) shall stand referred to the public health and housing committee, and the council, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of the public health and housing committee with respect to the matter in question, and the council may also delegate to the public health and housing committee, with or without restrictions or conditions as they think fit, any of their powers as respects public health and the housing of the working classes, except the power of raising a rate or borrowing money and except any power of resolving that the powers of a district council in default should be transferred to the council.

(2) This section shall not apply to Scotland or the London County Council.

Sect. 72. [*Formation and extension of building societies.*⁴⁸]

PART IV.

SUPPLEMENTAL.

Sect. 73.—(1) Where any scheme or order under the Housing Acts or Part II. of this Act authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment, the scheme or order,

Sect. 68, n.
County medi-
cal officers—
continued.

Duty of clerk
and medical
officer of health
of district coun-
cil to furnish
information to
medical officer
of health of
county council.

Extent of
Part III.

Public health
and housing
committee of
county councils.

Provisions as to
commons and
open spaces.

(43) *Ante*, p. 537.
(44) *Post*, Vol. II., Part V., under heading
“SANITARY OFFICERS.”
(45) *Post*, Vol. II., p. 1907.
(46) Substituted for “or information” by

H. T. P. Act, 1919, s. 39, Sched. II.
(47) Added by Housing, etc. Act, 1923, s. 16,
Sched. II.
(48) Repealed by H. T. P. Act, 1919, s. 50,
Sched. V. See s. 18, *post*, p. 1137.

Sect. 73.

Provisions as to
commons and
open spaces—
continued.

so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the [Minister of Health] after consultation with the [Minister] of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate the [Minister of Health] shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorises such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882,⁴⁹ and any town or village green;⁵⁰ the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground;⁵¹ and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.⁵²

Provisions as to
land in neigh-
bourhood of
Royal palaces
or parks.

Sect. 74.—(1) Where any land proposed to be included in any scheme or order to be made under the Housing Acts or Part II. of this Act, or any land proposed to be acquired under the Housing Acts or Part II. of this Act, is situate within the prescribed distance from any of the Royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the [Minister of Health] shall, before confirming the scheme or order or authorising the acquisition of the land or the raising of any loan for the purpose, take into consideration any recommendations [he] may have received from the Commissioners of Works with reference to the proposal.

(2) For the purposes of this section "prescribed" means prescribed by regulations made by the [Minister of Health] after consultation with the Commissioners of Works.⁵³

Repeal.

Sect. 75. The enactments mentioned in the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Note.**Repeals.**

The following are the English enactments repealed by the present section and Sched. VI. :—

1888—51 & 52 Vict. c. 41 (Loc. Gov.), s. 17, from "who shall not hold" to end of the section.

1890—53 & 54 Vict. c. 70 (Housing), in s. 6 (1) (a), the words "for sanitary purposes"; ss. 8 (6), 9, 12 (5), 15 (2) (including the proviso thereto), 17, 18, 19; in s. 25, the words at the end of the section "such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority"; ss. 27, 28; in s. 29, the words "means any inhabited building and" in the definition of "dwelling-house"; ss. 32, 33; in s. 39 (4), the words "by agreement" where those words first occur, and all after the word "sanctioned" to the end of that subsection; s. 39 (5) (6); in s. 39 (8), the words "to costs to be awarded in certain cases by a Committee of either House of Parliament"; s. 39 (9), from "provided that" to the end; in s. 47 (3), the words "the time allowed under any order for the execution of any works or the demolition of a building, or"; ss. 53 (2), 54, "so far as unrepealed"; ss. 63, 65, from "and (iii.)"

(49) As to such land, see *post*, Vol. II., p. 1466.

(50) As to such greens, see *ante*, p. 424.

(51) As to disused burial grounds, see *ante*, pp. 839—842.

(52) As to such allotments, see *post*, Vol. II., p. 1462.

(53) By an order of September 2nd, 1910,

distances of two miles from Windsor Castle, Windsor Great Park, and Windsor Home Park, and of half a mile from "any other Royal palace or park," were prescribed under the present section. Further as to Royal parks, see H. T. P. Act, 1919, s. 38, *post*, p. 1148.

to end of section; in s. 66, the words "or special"; ss. 77, 83; in s. 85, the words "not exceeding three guineas a day," s. 92, from "but in" to the end of the section; and Scheds. III., IV., and V. Sect. 75, n.

1900—63 & 64 Vict. c. 59 (Housing), ss. 2, 6, and 7.

1903—3 Edw. VII. c. 39 (Housing), ss. 5 (2) (a) and (b), 6, and 8, and in s. 10, the words "in the manner provided by s. 32 (3) of the principal Act"; and s. 16.

Sect. 76.—(1) This Act may be cited as the Housing, Town Planning, etc., Act, 1909, and Part I. of this Act shall be construed as one with the Housing of the Working Classes Acts, 1890 to 1903, and that Part of this Act and those Acts may be cited together as the Housing of the Working Classes Acts, 1890 to 1909.⁵⁴

Short title
and extent.

(2) This Act shall not extend to Ireland.

FIRST SCHEDULE.

Section 2.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A LOCAL AUTHORITY FOR THE PURPOSES OF PART III. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890.

(1) Where a local authority propose to purchase land compulsorily under this Act, the local authority may submit to the [Minister of Health] an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) An order under this schedule shall be of no force unless and until it is confirmed by the [Minister], and the [Minister] may confirm the order either without modification or subject to such modifications as [he thinks] fit, and an order when so confirmed shall, save as otherwise expressly provided by this schedule, become final and have effect as if enacted in this Act; and the confirmation by the [Minister] shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(3) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory.

(4) The order shall be in the prescribed form, and shall contain such provisions as the [Minister] may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (except sect. 127 of the Lands Clauses Consolidation Act, 1845) and sects. 77 to 85 of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the [Minister], who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly.¹

(5) The order shall be published by the local authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed.

(6) If within the prescribed period no objection to the order has been presented to the [Minister] by a person interested in the land, or if every such objection has been withdrawn, the [Minister] shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the [Minister] shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the inquiry

(54) As to effect of present section, see Note to s. 1 of principal Act, *ante*, p. 1043, and *Scraser's Case*, *ante*, p. 1068 (42).

(1) For Lands Clauses Acts, see *post*, Vol. II., p. 1565, and, for Railways Clauses Act,

1845, ss. 77—85, see *ibid.*, p. 1612. The arbitration will presumably now be by an official arbitrator under the Acquisition of Land Act of 1919, *post*, Vol. II., p. 2334.

Sched. I.

in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.²

(7) [Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of adjoining land, and such person shall in England have for the purpose of the inquiry all the powers of an inspector of the Local Government Board, and, if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that owing to its extent or situation or the purpose for which it is used it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the conditions specified in his report, then, if the Local Government Board confirm the order in respect of that land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament. Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat.³]

(8) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised to appear, and shall hear witnesses, but shall not, except in such cases as the [Minister] otherwise [directs], hear counsel or expert witnesses.⁴

(9) The [Minister] may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily.⁵

(10) The remuneration of an arbitrator appointed under this schedule shall be fixed by the [Minister].⁶

(11) In construing for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

(12) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(13) In this schedule the expression "[Minister]" means the [Minister of Health], and the expression "prescribed" means prescribed by the [Minister].

(14) . . . [Scotland].

(2) See modification in H. T. P. Act, 1919, s. 11, *post*, p. 1135.

(3) This clause was repealed by H. T. P. Act, 1919, s. 50, Sched. V. See now s. 11 of that Act, *post*, p. 1135. It is retained because, by s. 11 (4) of the Act of 1919, the repeal is not to affect the present schedule "as applied by any other enactment," and it has been applied by s. 1 of the Unemployment (Relief Works) Act, 1920, *post*, Vol. II., p. 2350. And see the reference to the present Schedule in Sched. I. (2) of the Ministry of

Transport (Unemployment Relief Works Procedure) Order, 1920, *post*, Vol. II., p. 2352. For "Local Government Board," read "Minister of Health."

(4) As to counsel, see Acq. Land Act, 1919, s. 5 (4), *post*, Vol. II., p. 2336; and as to expert witnesses, see *ibid.*, s. 3 (1), *ibid.*, p. 2335.

(5) As to costs, see *ibid.*, s. 5, *ibid.*, p. 2336.

(6) As to remuneration of official arbitrators, see *ibid.*, s. 1 (4), *ibid.*, p. 2334.

SECOND AND THIRD SCHEDULES.⁷

Sched. IV.

* * * * *

FOURTH SCHEDULE.

Section 55.

MATTERS TO BE DEALT WITH BY GENERAL PROVISIONS PRESCRIBED BY THE
[MINISTER OF HEALTH].

1. Streets, roads, and other ways, and stopping up, or diversion of existing highways.
2. Buildings, structures, and erections.
3. Open spaces, private and public.
4. The preservation of objects of historical interest or natural beauty.
5. Sewerage, drainage, and sewage disposal.
6. Lighting.
7. Water supply.
8. Ancillary or consequential works.
9. Extinction or variation of private rights of way and other easements.
10. Dealing with or disposal of land acquired by the responsible authority or by a local authority.
11. Power of entry and inspection.
12. Power of the responsible authority to remove, alter, or demolish any obstructive work.
13. Power of the responsible authority to make agreements with owners, and of owners to make agreements with one another.
14. Power of the responsible authority or a local authority to accept any money or property for the furtherance of the objects of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888.
15. Application with the necessary modifications and adaptations of statutory enactments.
16. Carrying out and supplementing the provisions of this Act for enforcing schemes.
17. Limitation of time for operation of scheme.
18. Co-operation of the responsible authority with the owners of land included in the scheme or other persons interested . . .⁸
19. Charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase, and for that purpose applying, with the necessary adaptations, the provisions of any enactments dealing with charges for improvements of land.

Note.

No "general provisions" have been prescribed, but "model clauses" (sixty-five in number, with five schedules) for town planning schemes were issued by the Minister of Health in February, 1923, and these, unlike the general provisions authorised by sect. 55 (1), can be varied to meet special circumstances. They are set out in full, as amended by Supplement No. 1, 1924, after the Act of 1923.^{8a}

Model clauses

FIFTH SCHEDULE.

Section 56.

1. Procedure anterior to [the preparation or adoption of⁹] a scheme:—
(a) [Preparation and deposit of plans¹⁰]. (b) Publication of notices.
2. Procedure during, on, and after the preparation or adoption and before the approval of the scheme:—(a) Submission to the [Minister of Health] of the

(7) As to the "minor amendments" enacted by Sched. II., see footnote (30), *ante*, p. 1114. Sched. III. relates to Scotland only.

(8) Words "by means of conferences, &c.," to be "omitted," see H. T. P. Act, 1919, s. 48, Sched. III.

(8a) *Post*, p. 1183.

(9) Substituted for "and for the purpose of an application for authority to prepare or adopt" by H. T. P. Act, 1919, s. 48, Sched. III.

(10) Substituted for "submission of plans and estimates" by H. T. P. Act, 1919, s. 48, Sched. III.

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proposed scheme, with plans and estimates. (b) Notice of submission of proposed scheme to the [Minister of Health]. (c) Hearing of objections and representations by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme. (d) Publication of notice of intention to approve scheme and the lodging of objections thereto.

3. Procedure after the approval of the scheme :—(a) Notice to be given of approval of scheme. (b) Inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme.

4. Duty, at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme.

5. The details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.

Regulations,
etc.

Note.

The Ministry of Health (Town Planning) Regulations, 1921, and the Town Planning (General Interim Development) Order, 1922, will be found set out elsewhere.⁹ The Model Town Planning Clauses of 1923, as amended by Supplement No. 1, 1924, follow the Housing, etc., Act, 1923.¹⁰

SIXTH SCHEDULE.¹¹

* * * * *

(9) *Post*, Vol. II., Part V., under heading
“TOWN PLANNING.”

(10) *Post*, p. 1183.
(11) See Note to s. 75, *ante*, p. 1124.

THE HOUSING ACT, 1914.

4 & 5 GEO. 5, c. 31.

An Act to make provision with respect to the Housing of Persons employed by or on behalf of Government Departments where sufficient dwelling accommodation is not available.

[10th August, 1914.]

Sect. 1.—(1) The [Minister of Health] shall have power, with the approval of the Treasury, to make arrangements with any authorised society within the meaning of this Act for the purpose of the provision, maintenance, and management of dwellings and gardens and other works or buildings for or for the convenience of persons employed by or on behalf of Government departments on Government works where sufficient dwelling accommodation is not available for those persons, and the Commissioners of Works shall have power for the same purpose, with the consent of the Treasury, given after consultation with the [Minister of Health], to acquire and dispose of land and buildings, and to build dwellings, and do all other things which appear to them necessary or desirable for effecting that purpose.

Powers of the [Minister of Health] and Commissioners of Works for the purpose of housing persons employed by Government departments.

(2) The [Minister of Health] may, with the approval of the Treasury, assist any authorised society with whom arrangements are made under this Act on such conditions as [he thinks] fit by becoming [holder] of the share or loan capital thereof or making loans thereto or otherwise as [he thinks] fit. Where the [Minister of Health makes] arrangements under this Act with any authorised society in connexion with the provision or maintenance of dwellings within any borough, the council of the borough shall have the like power, with the approval of the [Minister of Health], of assisting the society as the [Minister of Health has] under this Act with the approval of the Treasury. Any expenses incurred by the council under this provision shall be defrayed in the same manner as expenses of the council under Part III. of the Housing of the Working Classes Act, 1890¹; and the council shall have the like power to borrow for the purposes of this provision as they have for the purposes of that Part of that Act.

Note.

Sect. 1 of the Housing (No. 2) Act, 1914,² provided as follows:—“(1) The [Minister] of Agriculture and Fisheries in agricultural districts and the [Minister of Health] elsewhere shall have power during the period of one year from the passing of this Act to acquire, with the consent of the Treasury and with the concurrence of the Development Commissioners, land and buildings for housing purposes, and, with the consent of the Treasury, shall have power to dispose of any land or buildings so acquired. (2) The [Minister] of Agriculture and Fisheries and the [Minister of Health] respectively shall have power to do all other things which may appear to them necessary or desirable for housing purposes in connection with any land or buildings so acquired, and to make any arrangements for housing purposes with any local authority or authorised society within the meaning of this Act: Provided that neither the [Minister] of Agriculture and Fisheries nor the [Minister of Health] shall, in the exercise of [his] powers under this Act, in any case [himself] build any dwellings unless [he is] satisfied after holding a public local inquiry that in that case there is an insufficiency of dwelling accommodation for the working classes, or that the existing accommodation is unsuitable and that dwelling accommodation cannot be otherwise satisfactorily provided.”

Temporary additional powers.

This section expired on the 10th August, 1915. Sect. 2 is not temporary, but only refers to expenses “incurred under the Act,” and is therefore spent. A Circular was issued on the Act.³

By sect. 2 of this Act⁴ provisions practically identical with those in sect. 2 of the present Act, except that in sub-sect. (1) “four” is substituted for “two” million pounds, were enacted.

(1) See s. 65, *ante*, p. 1071.

(2) 4 & 5 Geo. V. c. 52, s. 1.

(3) Set out in 12 L. G. R. (Orders) 444.

(4) 4 & 5 Geo. V. c. 52, s. 2.

Sect. 1, n.

By sect. 3,⁵ “ (1) In this Act, unless the context otherwise requires,—The expression ‘housing purposes’ means the provision, maintenance, improvement, and management of dwellings and gardens and other works or buildings for or for the convenience of persons belonging to the working classes; and the expression ‘local authority’ means the local authority for the purposes of Part III. of the Housing of the Working Classes Act, 1890; and * * *⁶

Payment of
expenses in-
curred under
Act.

Sect. 2.—(1) The Treasury shall, as and when they think fit, issue out of the Consolidated Fund or the growing produce thereof such sums as may be required for the purpose of meeting any expenditure which is, in the opinion of the Treasury, of a capital nature and which is incurred with the consent or approval of the Treasury by or on behalf of the [Minister of Health], or the Commissioners of Works for the purposes of this Act, not exceeding in the aggregate two million pounds; and any expenses incurred for those purposes by the [Minister of Health], or the Commissioners of Works, not being, in the opinion of the Treasury, of the nature of capital expenditure, shall be defrayed out of moneys provided by Parliament, and any receipts arising in connexion therewith shall be paid into the Exchequer.

(2) The Treasury may, if they think fit, for the purpose of providing money for sums so authorised to be issued out of the Consolidated Fund, or for repaying to that Fund any part of the sums so issued, borrow by means of terminable annuities for a term not exceeding thirty years; and all sums so borrowed shall be paid into the Exchequer.

(3) The said annuities shall be paid out of moneys provided by Parliament, and, if those moneys are insufficient, shall be charged on and paid out of the Consolidated Fund of the United Kingdom or the growing produce thereof.

(4) The Treasury may also, if they think fit, for the same purpose borrow money by means of the issue of Exchequer bonds and the Capital Expenditure (Money) Act, 1904,⁷ shall have effect as if this Act had been in force at the time of the passing of that Act.

(5) The Treasury shall, within six months after the end of every financial year, cause to be made out and laid before the House of Commons accounts showing the amount of any expenditure of a capital nature incurred by the [Minister of Health] and the Commissioners of Works, respectively, under this Act, and of the money borrowed and the securities created under this Act; and any such accounts of expenditure shall be audited and reported upon by the Comptroller and Auditor-General as appropriation accounts in manner provided by the Exchequer and Audit Departments Act, 1866.⁸

Interpretation,
application, and
short title.

Sect. 3.—(1) In this Act the expression “authorised society” means any society, company, or body of persons approved by the Treasury whose objects include the erection, improvement, or management of dwellings for working classes, which does not trade for profit, or whose constitution forbids the payment of any interest or dividend at a rate exceeding five per cent. per annum.

(2) and (3) * * * [*Scotland and Ireland*].

(4) This Act may be cited as the Housing Act, 1914.⁹

(5) 4 & 5 Geo. V c. 52, s. 3.

(6) Here follows the same definition of “authorised society” as that in sect. 3 (1) of the present Act.

(7) 4 Edw. VII. c. 21.

(8) 29 & 30 Vict. c. 39.

(9) The present Act, and the Act quoted in the Note to sect. 1 of the present Act, are not included in the collective title “the Housing Acts.”

THE HOUSING, TOWN PLANNING, ETC., ACT, 1919.

9 & 10 GEO. 5, c. 35.

An Act to amend the enactments relating to the Housing of the Working Classes, Town Planning, and the acquisition of small dwellings.

[31st July, 1919.]

PART I.

HOUSING OF THE WORKING CLASSES.

SCHEMES UNDER PART III. OF ACT OF 1890.

Sect. 1.—(1) It shall be the duty of every local authority within the meaning of Part III. of the Housing of the Working Classes Act, 1890 (hereinafter referred to as the principal Act), to consider the needs of their area with respect to the provision of houses for the working classes and within three months after the passing of this Act, and thereafter as often as occasion arises, or within three months after notice has been given to them by the [Minister of Health], to prepare and submit to the [Minister of Health] a scheme for the exercise of their powers under the said Part III.

Duty of local authority to prepare housing schemes.

(2) A scheme under this section shall specify—(a) the approximate number and the nature of the houses to be provided by the local authority; (b) the approximate quantity of land to be acquired and the localities in which land is to be acquired; (c) the average number of houses per acre; (d) the time within which the scheme or any part thereof is to be carried into effect; and the scheme may contain such incidental, consequential and supplemental provisions (including provisions as to the subsequent variation of the scheme) as may appear necessary or proper for the purpose of the scheme.

(3) The [Minister of Health] may approve any such scheme or any part thereof without modification or subject to such modifications as [he] may think fit, and the scheme or part thereof when so approved shall be binding on the local authority; but if the [Minister considers] the scheme inadequate [he] may refuse to approve the scheme and require the authority to prepare and submit to [him] an adequate scheme within such time as [he] may fix, or [he] may approve the scheme or part thereof subject to the condition that the authority prepare and submit to [him] a further scheme within such time as [he] may fix: Provided that local authorities in preparing, and the [Minister of Health] in approving, any scheme shall take into account, and so far as possible preserve, existing erections of architectural, historic, or artistic interest, and shall have regard to the natural amenities of the locality, and, in order to secure that the houses proposed to be built under the scheme shall be of a suitable architecture and that the natural amenities of the locality shall not be unnecessarily injured, the [Minister of Health] may, in any case where it appears to [him] that the character of the locality renders such a course expedient, require as a condition of [his] approval the employment by the local authority of an architect to be selected from a panel of architects nominated for the purpose by the Royal Institute of British Architects.

(4) Before the [Minister of Health] finally [approves] a scheme, the local authority shall furnish to [him] estimates of the cost of the scheme and of the rents expected to be derived from the houses provided under the scheme.

(5) If the [Minister of Health considers] as respects any local authority that an occasion for the preparation of a new scheme has arisen, [he] shall give notice to that effect to the local authority, and thereupon such an occasion shall be deemed to have arisen.

(6) Where the local authorities concerned [are] or the [Minister of Health is] of opinion that a scheme should be made affecting the areas of two or more local authorities, such a scheme shall be prepared by the local authorities jointly and the local authority of each area to which any part of any such joint scheme applies may, or, if the [Minister of Health] after giving the local authority an opportunity of being heard so [directs], shall carry out that part of the joint scheme, and for the purposes of this subsection "local authority" shall, in any case where the [Minister of Health consents], and subject to any conditions which the [Minister] may prescribe, include a county council.

Sect. 1.

(7) Local authorities in preparing, and the [Minister of Health] in approving, schemes shall make inquiry respecting and take into account any proposals by other bodies and persons to provide housing accommodation.

(8) Where any proposals as to the provision of houses for the working classes have before the passing of this Act been submitted to the Local Government Board by a local authority and those proposals have been approved by the Board [or Minister], either before or after the passing of this Act, the proposals may, if the Board so [directed or the Minister so directs], be treated, for any of the purposes of this Act, as if they were a scheme submitted and approved under this section.

Note.

Local author-
ities for
purposes of
Part III. of
principal Act.

There is no special definition of "local authority within the meaning of Part III." of the principal Act, but what is meant has been laid down in a roundabout fashion thus:—The repealed sect. 54 provided that Part III. might be adopted "by the local authorities in that behalf" mentioned in Sched. I. Sect. 92 provides that in the Act "local authority" means the bodies specified in Sched. I., but the repealed portion of that section provided that the expression should, "in Part III. of this Act and in reference to any power given by that part, or any act to be done in pursuance thereof," mean such bodies "only in cases where that part of this Act is adopted or being adopted." As that part is now in force without adoption, this reference to adoption is no longer wanted. Sched. I. provides that the authorities are to be, throughout the Act, the urban sanitary authorities and the Common Council of the City of London; "for the purposes of Parts I. and III.," the London County Council; and "for the purposes of Parts II. and III.," the rural sanitary authorities. So that the local authorities "within the meaning of Part III." would appear to be the urban and rural sanitary authorities and the London County Council. But see sect. 41 of the present Act as to London, and sects. 1 (6), 2 (7), and 5 (5) of the Act of 1923.¹

Housing
schemes out-
side district.

By sect. 3 of the Housing Act, 1921,² "(1) Where a housing scheme approved under" the present section "is being carried into effect by a local authority outside their own area, that authority shall, subject to the approval of the Minister, have power—(a) to execute any works which are necessary for the purposes, or are incidental to the carrying out, of the scheme, subject to entering into agreements with the council of any county or district in which the scheme is being carried out as to the terms and conditions on which any such works are to be executed: (b) to borrow money for the purpose of defraying any expenses (including, if the Treasury so approve, interest payable in respect of any period before the completion of the scheme or a period of five years from the date of the borrowing, whichever period is the shorter, on money borrowed under this section) incurred by the local authority in connection with any such works as aforesaid: Provided that any order of the Minister, in so far as it relates to the sanction of a loan under the foregoing provisions for the purpose of the payment of interest payable in respect of money borrowed, shall be provisional only and shall be of no effect until confirmed by Parliament: (c) to advance to any such council as aforesaid such sums as may by reason of any agreement made under this section be required by that council in connection with the construction by the council of any such works as aforesaid. (2) The council of any county or district in which a scheme is being carried out as aforesaid shall have power, with the approval of the Minister, to borrow money for the purposes of any agreement entered into by the council under this section."

See also sect. 8 of the Housing, etc., Act, 1923.³

Duty of local
authority to
carry out
scheme.

Sect. 2. It shall be the duty of a local authority on which obligations are imposed by any such scheme to carry that scheme into effect within such time as may be specified in the scheme or within such further time as may be allowed by the [Minister of Health].

POWER OF COUNTY COUNCILS AND [MINISTER OF HEALTH] TO ACT IN PLACE
OF LOCAL AUTHORITIES.

Power to author-
ise county
council to act
in place of
local authority.

Sect. 3.—(1) Where the [Minister of Health is] satisfied that a local authority have failed or are not prepared to fulfil their obligations as to the preparation of schemes under this Act, or their obligations under any such scheme, or that

(1) *Post*, pp. 1176, 1178.

(2) 11 & 12 Geo. V. c. 19, s. 3.

(3) *Post*, p. 1179.

for any other reason it is desirable that any such obligation should be performed by the county council instead of by the local authority, the [Minister], after considering the circumstances of the case and giving the local authority and the county council an opportunity of being heard, may, if [he thinks] fit, by order, transfer to the council of the county, in which the district of the local authority is comprised, the obligation to prepare and carry out a scheme, or to carry out in whole or in part the provisions of a scheme prepared by the local authority.

(2) Where the [Minister makes] an order under this section, the order may, for the purpose of enabling the county council to give effect to the order, apply any of the provisions of the Housing Acts or sect. 63 of the Local Government Act, 1894,⁴ with such modifications and adaptations as appear necessary or expedient: Provided that the local authority shall be entitled to appeal to the [Minister of Health] if, in their opinion, the amount of the expenses, which the county council require them to defray or propose to charge against their district, is excessive or unreasonable, or against any refusal by a county council to make an order under the said sect. 63 vesting in the local authority all or any of the powers, duties, property, debts, and liabilities of the county council in relation to the powers transferred to them, and upon any such appeal the [Minister] may make such order as [he] may deem just, and an order so made shall be binding on the county council and the local authority.

(3) This section shall apply in cases where a joint scheme has been, or in the opinion of the [Minister] ought to be, prepared with the substitution of references to the local authorities concerned and their districts for references to the local authority and the district of the local authority.

Sect. 4.—(1) Where the [Minister of Health is] satisfied that a local authority, or, in cases where any powers or duties of a local authority have been transferred to a county council, such council, or, in cases where a joint scheme has been or in the opinion of the [Minister] should be prepared, the local authorities concerned, have failed to fulfil their obligations as to the preparation of schemes under this Act or their obligations under any such schemes, the [Minister] may, after considering the circumstances of the case, and after giving the local authority, authorities, or county council an opportunity of being heard, [himself] prepare and carry out a scheme or take such steps as may be necessary to carry out any scheme prepared by the local authority or council, or by two or more local authorities jointly, and shall for that purpose have all the powers of a local authority under the Housing Acts, and those Acts shall, with the necessary modifications and adaptations, apply accordingly.

(2) Any expenses incurred by the [Minister] in the exercise of such powers as aforesaid shall in the first instance be paid out of moneys provided by Parliament, but the amount certified by the [Minister] to have been so expended, and to be properly payable by a local authority, shall on demand be paid to the [Minister] by the local authority and shall be recoverable as a debt due to the Crown, and the payment of the sum so payable to the [Minister] shall be a purpose for which the local authority may borrow under Part III. of the principal Act.⁵

Sect. 5. Without prejudice to any other powers for enforcing the provisions of the Housing Acts, where the [Minister of Health is] satisfied that any area within the district of a local authority is an area in respect of which the local authority ought to exercise their powers under Part I. or Part II. of the principal Act, the [Minister] may by order require the local authority to make a scheme for the improvement of such area either under Part I. or under Part II. of that Act and to do all things necessary under the Housing Acts for carrying into execution the scheme so made, and, if the local authority fail within such time as may be prescribed by the order to make a scheme to the satisfaction of the [Minister of Health] and to carry the scheme into execution, the [Minister] may either by order empower the county council to make and carry out a scheme, or [himself] make and take such steps as may be necessary to carry out a scheme, and the provisions of the last two foregoing sections of this Act in regard to the powers of county councils and the [Minister], as the case may be, shall apply.

Sect. 6. Where a representation is made to the [Minister of Health] as respects any county district that the local authority have failed to exercise their powers under Part I. or Part II. of the principal Act, the [Minister] may direct the county council to instruct the medical officer of health of the county to inspect

Sect. 3.

Power to authorise county council to act in place of local authority—*cont.*

Power of [Minister of Health] to act in place of the local authority.

Power to act in default of local authority under Parts I. and II. of principal Act.

Inspection by county medical officer of health.

(4) *Post*, Vol. II., p. 2097.

(5) See s. 66, *ante*, p. 1072.

Sect. 6. such district and to make a report to the [Minister] as to the exercise of the powers aforesaid by the local authority.⁶

FINANCIAL PROVISIONS.

Sect. 7. [*Power to recoup losses.*⁷]

Powers of county councils in connection with the housing of their employees.

Sect. 8.—(1) Where money is borrowed by a county council for the purpose of the provision of houses for persons in the employment of or paid by the council or a statutory committee thereof, or of acquiring land for such houses, the maximum period for repayment shall be eighty years, and as respects money so borrowed eighty years shall be substituted for thirty years in sect. 69 (5) of the Local Government Act, 1888.⁸

(2) Where a loan is made by the Public Works Loan Commissioners to a county council for any such purposes as aforesaid, it shall be made on the same terms and conditions as a loan to a local authority for the purposes of the Housing Acts.

(3) A county council shall have power and shall be deemed always to have had power to provide houses for persons in the employment of or paid by the council or a statutory committee thereof, and for that purpose a county council may be authorised to acquire [or appropriate⁹] land in like manner as a local authority may be authorised to acquire [or appropriate⁹] land for the purposes of Part III. of the principal Act.¹⁰

This section shall apply to any such board or body as is mentioned in sect. 7 (5) of this Act in like manner as it applies to a county council,¹¹ with the substitution of a reference to the provisions fixing the period within which such board or body is required to repay loans for the reference to sect. 69 (5) of the Local Government Act, 1888.¹²

PROVISIONS AS TO THE ACQUISITION AND DISPOSAL OF LAND, ETC.

Provisions as to assessment of compensation.

Sect. 9.—(1) Where land included in any scheme made or to be made under Part I. or Part II. of the principal Act (other than land included in such a scheme only for the purpose of making the scheme efficient and not on account of the sanitary condition of the premises thereon or of those premises being dangerous or prejudicial to health) is acquired compulsorily, the compensation to be paid for the land, including any buildings thereon, shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district : Provided that, if in the opinion of the [Minister of Health] it is necessary that provision should be made by the scheme for the re-housing of persons of the working classes on the land or part thereof when cleared, or that the land or a part thereof when cleared should be laid out as an open space, the compensation payable to all persons interested in any land included in the scheme (other than as aforesaid) for their respective interests therein shall be reduced by an amount ascertained in accordance with the rules set forth in the First Schedule to this Act.

(2) The provisions of sects. 21 and 41 of the principal Act shall cease to apply as respects lands to which the provisions of this section apply, in so far as such first-mentioned provisions are inconsistent or in conflict with the provisions of this section.¹³

Power of entry on land acquired.

Sect. 10.—(1) Where an order authorising a local authority to purchase land compulsorily for the purposes of Part III. of the principal Act has been made and confirmed under the provisions of Part I. of the Housing, Town Planning, etc., Act, 1909,¹⁴ then, at any time after notice to treat has been served, the local authority may, after giving not less than fourteen days' notice to the owner and occupier of the land, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sects. 84

(6) Further as to defaults, see H. T. P. Act, 1909, s. 10 and Note, *ante*, p. 1096.

(7) Repealed by Housing, etc. Act, 1923, s. 24, Sched. III., subject to saving effected by s. 6 of that Act. See now ss. 1—6 of that Act, *post*, p. 1175.

(8) *Post*, Vol. II., p. 1946.

(9) Added by Housing, etc., Act, 1923, s. 16, Sched. II.

(10) See s. 57, *ante*, p. 1069.

(11) Namely, "the Lancashire Asylums

Board, the West Riding of Yorkshire Asylums Board, or other body constituted for the purpose of the administration of the Lunacy Acts on behalf of any combination of county councils and county borough councils." Further, as to these bodies, see H., etc., Act, 1923, s. 1 (5), *post*, p. 1176.

(12) *Post*, Vol. II., p. 1946.

(13) *Ante*, pp. 1052, 1063.

(14) See s. 2, *ante*, p. 1094.

to 90 of the Lands Clauses (Consolidation) Act, 1845,¹⁵ but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

(2) Where a local authority have agreed to purchase land for the purposes of Part III. of the principal Act, or have determined to appropriate land for those purposes, subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year or from year to year, then, at any time after such agreement has been made, or such appropriation has been approved by the [Minister of Health], the local authority may, after giving not less than fourteen days' notice to the person so in possession, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent but subject to the payment to the person so in possession of the like compensation with such interest thereon as aforesaid as if the local authority had been authorised to purchase the land compulsorily and such person had in pursuance of such power been required to quit possession before the expiration of his term or interest in the land, but without the necessity of compliance with sects. 84 to 90 of the Lands Clauses (Consolidation) Act, 1845.¹⁵

Sect. 10.

Power of entry
on land acquired
—continued.

Note.

The application of the present section is extended, by sect. 11 of the Act of 1923,¹⁶ to Parts I. and II. of the principal Act, but in such cases the notice is to be one of twenty-eight instead of fourteen days.

**Extension
of section.**

Sect. 11.—(1) Sched. I. (7) of the Housing, Town Planning, etc., Act, 1909 (which provides for special procedure in the case of the acquisition of land, for the purposes of Part III. of the principal Act, situate in London or in a borough or urban district), shall cease to have effect.

Amendment of
procedure for
compulsory
acquisition of
land.

(2) Where the confirming of an order made under that schedule is opposed, the [Minister of Health] shall, before confirming the order, duly consider the report of the person by whom, under paragraph (6) of the said schedule,¹⁷ a public inquiry is held, and the [Minister of Health] shall not confirm any order for the compulsory acquisition of land under that schedule, even when the order is unopposed, if [he is] of opinion that the land is unsuited for the purpose for which it is proposed to be acquired.

(3) Notwithstanding the provisions of Sched. I. (6) of the Housing, Town Planning, etc., Act, 1909,¹⁷ any order for the compulsory acquisition of land which is duly submitted after the date of the passing of this Act, and before the expiration of two years from that date, by a local authority under the provisions of Part I. of the Housing, Town Planning, etc., Act, 1909, may be confirmed by the [Minister of Health] without a public inquiry.

(4) The amendments to the said schedule effected by this Act shall apply to that schedule as originally enacted but not as applied by any other enactment.¹⁸

Sect. 12.—(1) The powers of a local authority to acquire land for the purposes of Part III. of the principal Act¹⁹ shall be deemed to include power—(a) to acquire any houses or other buildings on the land proposed to be acquired as a site for the erection of houses for the working classes; and (b) to acquire any estate or interest in any houses which might be made suitable as houses for the working classes, together with any lands occupied with such houses; and the local authority shall have power to alter, enlarge, repair and improve any such houses or buildings so as to render them in all respects fit for habitation as houses for the working classes.

Additional
powers as to
acquisition of
land and houses.

(2) The purposes for which land may be acquired under Part III. of the principal Act shall be deemed to include—(a) the lease or sale of the land, under the powers conferred by this Act, with a view to the erection thereon of houses for the working classes by persons other than the local authority; and (b) the lease or sale under the powers conferred by this Act of any part of the land acquired with a view to the use thereof for purposes which in the opinion of the local authority are necessary or desirable for or incidental to the development of the land as a building estate, including the provision, maintenance, and improvement of houses and gardens, factories, workshops, places of worship, places of recreation, and

(15) *Post*, Vol. II., pp. 1584—1586.

(16) *Post*, p. 1179.

(17) *Ante*, p. 1125.

(18) See the enactment mentioned in footnote (3), *ante*, p. 1126.

(19) See s. 57, *ante*, p. 1069.

Sect. 12.

other works or buildings for or for the convenience of persons belonging to the working classes and other persons.²⁰

(3) Subject to the consent of the [Minister of Health] and to such conditions as the [Minister] may prescribe, a local authority may, for the purposes of Part III. of the principal Act, contract for the purchase by or lease to them of houses suitable for the working classes, whether built at the date of the contract or intended to be built thereafter.

Note.**Acquisition of public house.**

Peterson, J., held that a local authority could acquire compulsorily under the present section, and sect. 11 of the Act of 1903,²¹ a public house which would, in the opinion of the Minister of Health, serve a beneficial purpose in connection with the requirements of the persons for whom dwelling accommodation was being provided.²²

Power to acquire in advance lands in areas proposed for inclusion in improvement schemes under Parts I. and II. of principal Act.

Sect. 13. Where a local authority have, under sect. 4 of the principal Act,²³ passed a resolution that an area is an unhealthy area and that an improvement scheme ought to be made in respect of such area, or have, under sect. 39 of the principal Act,²⁴ passed a resolution directing a scheme to be prepared for the improvement of an area, the local authority may, with the consent of and subject to any conditions imposed by the [Minister of Health], acquire by agreement any lands included within the area notwithstanding that the scheme may not at the time of acquisition have been made by the local authority or confirmed or sanctioned by the Local Government Board [or Minister of Health]; and the acquisition of such lands shall be deemed to be a purpose for which the local authority may borrow money under and subject to the provisions of Part I. or, as the case may be, Part II. of the principal Act.

Power to acquire water rights.

Sect. 14. A local authority or a county council may, notwithstanding anything in sect. 327 or sect. 332 of the Public Health Act, 1875,²⁵ but subject to the provisions of sect. 52 of that Act,²⁶ be authorised to abstract water from any river, stream, or lake, or the feeders thereof, whether within or without the district of the local authority or the county, for the purpose of affording a water supply for houses provided or to be provided under a scheme made under the Housing Acts, and to do all such acts as may be necessary for affording a water supply to such houses, subject to a prior obligation of affording a sufficient supply of water to any houses or agricultural holdings or other premises that may be deprived thereof by reason of such abstraction, in like manner and subject to the like restrictions as they may be authorised to acquire land for the purposes of the scheme: Provided that no local authority or county council shall be authorised under this section to abstract any water which any local authority, corporation, company, or person are empowered by Act of Parliament to impound, take or use for the purpose of supply within any area, or any water the abstraction of which would, in the opinion of the [Minister of Health], injuriously affect the working or management of any canal or inland navigation.

Powers of dealing with land acquired.

Sect. 15.—(1) Where a local authority have acquired or appropriated any land for the purposes of Part III. of the principal Act, then, without prejudice to any of their other powers under that Act, the authority may—

- (a) lay out and construct public streets or roads and open spaces on the land;²⁷
- (b) with the consent of the [Minister of Health] sell or lease the land or part thereof to any person for the purpose and under the condition that that person will erect and maintain thereon such number of houses suitable for the working classes as may be fixed by the local authority in accordance with plans approved by them, and when necessary will lay out and construct public streets or roads and open spaces on the land, or will use the land for purposes which, in the opinion of the local authority, are necessary or desirable for or incidental to the development of the land as a building estate in accordance with plans approved by the local

(20) Further as to dealing with land acquired, see s. 15 of the present Act, *infra*.

(21) *Ante*, p. 1091.

(22) *Conron v. London C.C.*, L. R. 1922, 2 Ch. 283; 91 L. J. Ch. 386; 126 L. T. 791; 87 J. P. 109; 20 L. G. R. 131. See now H., etc., Act, 1923, s. 9, *post*, p. 1179.

(23) *Ante*, p. 1046.

(24) *Ante*, p. 1061.

(25) *Ante*, pp. 783, 789.

(26) *Ante*, p. 137.

(27) See also s. 12 (2) (b) of the present Act, *ante*, p. 1135, and H., etc., Act, 1923, s. 8, *post*, p. 1179.

authority, including the provision, maintenance, and improvement of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings for, or for the convenience of, persons belonging to the working classes and other persons;²⁷

Sect. 15.

Powers of dealing with land acquired—*continued.*

(c) with the consent of the [Minister of Health] sell the land or exchange it for land better adapted for those purposes, either with or without paying or receiving any money for equality of exchange;

(d) with the consent of the [Minister of Health] sell or lease any houses on the land or erected by them on the land, subject to such covenants and conditions as they may think fit to impose either in regard to the maintenance of the houses as houses for the working classes or otherwise in regard to the use of the houses, and upon any such sale they may, if they think fit, agree to the price being paid by instalments or to payment of part thereof being secured by a mortgage of the premises : * * * ²⁸

(2) Where a local authority under this section sell or lease land . . . ²⁹ the local authority may contribute or agree to contribute towards the expenses of the development of the land and the laying out and construction of streets thereon, subject to the condition that the streets are dedicated to the public.

(3) Land and houses sold or leased under the provisions of this section shall be sold or leased at the best price or for the best rent that can reasonably be obtained, having regard to any condition imposed, and any capital money received in respect of any transaction under this section shall be applied in or towards the purchase of other land for the purposes of Part III. of the principal Act, or with the consent of the [Minister of Health] to any purpose, including the repayment of borrowed money, to which capital money may be properly applied.

Note.

The repeals of portions of subsects. (1) (d) and (2) of the present section are subject to the following proviso :—“ Provided that, where a local authority have sold land acquired by them under the Housing Acts, and the purchaser of the land has entered into any covenant with the local authority concerning the land, the authority shall have power to enforce the covenant against the persons deriving title under that purchaser, notwithstanding that the authority are not in possession of or interested in any land for the benefit of which the covenant was entered into, in like manner and to the like extent as if they had been possessed of or interested in such land.” ³⁰

Repeal.

The expressions “ sale ” and “ sell ” are defined in sect. 40 of the present Act.

Meaning of “ sale.”

Sect. 16. [Power of Local Government Board to assist in preparation of schemes.³¹]

Sect. 17. For removing doubts it is hereby enacted that a person shall not, by reason only of the fact that he occupies a house at a rental from a local authority within the meaning of Part III. of the principal Act, be disqualified from being elected or being a member thereof or any committee thereof.³²

Occupation of house at a rental from local authority not to disqualify for election to local authority.

PROVISIONS FOR THE ASSISTANCE OF PUBLIC UTILITY SOCIETIES, HOUSING TRUSTS, AND OTHER PERSONS.

Sect. 18.—(1) A local authority within the meaning of Part III. of the principal Act, or a county council, may promote the formation or extension of or, subject to the provisions of this section, assist a public utility society whose objects include the erection, improvement or management of houses for the working classes, and where such a society is desirous of erecting houses for the working classes which, in the opinion of the [Minister of Health], are required, and the local authority of the area in which the houses are proposed to be built are unwilling to acquire land with a view to selling or leasing the same to the society, the county council, on the application of the society, may for this purpose acquire land and exercise all the powers of a local authority under the Housing Acts in regard to the acqui-

Powers of promoting and assisting public utility societies.

(27) See also s. 12 (2), *ante*, p. 1135.

(28) Proviso as to house not being used for housing persons in employment of person interested, repealed by Housing, etc., Act, 1923, ss. 7, 24, Sched. III., subject to proviso quoted in Note to present section.

(29) As to conditions, repealed by Housing, etc. Act, 1923, ss. 7, 24, Sched. III., subject

to proviso quoted in Note to present section.

(30) H., etc., Act, 1923 (13 & 14 Geo. V. c. 24) s. 7.

(31) Repealed by H., etc., Act, 1923, s. 24, Sched. III.

(32) As to such disqualifications, see L. G. Act, 1894, s. 46, *post*, Vol. II., p. 2068.

Sect. 18. Powers of promoting and assisting public utility societies —continued.

tion and disposal of land, and the provisions of those Acts as to the acquisition of land by local authorities within the meaning of Part III. of the principal Act shall apply accordingly.

(2) Any such local authority or county council with the consent of, and subject to any regulations or conditions which may be made or imposed by, the [Minister of Health] may, for the assistance of such a society—(a) make grants or loans to the society; (b) subscribe for any share or loan capital of the society; (c) guarantee or join in guaranteeing the payment of interest on money borrowed by the society or of any share or loan capital issued by the society; on such terms and conditions as to rate of interest and repayment or otherwise and on such security as the local authority or council think fit, and, notwithstanding the provisions of sect. 4 of the Industrial and Provident Societies Act, 1893,³³ where a local authority or county council assist such a society under this subsection, the local authority or council shall not be prevented from having or claiming an interest in the shares of the society exceeding two hundred pounds.

(3) Any expenses incurred by a local authority (other than the London County Council) under the provisions of this section shall be defrayed in the same manner as the expenses of the local authority under Part III. of the principal Act,³⁴ and the raising of money for the purpose of making grants or loans to or subscribing for the capital of a society under this section shall be a purpose for which the authority may borrow under that Part of that Act.

(4) Any expenses incurred by a county council under this section shall be defrayed as expenses for general county purposes, and the raising of money for the purpose of making grants or loans to or subscribing for the capital of a society under this section shall be a purpose for which the council may borrow; provided that, where money is borrowed by the county council for that purpose, the maximum period for repayment shall be fifty years, and as respects money so borrowed fifty years shall be substituted for thirty years in sect. 69 (5) of the Local Government Act, 1888.³⁵

Sect. 19. [Power of contributing to costs incurred by public utility societies and housing trusts.³⁶]

Sect. 20.—(1) The purposes referred to in sect. 67 (1) of the principal Act³⁷ for which the Public Works Loan Commissioners may advance money on loan shall extend to the purchase of houses which may be made suitable as houses for the working classes and to the purchase and development of land by a public utility society.

(2) Notwithstanding anything contained in the Public Works Loans Act, 1875,³⁸ or any Act amending that Act, where a loan is made by the Public Works Loan Commissioners under sect. 67 of the principal Act to a public utility society for the purpose of carrying out a scheme for the provision of houses for the working classes approved by the [Minister of Health] (a) The maximum period for the repayment of the loan shall be fifty instead of forty years; (b) Money may be lent on the mortgage of an estate for a term of years absolute whereof a period not less than ten years in excess of the period fixed for the repayment of the sums advanced remains unexpired at the date of the loan; (c) In the case of loans made during such period after the passing of this Act as may be specified by the [Minister] with the consent of the Treasury, the money advanced on the security of a mortgage of any land or dwellings solely shall not exceed seventy-five per cent. of the purchase price of the land and of the cost of its development and of the houses proposed to be mortgaged as certified by the [Minister of Health]; but advances may be made by instalments in respect of the purchase money of the land to be acquired, and of the cost of its development, and in respect of the building of any house or houses on the land mortgaged as such building progresses, so that the total of the advances do not at any time exceed the amount aforesaid; and a mortgage may accordingly be made to secure advances so to be made from time to time.

Note.

Meaning of public utility society. | For the definition of “public utility society,” see sect. 40.
By sect. 6 of the Housing Act, 1921,³⁹ “any public utility society shall have,

(33) 56 & 57 Vict. c. 39, s. 4.
(34) See s. 65, ante, p. 1071.
(35) Post, Vol. II., p. 1946.
(36) Repealed by H., etc., Act, 1923, s. 24, Sched. III., subject to saving effected by s. 6 of that Act. See now s. 3 of that Act, post, p. 1177.
(37) Ante, p. 1072.
(38) Post, Vol. II., p. 1725.
(39) 11 & 12 Geo. V. c. 19, s. 6. Further as to this section see s. 40 of the present Act.

and shall be deemed always to have had, power, notwithstanding anything in their rules or constitution prohibiting the payment of any interest on loan capital at a rate exceeding six per cent. per annum, to raise money on loan at a rate of interest not exceeding the rate for the time being prescribed by the Treasury." See also, as to "authorised associations," sect. 10 of the Housing (Additional Powers) Act, 1919,⁴⁰ and as to loans for garden cities, the Note to that section.

Sect. 20, n.
Rates of interest.

Sect. 21. During a period of two years from the passing of this Act, the money which may be advanced by the Public Works Loan Commissioners to any private person for the purpose of constructing houses for the working classes on the security of a mortgage of any land or dwellings solely may, if the Commissioners think fit and if the houses are constructed in accordance with plans approved by the [Minister of Health], exceed the amount specified in sect. 67 (2) of the principal Act, but shall not exceed seventy-five per centum of the value of the estate or interest in such land or dwellings proposed to be mortgaged, and advances may be made by instalments from time to time as the building of the houses on the land mortgaged progresses, so that the total of the advances does not at any time exceed the amount last mentioned, and a mortgage may accordingly be made to secure advances so to be made from time to time.

Loans to private persons.

Sect. 22.—(1) Where the owner of a house or building applies to the local authority, within the meaning of Part III. of the principal Act, of the district in which the house is situated for assistance for the purpose of carrying out works for the reconstruction, enlargement, or improvement thereof, and the local authority are of opinion that after the works are carried out the house or building would be in all respects fit for habitation as a house or as houses for the working classes, and that the circumstances of the district in regard to housing accommodation are such as to make it desirable that the works should be carried out, the local authority may lend to the owner the whole or any part of such sum as may be necessary to defray the cost of the works, and any costs, charges, or expenses incidental thereto: Provided that the loan shall not exceed one half of the estimated value of the property mortgaged, unless some additional or collateral security is given sufficient to secure the excess.

Loans by local authorities for the improvement of housing accommodation.

(2) Before the works are commenced, full particulars of the works and, where required by the local authority, plans and specifications thereof shall be submitted to the local authority for their approval, and before any loan is made the authority shall satisfy themselves that the works in respect of which the loan is to be made have been carried out in a satisfactory and efficient manner.

(3) The raising of money for the purpose of making a loan under this section shall be a purpose for which the local authority may borrow for the purposes of Part III. of the principal Act.⁴¹

(4) For the purpose of this section "owner" means any person whose interest, or any number of persons whose combined interests, constitute either an estate of fee simple in possession or, in the case of copyhold land, a similar estate, or a leasehold interest in possession for a term of years absolute whereof a period of not less than ten years in excess of the period fixed for the repayment of the loan remains unexpired at the date of the loan.

Sect. 23. Subject to any conditions prescribed by the [Minister of Health] with the consent of the Treasury, any bricks or other building materials which have been acquired by a Government Department for the purpose of the erection or improvement of houses for the working classes, may during a period of five years from the passing of this Act be sold to any person who undertakes to use the same forthwith for the purpose of erecting or improving houses for the working classes and to comply with the said conditions at a price sufficient to cover the cost of replacement at the time of sale of the materials so sold.⁴²

Provisions as to sale of building materials.

RELAXATION OF BYELAWS.

Sect. 24.—(1) Where in pursuance of a housing scheme to which this section applies new buildings are constructed, or public streets and roads are laid out and constructed, in accordance with plans and specifications approved by the [Minister of Health], the provisions of any building byelaws shall not apply to the new buildings and new streets constructed and laid out in pursuance of the

Relaxation of byelaws.

(40) *Post*, p. 1153.

(41) See s. 66, *ante*, p. 1072.

(42) As to erection of houses by Govern-

ment Departments, see the Acts of 1914, *ante*, p. 1129.

Sect. 24.Relaxation of
byelaws—*cont.*

scheme so far as those provisions are inconsistent with the plans and specifications approved by the [Minister of Health], and, notwithstanding the provisions of any other Act, any street laid out and constructed in accordance with such plans and specifications may be taken over and thereafter maintained by the local authority: Provided that, as regards the administrative county of London, the [Minister] shall not approve any plans and specifications inconsistent with the provisions of any building byelaws in force in the county except after consultation with the London County Council on the general question of the relaxation of such provisions in connexion with housing schemes.

(2) Where the [Minister of Health has] approved plans and specifications which in certain respects are inconsistent with the provisions of any building byelaws in force in the district in which the works are to be executed, any proposals for the erection therein of houses and the laying out and construction of new streets which do not form part of a housing scheme to which this section applies may, notwithstanding those provisions, be carried out if the local authority [are] or, on appeal, the [Minister of Health is] satisfied that they will involve departures from such provisions only to the like extent as in the case of the plans and specifications so approved, and that, where such plans and specifications have been approved subject to any conditions, the like conditions will be complied with in the case of proposals to which this subsection applies: Provided that, in the application of this subsection to the administrative county of London, the expression "local authority" means the London County Council with respect to the matters within their jurisdiction and the Common Council of the City of London or the council of a metropolitan borough (as the case may be) with respect to other matters.

(3) The housing schemes to which this section applies are schemes made by a local authority or county council under the Housing Acts, or by a public utility society or housing trust, and approved by the [Minister of Health].

(4) Subject to any conditions which may be prescribed by the [Minister of Health], the provisions of any building byelaws shall not apply to any new buildings and new streets constructed and laid out by a county council or local authority in accordance with plans and specifications approved by the [Minister] of Agriculture and Fisheries under the Small Holdings and Allotments Acts, 1908 and 1910,⁴³ or any Act amending the same.

Note.

Under sect. 12 of the Act of 1923,⁴⁴ local authorities may adopt a code of byelaws as to streets in connection with housing schemes without confirmation by the Minister, but subject to certain other restrictions. See also sect. 44 of the Act of 1909,⁴⁵ as to revocation of unreasonable byelaws.

**Housing
scheme
byelaws.**Consent of local
authority to
erection and use
of buildings.

Sect. 25.—(1) Notwithstanding the provisions of any building byelaws,⁴⁶ a local authority may, during a period of three years from the passing of this Act,⁴⁷ consent to the erection and use for human habitation of any buildings erected or proposed to be erected in accordance with any regulations made by the [Minister of Health].⁴⁸

(2) The local authority may attach to their consent any conditions which they may deem proper with regard to the situation, sanitary arrangements, and protection against fire of such buildings, and may fix and from time to time extend the period during which such buildings shall be allowed to be used for human habitation.

(3) If any person feels aggrieved by the neglect or refusal of the local authority to give such consent or by the conditions on which such consent is given, or as to the period allowed for the use of such buildings for human habitation, he may appeal to the [Minister of Health], whose decision shall be final, and shall have effect as if it were the decision of the local authority, provided that the [Minister] may, before considering any such appeal, require the appellant to deposit such sum, not exceeding ten pounds, to cover the costs of appeal as may be fixed by rules to be made by [him].

(43) *Post*, Vol. II., p. 1496.(44) *Post*, p. 1179.(45) *Ante*, p. 1114.

(46) Defined in s. 40 of the present Act.

(47) Extended to December 31st, 1924, by Expiring Laws Act, 1923.

(48) See the Ministry of Health (Temporary Relaxation of Building Bye-laws) Regulations, 1922, set out *post*, Vol. II., Part V., under heading "HOUSING, Relaxation of Bye-laws."

(4) Sect. 27 of the Public Health Acts Amendment Act, 1907,⁴⁹ shall not apply to any buildings to which this section applies. **Sect. 25.**

(5) In the application of this section to the administrative county of London, the expression "local authority" means the London County Council with respect to matters within their jurisdiction, and the Common Council of the City of London or the council of a metropolitan borough (as the case may be) with respect to other matters. ⁵⁰

MISCELLANEOUS.

Sect. 26.—(1) The power of making and enforcing byelaws under sect. 90 of the Public Health Act, 1875,¹ and sect. 94 of the Public Health (London) Act, 1891,² shall in the case of houses intended or used for occupation by the working classes be deemed to include the making and enforcing of byelaws—

Byelaws respecting houses divided into separate tenements.

- (a) for fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, and for separation of the sexes therein;
- (b) for the registration and inspection of such houses;
- (c) for enforcing drainage and promoting cleanliness and ventilation of such houses;
- (d) for requiring provision adequate for the use of and readily accessible to each family of—(i) closet accommodation; (ii) water supply and washing accommodation; (iii) accommodation for the storage, preparation, and cooking of food; and, where necessary, for securing separate accommodation as aforesaid for every part of such house which is occupied as a separate dwelling;
- (e) for the keeping in repair and adequate lighting of any common staircase in such houses;
- (f) for securing stability, and the prevention of and safety from fire;
- (g) for the cleansing and redecoration of the premises at stated times, and for the paving of the courts and courtyards;
- (h) for the provision of handrails, where necessary, for all staircases of such houses;
- (i) for securing the adequate lighting of every room in such houses;
- [(j) for the taking of precautions in the case of any infectious disease³];

and any such byelaws, in addition to any other penalty, may prohibit the letting for occupation by members of more than one family of any such house unless the same are complied with, subject in the case of houses so let or occupied at the time when such byelaws come into force to the allowance of a reasonable time for the execution of any works necessary to comply therewith.

(2) Such byelaws may impose the duty of executing any work required to comply therewith upon the owner within the meaning of [the Public Health Act, 1875, or the Public Health (London) Act, 1891, as the case may be⁴] of any such house, or upon any other person having an interest in the premises, and may prescribe the circumstances and conditions in and subject to which any such duty is to be discharged.

(3) For the purpose of discharging any duty so imposed, the owner or other person may at all reasonable times enter upon any part of the premises, and sect. 51 of the principal Act⁵ shall apply as if for the reference to the provisions of Part II. of that Act there were substituted a reference to the provisions of such byelaws, and as if the person on whom such duty is imposed were the owner and any inmate of the premises were the occupier of a dwelling-house.

(4) Where an owner or other person has failed to execute any work which he has been required to execute under the byelaws, the local authority by whom such byelaws are enforced may, after giving to him not less than twenty-one days' notice in writing, themselves execute the works and recover the costs and expenses, and for that purpose the provisions of [sect. 28 of this Act⁶], with respect to the

(49) *Ante*, p. 894.

(50) See also H. Act, 1923, s. 12 (5), *post*, p. 1180.

(1) *Ante*, p. 171. See also P. H. Am. Act, 1890, s. 23, *ante*, p. 858.

(2) 54 & 55 Vict. c. 76, s. 94.

(3) Added to the present section "in its application to the administrative county of London," by H., etc., Act, 1923 (13 &

14 Geo. V. c. 24), s. 14 (1). See also the further provisions as to London contained in that section, *post*, p. 1180.

(4) Substituted for "the Public Health Acts" by H., etc., Act, 1923, s. 16, Sched. II.

(5) *Ante*, p. 1068.

(6) Substituted for H. T. P. Act, 1909, s. 15 (5), by H., etc., Act, 1923, s. 16, Sched. II.

Sect. 26.

Byelaws respect-
ing houses
divided into
separate
tenements—
continued.

execution of works and the recovery of expenses by local authorities, shall apply [with such ⁷] adaptations as may be necessary.

(5) If in the opinion of the [Minister of Health] premises are being occupied by members of more than one family or are intended to be converted for such occupation in the district of any local authority, and either no byelaws have been made by the local authority for the purposes specified in subsect. (1) of this section, or the byelaws made are not sufficient properly to regulate such occupation or conversion, the [Minister of Health] may [himself] make byelaws for such purposes which shall have effect and shall be enforced as if they had been made by the local authority.

(6) Where the person on whom obligations are imposed by any byelaws made for the purposes specified in subsect. (1) of this section with respect to houses so occupied as aforesaid holds the premises under a lease or agreement and satisfies the local authority that compliance with such byelaws is contrary to the provisions of the lease or agreement, or that the whole or any part of the expenses of carrying out the obligations ought to be borne by his lessor or other superior landlord, the local authority may make application to the county court, and the county court may, after giving the lessor or any such superior landlord an opportunity of being heard,—(a) in the first case, order that the provisions of the lease or agreement be relaxed so far as they are inconsistent with the requirements of the byelaws; (b) in the second case, grant to the person who carries out the works necessary for compliance with the byelaws, on proof to the satisfaction of the local authority that the works have been properly carried out, a charging order charging on the premises an annuity to repay the expenses properly incurred in carrying out the works or such part of those expenses as the county court consider ought to be so charged.

(7) The annuity shall be of such amount and extend over such number of years as the county court may determine.

(8) Sect. 36 (3) and sect. 37 except subsect. (4) of the principal Act,⁸ and sect. 19 of the Housing, Town Planning, etc., Act, 1909,⁹ shall apply to charging orders and annuities under this section in like manner as to charging orders and annuities under the said sect. 36.

(9) Where a local authority have themselves acquired a leasehold interest in any house under the powers conferred upon them by this Act, the [Minister of Health], on the application of the local authority, may make a similar order with regard to the relaxation of the provisions of the lease and to charging an annuity on the premises as might, had the lessee not been the local authority, have been made on the application of the local authority by the county court, and in that case the decision of the [Minister of Health] as to the amount and duration of any such annuity shall be final.

(10) This section shall apply to the administrative county of London with the following modifications: (a) As respects the county of London, the byelaws for the purposes specified in subsect. (1) of this section shall be made by the London County Council, and any byelaws so made shall supersede any byelaws made for those purposes by the council of any metropolitan borough, and shall be observed and enforced by the council of each metropolitan borough except as regards byelaws for the purposes specified in subsect. (1) (f) which shall be enforced by the London County Council; (b) As respects the City of London, such byelaws shall be made and enforced by the common council except as regards byelaws for the purposes specified in subsect. (1) (f), which shall be made and enforced by the London County Council.

Power to
authorise con-
version of a
house into
several
tenements.

Sect. 27. Where it is proved to the satisfaction of the county court on an application by the local authority or any person interested in a house that, owing to changes in the character of the neighbourhood in which such house is situate, the house cannot readily be let as a single tenement but could readily be let for occupation if converted into two or more tenements, and that, by reason of the provisions of the lease or of any restrictive covenant affecting the house or otherwise, such conversion is prohibited or restricted, the court, after giving any person interested an opportunity of being heard, may vary the terms of the lease or other instrument imposing the prohibition or restriction so as to enable the house to be so converted subject to such conditions and upon such terms as the court may think just.

(7) Substituted for "as if the owner or other person were the landlord, and with such other" by H., etc. Act, 1923, s. 16,

Sched. II.

(8) *Ante*, pp. 1058, 1059.

(9) *Ante*, p. 1107.

Note.

The present section is applicable where it is shown that the house, when converted, could be let for occupation by persons of any class.¹⁰

This case subsequently came before Sir Walworth Roberts at Marylebone County Court. There the following propositions and facts were held established:—(1) that the expression “neighbourhood” was not to be confined to houses in the same street, (2) that a number of large houses in neighbouring streets had recently been converted from single houses into hotels, boarding houses, maisonettes, or flats; (3) that owing to these changes the house in question could not be readily let as a whole for private occupation; (4) that it could readily be let if converted into two or more tenements; (5) that the occupation of the houses in the manner proposed by four families instead of one would indirectly benefit the public; (6) that there would be no serious detriment to those entitled to the benefit of the mutual covenant which prevented such conversion; and (7) that the plans of the conversion had been approved by the local authority. An order was accordingly made authorising the proposal.¹¹

To justify an order under the present section, it is not enough that a house has become “difficult to let” because “owing to economic causes which are affecting the whole kingdom equally the letting value of the class of house of which the house in question is one has fallen, at any rate for the time being” (*per Bankes, L.J.*). “A migration of the merchant princes which occurred thirty years ago” was held irrelevant. “If the change of character of one locality does in fact affect the letting qualities of houses in another and adjacent locality, both may be included in the term neighbourhood” (*per Scrutton, L.J.*). “Neighbours are apparently treated as having the same interest in the application as have the parties to the contract” (*per Younger, L.J.*). The case in which the above propositions were laid down by the Court of Appeal was sent back for another county court judge to find exactly what was the “neighbourhood” and what were the “changes in its character.”¹²

As to whether converting premises into flats amounts to the erection of a “new building” for byelaw purposes, see the Note to sect. 23 of the Public Health Acts Amendment Act, 1907.¹³ Where premises were originally constructed principally for a shop, and the use of several rooms for habitation was ancillary to this main purpose, it was held that converting the rooms for use as part of the shop without the consent of the local authority under the repealed sect. 6 of the Housing (Additional Powers) Act, 1919, was no offence.^{13a}

Sect. 28. (1) If the owner of any house suitable for occupation by persons of the working classes fails to make and keep such house in all respects reasonably fit for human habitation then, without prejudice to any other powers, the local authority may serve a notice upon the owner of such house requiring him within a reasonable time, not being less than twenty-one days, specified in the notice, to execute such works as may be necessary to make the house in all respects reasonably fit for human habitation¹⁴: Provided that, if such house is not capable without reconstruction of being rendered fit for human habitation, the owner may, within twenty-one days after the receipt of such notice, by written notice to the local authority declare his intention of closing the house for human habitation, and thereupon a closing order shall be deemed to have become operative in respect of such house. Any question arising under this proviso shall, in case of difference between the owner and the local authority, be determined by the [Minister of Health].

(2) If the notice of the local authority is not complied with, the local authority may—(a) at the expiration of the time specified in that notice if no such notice as aforesaid has been given by the owner; and (b) at the expiration of twenty-one days from the determination by the [Minister of Health] if such notice has been given by the owner, and the [Minister of Health] has determined that the house is capable without reconstruction of being made fit for human habitation; do the work required to be done.

(3) Any expenses incurred by the local authority under this section may be

(10) *Johnston v. Maconochie* (C.A.), L. R. 1921, 1 K. B. 239; 90 L. J. K. B. 83; 124 L. T. 323; 85 J. P. 18; 18 L. G. R. 806.

(11) *Johnston v. Manzi-Fe* (1921), 65 Sol. J. & W. R. 607.

(12) *Alliance Economic Investment Co. v. Berton* (1923), 129 L. T. 76; 87 J. P. 85; 21 L. G. R. 403.

(13) *Ante*, p. 893 (37).

(13a) 9 & 10 Geo. V. c. 99, s. 6; *Davison v. Birmingham Industrial Co-op. Soc.* (1920, K. B. D.), 90 L. J. K. B. 206; 124 L. T. 270; 85 J. P. 73; 18 L. G. R. 833.

(14) The notice must now specify “what works are to be executed,” see H., etc. Act, 1923, s. 10 (2) (a), *post*, p. 1144.

Sect. 27, n.

Class of
tenant.

Change in
neighbour-
hood.

New
buildings.

Repair of
houses.

Sect. 28.Repair of
houses—*cont.*

recovered in a court of summary jurisdiction, together with interest [*at a rate not exceeding five pounds per centum per annum*¹³] from the date of service of a demand for the same till payment thereof from the owner, and until recovery of such expenses and interest the same shall be a charge on the premises. In all summary proceedings by the local authority for the recovery of any such expenses, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

(4) The local authority may by order declare any such expenses to be payable by monthly or annual instalments within a period not exceeding thirty years with interest [*at a rate not exceeding five pounds per centum per annum*¹⁴] from the date of the service of notice of demand until the whole amount is paid, and any such instalments and interest or any part thereof may be recovered in a summary manner from the owner or occupier, and, if recovered from the occupier, may be deducted by him from the rent of such premises.

(5) In this section "owner" shall have the same meaning as in the Public Health Act, 1875.¹⁵

(6) This section shall be deemed to be part of Part II. of the principal Act.

Note.**Modification
of section.**

Sect. 10 (2) of the Housing, etc., Act, 1923,¹⁶ provides as follows:—"Subsects. (3) to (6) of sect. 15 of the Housing, Town Planning, etc., Act, 1909 (being provisions which are virtually superseded by" the present section) "are hereby repealed, and the" present section "shall have effect subject to the following modifications—

"(a) A notice given by a local authority under" the present "section shall specify what works are to be executed as being necessary to make the house in all respects reasonably fit for human habitation; and in addition to serving the notice on the owner the local authority may serve copies of the notice on any persons having an estate or interest in the premises superior to that of the owner, and it shall be the duty of the owner or any other person having such an estate or interest, on being so required by the local authority, to state the name and address of the person from whom he holds, and if he fails to do so, or knowingly makes a mis-statement, he shall be liable on summary conviction to a fine not exceeding five pounds:

"(b) The owner may appeal to the Minister against any notice requiring him to execute works under" the present "section, and against any demand for the recovery of expenses from him under" the present "section or an order made by the local authority under" the present "section with respect to those expenses, by giving notice of appeal to the Minister within twenty-one days after the notice is received or the demand or order is made (as the case may be) or such longer time as the Minister may allow, and no proceedings shall be taken in respect of any notice, demand, or order whilst the appeal is pending: Provided that no appeal against such a demand or order shall lie if and so far as the appeal raises any question which might have been raised on an appeal against the notice itself, and subject to such appeal the notice, demand, or order shall be binding and conclusive as to any matters which could have been raised on such appeal:

"(c) The raising of money to defray the expenses of repairs executed by a local authority under" the present "section shall be a purpose for which the local authority may borrow:

"(d) Where a house in respect of which a notice has been served upon the owner by the local authority under subsect. (1) of" the present "section is not capable without reconstruction of being rendered fit for human habitation, and a closing order has in consequence been deemed to have become operative in respect thereof, the Minister may on the application of the local authority make an order authorising the authority to acquire the house, and thereupon the Housing Acts shall apply as if the house were land authorised to be acquired compulsorily for the purposes of a scheme under Part II. of the principal Act, and that land had been included in the scheme on account of the sanitary condition of the premises thereon:

"(e) The local authority shall, for the recovery of their expenses with interest, have all the same powers and remedies under the Conveyancing Acts, 1881 to

(13) Repealed by 11 & 12 Geo. V. c. 19, s. 11 (4), Sched. See now Note to present section.

(14) Repealed by 11 & 12 Geo. V. c. 19,

s. 11 (4), Sched. See, now, Note to present section.

(15) See s. 4 and Note, *ante*, p. 15.

(16) 13 & 14 Geo. V. c. 24, s. 10 (2).

1922, and otherwise as if they were mortgagees having powers of sale and lease, of accepting surrenders of leases, and of appointing a receiver."

The present section is confined to houses "suitable for occupation by persons of the working class,"¹⁷ and, though there is no restriction based on rental,¹⁸ it is obvious that a mansion would not come within the section. The line must be drawn somewhere, and if the local authority do not seek to apply the enactment to a house obviously outside its scope, the court would probably not intervene.

The proviso to the present section is confined to houses "not capable without reconstruction of being rendered fit for human habitation." If a house does not come within this description, the proviso has no application to it at all, and the operative part of the section applies, and under that part the local authority can require the owner to "make and keep" the house habitable, though he cannot be compelled, except indirectly by being made to spend money upon repairs, to put in a tenant if he does not choose to do so.

The effect of a closing order being "deemed to have become operative" is that the local authority must, under sect. 17 (4) of the Act of 1909,¹⁹ serve notice of the order on the occupier and take steps to enforce compliance with the notice. Under sect. 18 (1) of the Act of 1909,²⁰ they must consider demolition, and in certain circumstances, under subsect. (2) of the same section, order demolition. These duties are enforceable under sect. 10 of that Act,²¹ and possibly also by *mandamus*.²² See also sect. 32 of the present Act, which imposes penalties on owners who let, or even permit to be occupied, houses in respect of which closing orders are "in force."

In the case cited below,²³ the following defences were raised to a claim for expenses incurred under the present section: (1) That the section applied only to houses the rent of which did not, outside the administrative county of London, exceed £26 a year, (2) that the notice under the section did not inform the owner that he had a right of appeal to the Minister of Health against the notice or the demand for the expenses, (3) that the notice contained a requirement not authorised by the Act, namely, that notice should be given by the owner to the local authority of his intention to commence the necessary works, (4) that the notice required him to do work not reasonably necessary to make the house fit for habitation, as the dirty condition of and defects in the ceilings and walls were only such as arose from user and tenant's wear and tear, (5) that the time specified for carrying out the work was unreasonable, (6) that the demand included works which had not been specified in the notice, and (7) that it was only competent for the respondents to do the work by their own workmen and not to put him to the expense of paying contractor's profit in addition to the cost of executing the work. The justices found (a) that the house was a house suitable for occupation by persons of the working classes, (b) that all the works required by the notice were necessary to make it reasonably fit for human habitation, (c) that 28 days was in the circumstances a reasonable time to prescribe for the execution of the works, and (d) that 7s. 6d. must be deducted on ground (6), and they overruled all the other defences. The Divisional Court held that the words "any house suitable for occupation by persons of the working classes" in the present section must be construed in their natural and ordinary sense, and that the limitations as to rent contained in sects. 14 and 15 of the Act of 1909, although referred to in the present Act, related solely to the condition to be implied in a contract for letting. On the other hand, the present section dealt with the more general subject-matter of houses suitable for occupation by persons of the working classes. Accordingly, the present section applied and the justices were right. They were also upheld on the other points. The houses in question were, in fact, let, but Lush, J., considered that the primary object of the present section was to deal with houses which were unlet and "allowed to get into a ruinous condition." Bailhache, J., disagreed.

Justices dismissed a summons for recovery of expenses incurred by a local authority under the present section in repairing twenty-three houses belonging to the defendant, on the ground that each notice specified twenty-one days as the time within which the work was to be done. They found that having regard

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Application of section.

Notice to repair.

(17) As to the meaning of "working class" and "labouring population," see the Note to s. 1 of the principal Act, *ante*, p. 1043.

(18) See the *Tottenham Case*, *infra* (23).

(19) *Ante*, p. 1101.

(20) *Ante*, p. 1105.

(21) *Ante*, p. 1096.

(22) See sect. 47 (1), *ante*, p. 1114. But see the *Poole Case*, *post*, p. 1146 (28).

(23) *Arlidge v. Tottenham U. D. C.* L. R. 1922, 2 K. B. 719; 92 L. J. K. B. 21; 127 L. T. 841; 86 J. P. 171; 20 L. G. R. 594. As to grounds (4) to (6), see *Tuer's Case*, *post*, p. 1146 (27).

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to the number of houses, to the state of the labour market, and to the fact that the time taken by the local authority to do the work had varied from one day to thirteen weeks, the time specified was unreasonable. Their decision was upheld by the Divisional Court.²⁴

Jurisdiction of justices.

This decision is not affected by the ruling, given subsequently,²⁵ that the owner has a right to appeal against the notice to the Minister of Health, and another twenty-one days' notice was held to have been properly regarded as unreasonable.²⁶

Effect of counter notice.

Justices were held justified in reducing a claim for work executed in default of an owner, under the present section, from £342 to £250 10s., they having found (1) that some of the work charged for had not been done, (2) that timber and other materials charged for had not been used, (3) that the amount charged for labour was excessive, and (4) that part of the work done was unnecessary.²⁷

After a counter notice had been served under the proviso to subsect. (1) of the present section, and the owner had twice requested the local authority to serve on the occupier notice of the closing order which had thereby become operative, and the local authority had passed a resolution that "no further action be taken," the owner obtained an order *nisi* for a writ of *mandamus* directing the authority to serve such notice on the ground that the refusal to do so was a breach of the statutory duty imposed by sect. 17 (4) of the Act of 1909. Three days after the order *nisi* had been made, the authority appealed to the Minister of Health against the counter notice, alleging that the house was capable of being rendered fit for human habitation without reconstruction. The rule was discharged, the court in the exercise of its discretion declining to interfere, as there was no time limit for such an appeal and the proper tribunal to decide such a question was the Minister of Health.²⁸

Meaning of reconstruction.

It may be useful to note that in June, 1921, the Ministry of Health, in their official publication called "Housing,"²⁹ made the following observations as to the meaning of "reconstruction" in the present section:—

"Difficult questions arise as to the meaning of the term 'reconstruction' used in this section. It is not defined in the Act. Mere repair work, though extensive, can hardly come under this category. The broad line of distinction would seem to be between such work and work affecting the fabric. The term may be taken to mean generally the reconstruction of the house as a whole. There may be cases, however, other than those involving reconstruction as a whole, where requirements of considerable and expensive structural alterations can properly be regarded as reconstruction. Though the cost of the work required is not a legal criterion from which reconstruction may be inferred, it is nevertheless an important one which must be borne in mind in forming a conclusion on the question. In other words, reasonableness and proportion must be a governing consideration. As examples of factors which, where very considerable cost is involved as compared with the value of the house affected, tend to the conclusion that the works required amount to reconstruction, the following questions may be suggested:—Is the house very old and worn out? Is any extensive rebuilding of main walls required? Is the roof so far gone that it must be stripped, new tiles or slates provided, and new rafters substituted for old decayed rafters? Whether the alterations required to make a house fit cumulatively amount to reconstruction must depend upon the varying details and local circumstances of each case, and over and above all considerations the doctrine of reasonableness, which is latent in the English common law, must always be kept in mind." In the *Poole Case*,³⁰ the Minister dismissed an appeal against a counter notice, holding that the cottages, which were dilapidated and one wall of which was bulging after it had fallen down and been replaced, could not be repaired without re-construction. The local authority's estimate for doing the work was £180, and the owners' was £450. The rateable value of each cottage was £5 12s. per annum.

Appeal.

By the combined operation of subsect. (6) of the present section and sect. 39 (2) of the present Act, an owner was held entitled to appeal to the Minister of Health under sect. 15 (6) of the Act of 1909 against a claim for payment

(24) *Ryall v. Cubitt Heath*, L. R. 1922, 1 K. B. 275; 91 L. J. K. B. 189; 126 L. T. 359; 86 J. P. 15; 20 L. G. R. 56.

(25) See *Rush's Case*, *infra* (30).

(26) *Ryall v. Hart*, L. R. 1923, 2 K. B. 464; 92 L. J. K. B. 612; 129 L. T. 85; 87 J. P. 81; 21 L. G. R. 497.

(27) *Adams v. Tuer* (1923, K. B. D.), 87

J. P. 749; 22 L. G. R. 88.

(28) *Rex (Nail Making Machines, Ltd.) v. Poole Cpn.* (Nov. 8, 1923, M. S.). See comments on this case in 58 L. J. Jo. 565. An appeal to C. A. was settled. See also *infra* (30).

(29) See No. 40, p. 290.

(30) *Supra* (28). See also *ante*, p. 1103 (18).

of expenses incurred by a local authority under the present section.³⁰ The last-mentioned subsection has now been repealed by the Act of 1923, and an express right of appeal is conferred by sect. 10 (2) (b) of that Act.³¹

By sect. 5 of the Housing Act, 1921,³² "the rate of interest on advances under" the present section "shall, as regards advances made and expenses incurred after the commencement of this Act,³³ be such rate as the Minister may, with the approval of the Treasury, from time to time by order fix, and different rates of interest may be fixed for different purposes and in different cases."

As to the power of a tenant to claim a reduction of rent on a certificate by the sanitary authority that his house is not in a reasonable state of repair, see sect. 2 (2) (4) of the Rent Restriction Act of 1920, as amended by sects. 5, 13, and 18 of the Act of 1923.³⁴

Sect. 29. In the case of houses intended or used for occupation by the working classes, the name and address of the medical officer of health for the district and of the landlord or other person who is directly responsible for keeping the house in all respects reasonably fit for human habitation shall be inscribed in every rent book or, where a rent book is not used, shall be delivered in writing to the tenant at the commencement of the tenancy and before any rent is demanded or collected; and, if any person demands or collects any rent in contravention of the provisions of this section, he shall in respect of each offence be liable on summary conviction to a fine not exceeding forty shillings.³⁵

Sect. 30.—(1) Where it is proved to the satisfaction of the court, on an application in accordance with rules of court of any person entitled to any interest in any land used in whole or in part as a site for houses for the working classes, that the premises on the land are or are likely to become dangerous or injurious to health or unfit for human habitation, and that the interests of the applicant are thereby prejudiced, or that the applicant should be entrusted with the carrying out of a scheme of reconstruction or improvement approved by the local authority of the district in which the land is situate, the court may make an order empowering the applicant forthwith to enter on the land and within the time fixed by the order to execute such works as may be necessary, and may order that any lease or agreement for a lease held from the applicant and any derivative underlease shall be determined, subject to such conditions and to the payment of such compensation as the court may think just.

(2) The court shall include in its order provisions to secure that the proposed works are carried out and may authorise the local authority in whose area the land is situated or which has approved a scheme of reconstruction or improvement under this section to exercise such supervision or take such action as may be necessary for the purpose.

(3) For the purposes of this section "court" means the High Court of Justice, and the Court of Chancery of the county palatine of Lancaster or Durham or the county court, where those courts respectively have jurisdiction.

Sect. 31. [Extension of powers under Settled Land Acts.¹]

Sect. 32. If any owner of a house in respect of which a closing order is in force, or any other person, lets or attempts to let or occupies or permits to be occupied that house or any part thereof as a dwelling-house, he shall on summary conviction be liable to a fine not exceeding £20 [and in the event of the offence continuing after conviction thereof to a further fine not exceeding £5 for each day on which the offence is continued after such conviction²].

Sect. 33. The enactments regulating the provision to be made under Part I. of the principal Act for the accommodation of persons of the working classes displaced by the operation of a scheme under that Part shall be the same in cases where the area comprised in the scheme is situate in the county or city of London as in other cases, and accordingly sect. 11 (1) of that Act,³ and in subsect. (2) the words "where" and "comprises an area situate elsewhere than in the county or city of London, it" shall be repealed.

Sect. 34. The [Minister of Health] may make arrangements with any other Government Department for the exercise or performance by that Department of

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Rate of interest.

Reduction of rent.

Information to tenants of houses for the working classes.

Power to authorise superior landlord to enter and execute works.

Penalty on re-letting house ordered to be closed.

Amendment of s. 11. of principal Act.

Arrangements between the [Minister of Health] and other Departments.

(30) *Rex (Rush) v. Minister of Health* L. R. 1922, 2 K. B. 28; 91 L. J. K. B. 530; 126 L. T. 633; 86 J. P. 51; 20 L. G. R. 252. Further as to effect of this case, see M. H. Circular, Feb., 1922, 20 L. G. R. (Orders) 56.

(31) *Ante*, p. 1144.

(32) 11 & 12 Geo. V. c. 19, s. 5.

(33) Royal assent, July 1, 1921.

(34) *Post*, pp. 1157-1159.

(35) See also Rent Act, 1920, s. 11, and Note, *post*, p. 1168.

(1) Quoted in full in Note to s. 74 of principal Act, *ante*, p. 1075.

(2) Added by H., etc., Act, 1923, s. 16, Sched. II.

(3) *Ante*, p. 1050.

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any of [his] powers and duties under the Housing Acts which in [his] opinion could be more conveniently so exercised and performed, and in such case the Department and officers of the Department shall have the same powers and duties as are by the Housing Acts conferred on the [Minister of Health] and [his] officers.

Provisions of Housing Acts not to be affected by the Increase of Rent and Mortgage Interest [(Restrictions) Act, 1920].

Compensation in cases of subsidence.

Sect. 35. Nothing in the Increase of Rent and Mortgage Interest [(Restrictions) Act, 1920⁴], or in the enactments amending that Act, shall be deemed to affect the provisions of sect. 17 of the Housing, Town Planning, &c. Act, 1909,⁵ or to prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under the Housing Acts or under any scheme made under those Acts.⁶

Sect. 36. Notwithstanding anything in sect. 50 of the Brine Pumping (Compensation for Subsidence) Act, 1891, a local authority or county council shall be entitled to compensation in accordance with the provisions of that Act in respect of any injury or damage to any houses belonging to such local authority or council, and provided under a housing scheme towards the losses on which the [Minister of Health] is liable to contribute under this Act.

Note.

Brine pumping.

Under the Act of 1891 referred to in the present section, owners of land and sanitary authorities may apply to the Minister of Health asking for a "compensation district" to be formed by provisional order confirmed by Parliament. For each such district there is to be a "compensation board," which is required to form a "compensation fund" for the district by the levy of a rate upon brine pumpers. Among the matters in respect of which compensation is payable under that Act are:—(2) Destruction or structural damage of buildings and walls of all kinds, but not including damage to machinery or fixtures, whether removable or not; (3) the proper and necessary expense of building retaining walls or bolting together or underpinning or otherwise supporting, raising, or repairing buildings and walls; (4) the proper and necessary expense of altering the approaches to or the levels of lands or buildings; (5) the proper and necessary expense of raising, lowering, diverting, or making good private roads, bridges, fences, sewers, or drains." But by sect. 50, "nothing in this Act shall entitle the following persons or bodies of persons to compensation from any compensation board namely . . . (3) any county council or municipal corporation, (4) any sanitary, highway, or other local authority."⁷ Now by reason of the present section, county and district councils will not be debarred from claiming compensation in respect of the above mentioned damage to houses belonging to them and provided under a housing scheme towards which the Government contribute.

Application of Act to New Forest.

Sect. 37. The provision of houses under the Housing Acts shall be deemed to be a local sanitary requirement for the purpose of the New Forest (Sale of Lands for Public Purposes) Act, 1902.⁹ Provided that the total area of land being part of the New Forest which may be sold or let for the provision of houses shall not exceed 30 acres.

Extension of powers of Commissioners of Woods.

Sect. 38. The Commissioners of Woods may under and in accordance with the provisions of the Crown Lands Acts, 1829 to 1906,¹⁰ sell or let to a local authority for the purposes of Part III. of the principal Act any part of the land described on the duplicate plans which have been deposited with the Clerk of Parliaments and the Clerk of the House of Commons notwithstanding that such land may be part or parcel of a Royal park, if the [Minister of Health], after holding a local inquiry, [is] satisfied that the acquisition of the land by the local authority for such purposes as aforesaid is desirable in the national interest.

Procedure and minor amendments of Housing Acts.

Sect. 39.—(1) The amendments specified in the second column of the Second Schedule to this Act (which relate to procedure under Part I. and Part II. of the principal Act and to minor details) shall be made in the provisions of the principal Act, the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, &c. Act, 1909, specified in the first column of that schedule.¹¹

(4) Substituted for Act of 1915 by H., etc. Act, 1923, s. 16, Sched. II. For Act of 1920, see *post*, p. 1156.

(5) *Ante*, p. 1101.

(6) See also *Blake's Case*, *ante*, p. 1105.

(7) 54 & 55 Vict. c. 40, ss. 3, 9, 21, 22 (5), 37, 50.

(9) 2 Edw. VII. c. cxviii.

(10) For other references to the Act of 1906, 6 Edw. VII. c. 28, see *ante*, p. 280, and

post, Vol. II., p. 1476.

(11) The unrepealed amendments specified in Sched. II. have all been incorporated in the enactments amended, namely H. W. C. Act, 1890, ss. 5 (2), 6 (3), 7, 8 (5), 12 (1) (6), 14, 16 (1), 31 (1) (2), 38 (2), 45 (1), 57 (3), and 81, and Scheds. I. and II. (10) (12); H. W. C. Act, 1903, s. 4 (2); and H. T. P. Act, 1909, ss. 17 (3) (4) (7), 18 (3) (4), 39 (1), and 69 (1).

(2) Sects. 14 and 15 of the Housing, Town Planning, &c. Act, 1909,¹² shall be deemed to be part of Part II. of the principal Act. **Sect. 39.**

Sect. 40. This Part of this Act shall be construed as one with the principal Act, and any provisions of this Part of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained, and references in this Part of this Act to the principal Act or to any provision of the principal Act shall be construed as references to that Act or provision as amended by any subsequent enactment, including this Part of this Act; **Construction.**

In this Part of this Act—The expression “houses for the working classes” has the same meaning as the expression “lodging-houses for the working classes” has in the principal Act; ¹³

The expression “sale” includes sale in consideration of an annual rentcharge, and the expression “sell” has a corresponding meaning;

The expression “public utility society” means a society registered under the Industrial and Provident Societies Acts, 1893 to 1913, the rules whereof prohibit [the issue of any share or loan capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury ¹⁴].

The expression “housing trust” means a corporation or body of persons which, by the terms of its constituent instrument, is required to devote the whole of its funds, including any surplus which may arise from its operations, to the provision of houses for persons the majority of whom are in fact members of the working classes, and to other purposes incidental thereto;

The expression “building byelaws” includes byelaws made by any local authority under sect. 157 of the Public Health Act, 1875,¹⁵ as amended by any subsequent enactment, with respect to new buildings including the drainage thereof and new streets, and any enactments in any local Acts dealing with the construction and drainage of new buildings and the laying out and construction of new streets, and any byelaws made with respect to such matters under any such local Act.

Sect. 41.—(1) For the purposes of the application of Part III. of the principal Act to the county of London— **Application to London of certain provisions of the Housing Acts.**

(a) the London County Council shall be the local authority for the county, to the exclusion of any other authority, so far as regards the provision of any houses outside the administrative county of London;

(b) the council of a metropolitan borough shall be the local authority for the metropolitan borough, to the exclusion of any other authority, so far as regards the provision of houses within the metropolitan borough; Provided (i) that nothing in this section shall prejudice or affect the rights, powers and privileges of the London County Council in regard to any lands, buildings or works acquired, provided or carried out by the county council before the date of the passing of this Act; and (ii) that where the London County Council are satisfied that there is situate within the area of a metropolitan borough land suitable for development for housing, the county council may submit a scheme for the approval of the [Minister of Health] for the development of such land to meet the needs of districts situate outside the area of such borough, and the county council may carry into effect any scheme which is so approved, and such approval shall have the like effect as if it had been given under sect. 1 of this Act;

(c) the [Minister of Health] may by order direct that any of the powers or duties of the council of a metropolitan borough under Part III. of the principal Act shall be transferred to the London County Council, or that any of the powers or duties of the London County Council under Part III. of the principal Act shall be transferred to the council of a metropolitan borough.

(2) * * * ¹⁶

(3) The London County Council and the Common Council of the City of London may at any time enter into an agreement for carrying out any scheme for the purposes of Part I. or Part III. of the principal Act, and for the apportionment

(12) *Ante*, pp. 1099, 1100.

(13) See s. 53, *ante*, p. 1069.

(14) Substituted for “the payment of any interest or dividend at a rate exceeding six per cent. per annum” by Housing Act, 1921 (11 & 12 Geo. V. c. 19), s. 6, which contains a further provision as to rates of interest quoted in the Note to s. 20, *ante*, p. 1138.

(15) *Ante*, p. 353.

(16) Repealed by 11 & 12 Geo. V. c. 19, s. 11 (4), Sched. The provision substituted by that Act (s. 8) for sub-sect. (2) of the present section, was itself repealed by H. etc., Act, 1923, s. 24, Sched. III., subject to a saving effected by s. 6 of the Act, *post*, p. 1178. As to recoupment of losses now, see ss. 1—6 of the Act of 1923.

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of the expenses incurred in carrying out such scheme, and, if the scheme is a scheme to which sect. 7 of this Act applies, any payments made under such apportionment by the county council and the common council shall be deemed to have been made as part of the expenses incurred in carrying out a scheme to which that section applies.

PART II.

TOWN PLANNING.

Sect. 42. [Removal of necessity to obtain previous authorisation of [Minister of Health] to preparation or adoption of town planning scheme.¹⁷]

Sect. 43. [Extension of power to make regulations as to procedure.¹⁸]

Sect. 44. [Repeal of provisoes.¹⁹]

Sect. 45. [Power to permit development of estates pending preparation and approval of town planning schemes.²⁰]

Sect. 46. [Preparation of town planning schemes.²¹]

Sect. 47. [Power of [Minister of Health] to require town planning scheme.²¹]

Sect. 48. The amendments specified in the second column of the Third Schedule to this Act (which relate to consequential and minor matters) shall be made in the provisions of Part II. of the Act of 1909 mentioned in the first column of that schedule.²²

Consequential and minor amendments.

PART III.

ACQUISITION OF SMALL DWELLINGS.

Sect. 49. [Amendment of 62 & 63 Vict. c. 44.²³]

PART IV.

GENERAL.

Repeals.

Sect. 50. The enactments specified in the Fifth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Note.

Repeals.

The enactments repealed by the present section and Sched. V. were :—
1890—53 & 54 Vict. c. 70 (H. W. C.), ss. 14, 57 (2), 60, 64.
1900—63 & 64 Vict. c. 59 (H. W. C.), s. 5.
1903—3 Edw. VII. c. 39 (H. W. C.), s. 5 (1).
1909—9 Edw. VII. c. 44 (H. T. P.), ss. 4 (2), 6, 16, 32, 72, Sched. I. (7).

Extent.

Sect. 51. This Act shall not extend to Scotland or Ireland.

Short title.

Sect. 52.—(1) This Act may be cited as the Housing, Town Planning, etc., Act, 1919.
(2) The Housing of the Working Classes Acts, 1890 to 1909, and this Act so far as it amends those Acts may be cited together as the Housing Acts, 1890 to 1919, and are in this Act referred to as the "Housing Acts."²⁴
(3) Part II. of the Housing, Town Planning, etc., Act, 1909, and Part II. of this Act may be cited together as the Town Planning Acts, 1909 and 1919.
(4) The Small Dwellings Acquisition Act, 1899, and Part III. of this Act may be cited together as the Small Dwellings Acquisition Acts, 1899 and 1919.

(17) Quoted in full in Note to H. T. P. Act, 1909, s. 54, ante, p. 1116.

(18) Incorporated in H. T. P. Act, 1909, s. 56, and Note thereto, ante, p. 1117.

(19) See Act of 1909, ss. 54 (4) and 55 (2), ante, pp. 1115, 1117.

(20) Incorporated in H. T. P. Act, 1909, s. 58, and Note, ante, p. 1118.

(21) Quoted in full in Note to H. T. P. Act, 1909, s. 61, ante, p. 1121.

(22) The amendments specified in Sched. III. have all been incorporated in the enactments amended, namely, H. T. P. Act, 1909, ss. 54, 56, 58, 59, and 65, and Sched. IV. (18), and Sched. V. (1).

(23) See Note to Act of 1899, s. 1, ante, p. 1083 (7).

(24) As to citation of Housing Acts, see Note to H. W. C. Act, 1890, s. 1, ante, p. 1043.

FIRST SCHEDULE.

Sched. I.
Section 9.

RULES FOR DETERMINING THE AMOUNT OF REDUCTION OF COMPENSATION.

- (a) The value of the whole of the land included in the scheme shall first be ascertained on the basis of its value as a cleared site available for development in accordance with the requirements of the building byelaws in force in the district.
- (b) The value of the whole of the said land shall next be ascertained on the basis of its value as a cleared site subject to the requirements of the scheme as to the provision to be made for the rehousing of persons of the working-classes or the laying out of open spaces on the land or any part thereof.
- (c) The difference between the amounts ascertained under paragraph (a) and paragraph (b) shall then be computed.
- (d) The amount by which the compensation payable for the respective interests in the land to which sect. 9 of this Act applies, as ascertained in accordance with the principle laid down in that section, is to be reduced shall be a fraction thereof equal to the amount arrived at under paragraph (c) when divided by the amount arrived at under paragraph (a).

SECOND,²⁵ THIRD,²⁶ FOURTH,²⁷ AND FIFTH SCHEDULES.²⁸

* * * * * * *

(25) For the unrepealed “amendments as to procedure under Part I. and Part II. of the principal Act and minor amendments of the Housing Acts” enacted by s. 39 and Sched. II., see footnote (11), *ante*, p. 1148.

(26) For the “minor and consequential amendments of the provisions as to town planning” enacted by s. 48, and Sched. III., see footnote (22), *ante*, p. 1150.

(27) For the “form of endorsed receipt” in Part I. and the “effect of endorsed receipt” in Part II. of this Schedule, see the Note to Small Dwellings Acquisition Act, 1899, s. 1, *ante*, p. 1083.

(28) For the enactments repealed by s. 50 and Sched. V., see the Note to s. 50, *ante*, p. 1150.

THE HOUSING (ADDITIONAL POWERS) ACT, 1919.

9 & 10 GEO. V. c. 99.

An Act to make further provision for the better housing of the people, to authorise the acquisition of land for the development of garden cities or for the purposes of town planning schemes, and to make further provision with respect to the borrowing powers of public authorities and bodies and with respect to the securities issued by them.

[23rd December, 1919.]

Sect. 1. [*Provision for payment of money to persons constructing houses.*¹]

Sect. 2. [*Aggregate amount of grants.*²]

Sect. 3. [*Provision as to expenses under 9 & 10 Geo. V. c. 35, s. 16.*³]

Sect. 4. [*Amendment of 9 & 10 Geo. V. c. 35, ss. 7 and 19, with respect to amount of annual payments.*⁴]

Sect. 5. [*Prohibition of building operations which interfere with provision of dwelling-houses.*⁵]

Sect. 6. [*Prohibition on demolition of dwelling-houses.*⁶]

Powers of borrowing for purpose of Housing Acts.

Sect. 7.—(1) A local authority (including a county council) may, with the consent of the Minister, borrow any sums which they have power to borrow for the purposes of the Housing Acts, 1890 to 1919, by the issue of bonds (in this Act referred to as "local bonds") in accordance with the provisions of this Act.⁹

(2) A county council may lend to any local authority within their area any money which that authority have power to borrow for the purposes of the Housing Acts, 1890 to 1919, and may, with the sanction of the Minister and irrespective of any limit of borrowing, raise the money required for the purpose either by the issue of local bonds under this section or by a loan subject to the like conditions and in the like manner as any other loan raised for the purpose of their powers and duties, and subject in either case to any conditions which the Minister may by general or special order impose.¹⁰

(3) The provisions set out in the Schedule to this Act shall have effect with respect to local bonds.

(4) Where on an application made by two or more local authorities the Minister is satisfied that it is expedient that those authorities should have power to make a joint issue of local bonds, the Minister may by order make such provision as appears to him necessary for the purpose, and any such order shall provide for the securing of the bonds issued upon the joint rates, property and revenues of the authorities. The provisions of any such order shall have effect as if they were contained in a Provisional Order made under sect. 279 of the Public Health Act, 1875.¹¹

(5) Any local authority by whom any local bonds have been issued may, without the consent of the Minister, borrow for the purpose of redeeming those bonds.

Sect. 8. [Sect. 1 (2) of 6 & 7 Geo. V. c. 69, to be perpetual.¹²]

Power of trustees to invest in certain securities issued by local authorities.

Sect. 9. Sect. 1 of the Trustee Act, 1893 (which specifies the securities in which trust funds may be invested),¹³ shall have effect as though there were included therein local bonds issued under this Act and mortgages of any fund or rate granted after the passing of this Act under the authority of any Act or provisional order by a local authority (including a county council) which is authorised to issue local bonds under this Act.

(1) Repealed, with s. 1 of H. Act, 1921, which amended it, by H., etc. Act, 1923, s. 24, Sched. III. See now ss. 1—6 of Act of 1923, *post*, p. 1175.

(2) Repealed by H., etc. Act, 1923, s. 24, Sched. III. See now ss. 1—6 of Act of 1923, *post*, p. 1175.

(3) Repealed by Housing, etc. Act, 1923, s. 24, Sched. III.

(4) Repealed by Housing, etc. Act, 1923, s. 24, Sched. III.

(5) By the Housing Act, 1921 (11 & 12 Geo. V. c. 19), s. 2, the present section "and all orders made under that section shall cease to have effect," and by s. 11 (4) and the Schedule to the same Act the present section is repealed.

(6) Spent, see s. 15 (2), *post*, p. 1154.

(9) See M. H. Circular, Feb. 23, 1922, 20 L. G. R. (Orders) 25, and M. H. Memo., May 5, 1923, 21 L. G. R. (Orders) 62.

(10) By the Housing Act, 1921, (11 & 12 Geo. V. c. 19), s. 4, the power to make these general or special orders "shall be deemed to include, and always to have included, a power to impose conditions with respect to the borrowing by a local authority from a county council of money so raised." The Order of 1922 is set out *post*, Vol. II., Part V., under heading "FINANCE, Local Bonds."

(11) *Ante*, p. 725.

(12) Quoted, *ante*, p. 616.

(13) Quoted, *ante*, p. 880.

Sect. 10.—(1) Where the Minister is satisfied that any local authority (including a county council) or two or more local authorities jointly, or any authorised association, are prepared to purchase and develop any land as a garden city (including a garden suburb or a garden village), or any land in regard to which a town-planning scheme may be made for the purpose of such a scheme for the area in which the land is situate, in accordance with a scheme approved by the Minister, and have funds available for the purpose, he may, with the consent of the Treasury and after consultation with the Board of Trade, the [Minister] of Agriculture and Fisheries, and the Minister of Transport, acquire that land on behalf of the authority or association either by compulsion or by agreement in any case in which it appears to him necessary or expedient so to do for the purpose of securing the development of the land as aforesaid, and may do all such things as may be necessary to vest the land so acquired in the local authority or association.

Sect. 10.

Acquisition of land for purpose of garden cities or town planning schemes.

(2) The provisions of the Housing Acts, 1890 to 1919, relating to the powers of a local authority to acquire land for the purposes of Part III. of the Housing of the Working Classes Act, 1890,¹⁴ shall apply for the purpose of the acquisition of land by the Minister under this section, and the Minister in exercising his powers of acquiring land under this section shall be subject to the same conditions as are applicable to the acquisition of land under the Housing Acts, 1890 to 1919, by a local authority: Provided that, in the case of an order for the compulsory acquisition of land on behalf of an authorised association, the order shall be laid before each House of Parliament and shall not be confirmed by the Minister unless and until both Houses by resolution have approved the order, nor, if any modifications are agreed to by both Houses, otherwise than as so modified.

(3) A local authority shall have power to acquire land for the purposes of a scheme approved by the Minister under this section, and to develop any land so acquired in accordance with the scheme, and shall have power to borrow, as for the purposes of the Housing Acts, 1890 to 1919, any money required for the purpose of so acquiring or developing any land.

(4) In this section "authorised association" means any society, company or body of persons approved by the Minister whose objects include the promotion, formation, or management of garden cities (including garden suburbs and garden villages), and the erection, improvement or management of buildings for the working classes and others, which does not trade for profit or whose constitution forbids [the issue of any share or loan capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury¹⁵]. [And any authorised association shall have, and shall be deemed always to have had, power, notwithstanding anything in their rules or constitution prohibiting the payment of any interest on loan capital at a rate exceeding six per cent. per annum, to raise money on loan at a rate of interest not exceeding the rate for the time being prescribed by the Treasury as aforesaid¹⁶].

Note.

By sect. 7 of the Housing Act, 1921,¹⁷ " (1) Subject to such conditions as the Treasury may prescribe and up to an amount approved by the Treasury, the Public Works Loan Commissioners may advance by way of loan to any authorised association, within the meaning of " the present section, "such money as the association may require for the purpose of developing a garden city in accordance with a scheme approved by the Minister, and sect. 67 of the Housing of the Working Classes Act, 1890 (which makes provision with respect to loans by the Commissioners aforesaid),¹⁸ as amended by sect. 20 of the Housing, Town Planning, etc., Act, 1919,¹⁹ shall, subject to the provisions of this section, apply to any advance made in pursuance of this section as it applies to a loan to a public utility society. (2) The power to make advances under this section shall be exercised during such period as the Treasury may prescribe."

Loans for garden cities.

Sect. 11. In this Act the expression " local authority " means the local authority within the meaning of Part III. of the Housing of the Working Classes Act,

Meaning of local authority.

(14) See s. 57, *ante*, p. 1069.

(15) Substituted for " payment of any interest or dividend at a higher rate than six per centum per annum " by Housing Act, 1921 (11 & 12 Geo. V. c. 19), s. 6.

(16) Added by the same section.

(17) 11 & 12 Geo. V. c. 19, s. 7.

(18) *Ante*, p. 1072.

(19) *Ante*, p. 1138.

Sect. 11.

1890 :²⁰ Provided that for the purpose of the application of the provisions of this Act (other than those relating to expenses under sect. 16 of the Housing, Town Planning, &c. Act, 1919 ²¹) to the county of London the London County Council shall be the local authority to the exclusion of any other authority, and that in the city of London the London County Council shall be the local authority for the purpose of the certificate as to the completion of houses to be given under the provisions of this Act relating to the payment of money to persons constructing houses.

Execution of Act in county of London.

Sect. 12. For the purpose of securing the proper execution of this Act in the administrative county of London, the London County Council shall have the power to require a district surveyor under the London Building Act, 1894, to perform within his district such duties as the council think necessary for that purpose, and the council may pay to a district surveyor such remuneration as they may determine in respect of any duties performed by him in pursuance of this section.

Short title and duration.

Sects. 13 and 14. [Application to Scotland and Ireland].

Sect. 15.—(1) This Act may be cited as the Housing (Additional Powers) Act, 1919.²²

(2) The provisions of this Act, other than the provisions thereof relating to powers of borrowing for the purpose of the Housing Acts, 1890 to 1919, the Public Authorities and Bodies (Loans) Act, 1916, trustee securities, and the acquisition of land for the purpose of garden cities and town-planning schemes, shall continue in force for two years only from the commencement thereof, and no longer : Provided that sect. 38 of the Interpretation Act, 1889 (which relates to the effect of repeals),²³ shall, in relation to the provisions of this Act which cease to be in force on the expiration of the period aforesaid, apply as if these provisions had been repealed by another Act passed on the date of the expiration of the said period.

Note.

Duration of Act.

Sects. 1, 2, 4, 11, 12, and 14 were continued until the 31st December, 1922, by sect. 1 (1) of the Expiring Laws Continuance Act, 1921. Parts of the present Act were continued by the Expiring Laws Act, 1922, but only as to Scotland. The Act is not mentioned in the Expiring Laws Continuance Act, 1923. So that all the temporary portions have expired.

Section 7.

SCHEDULE.

PROVISIONS AS TO LOCAL BONDS.

1. Local bonds shall—(a) be secured upon all the rates, property and revenues of the local authority : (b) bear interest at such rate of interest as the Treasury may from time to time fix : (c) be issued in denominations of five, ten, twenty, fifty, and one hundred pounds and multiples of hundred pounds : (d) be issued for periods of not less than five years.

2. Local bonds shall be exempt from stamp duty under the Stamp Act, 1891, and no duty shall be chargeable under sect. 8 of the Finance Act, 1899, as amended by sect. 10 of the Finance Act, 1907,¹ in respect of the issue of any such bonds.

3. The provisions of sect. 115 of the Stamp Act, 1891 (which relates to composition for stamp duty),² shall, with the necessary adaptations, apply in the case of any local authority by whom local bonds are issued as if those bonds were stock or funded debt of the authority within the meaning of that section.

4. A local authority shall, in the case of any person who is the registered holder of local bonds issued by that authority of a nominal amount not exceeding in the aggregate one hundred pounds, pay the interest on the bonds held by that person without deduction of income tax, but any such interest shall be accounted for and charged to income tax under the third case of Schedule D. in the First Schedule to the Income Tax Act, 1918,³ subject, however, to any provision of that Act with respect to exemption or abatement.

(20) As to meaning of local authority for purposes of Part III., see Note to H. T. P. Act, 1919, s. 1, ante, p. 1132.

(21) Now repealed, see ante, p. 1137.

(22) As to the citation of the present Act with the other Housing Acts, see the Note to s. 1 of the principal Act, ante, p. 1043.

(23) *Post*, Vol. II., p. 1971.

(1) 62 & 63 Vict. c. 9, s. 8; 7 Edw. VII. c. 13, s. 10.

(2) 54 & 55 Vict. c. 39, s. 115.

(3) 8 & 9 Geo. V. c. 40, Sched. I. (D.), case 3.

5. Local bonds issued by a local authority shall be accepted by that authority at their nominal value in payment of the purchase price of any house erected by or on behalf of any local authority in pursuance of any scheme under the Housing Acts, 1890 to 1919. **Sched.**

6. The Minister may, with the approval of the Treasury, make regulations with respect to the issue (including terms of issue), transfer and redemption of local bonds and the security therefor, and any such regulations may apply, with or without modifications, any provisions of the Local Loans Act, 1875,⁴ and the Acts amending that Act, and of any Act relating to securities issued by the London County Council or by any other local or public body.

Note.

The Housing (Local Bonds) Regulations, 1920,⁵ and the Stock Regulations of 1891, as amended,⁶ will be found elsewhere. **Regulations.**

(4) *Post*, Vol. II., p. 1711.

(6) *Ibid.*, under heading: "FINANCE,

(5) *Post*, Vol. II., Part V., under heading: "FINANCE, Local Bonds."

Stock."

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

10 & 11 GEO. 5, c. 17.

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith. [2nd July, 1920.]

Note.

Rent and Mortgage Interest Restrictions Acts.

The present Act and the amending Acts, namely, the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923,¹ the Rent Restrictions (Notices of Increase) Act, 1923,² and the Rent and Mortgage Interest Restrictions Act, 1923,³ "may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923."⁴ The second and third Acts of 1923 are to be "construed as one with" the present Act.⁵

The third Act is divided into three parts, sects. 1 to 11 in Part I. under the heading "Amendment and prolongation of duration of principal Act," sects. 12 to 17 in Part II. under the heading "Restrictions after expiry of principal Act," and sects. 18 to 20 in Part III. under the heading "General." Part II. is to "continue in force until the 24th day of June, 1930: Provided that, if a resolution is passed by both Houses of Parliament for the repeal of this part of this Act on some earlier date, it shall be lawful for His Majesty in Council to repeal this Part of this Act on such date as may be specified in that behalf in the resolution."⁶ The three parts have been dealt with in the sections or Notes to the present Act as indicated below.⁷

For the numerous decisions on these Acts, reference must be made to the separate works on the subject.⁸ They are set out here because they greatly affect the housing conditions of this country, but the only sections particularly affecting public health authorities are those referred to below.⁹

Housing Acts.

By sect. 35 of the Housing, Town Planning, etc., Act, 1919,¹⁰ nothing in the present Act or the amending Acts is to prevent a local authority from obtaining possession of houses required by them under the Housing Acts.

RESTRICTIONS ON INCREASE OF RENT AND MORTGAGE INTEREST.

Restriction on increasing rent and mortgage interest.

Sect. 1. Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the 25th day of March, 1920, or is hereafter, increased, then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be:¹¹ Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.¹²

Permitted increases in rent.

Sect. 2.—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say:—

(1) See footnote (67), *post*, p. 1173.
(2) Quoted in full in Note to s. 3, *post*, p. 1160.
(3) See footnote (7), *infra*.
(4) 13 & 14 Geo. V. c. 32, s. 20.
(5) 13 & 14 Geo. V. c. 13, s. 4; 13 & 14 Geo. V. c. 32, s. 20.
(6) 13 & 14 Geo. V. c. 32, s. 17.
(7) For s. 1, see *post*, p. 1173 (68); s. 2, p. 1170 (58); s. 3, p. 1162 (29); s. 4, p. 1163 (33)—(44); s. 5, p. 1158 (14); s. 6, pp. 1162 (30), 1174 (69); s. 7, p. 1158 (15); s. 8, p. 1158 (16); s. 9, p. 1167 (50); s. 10, pp. 1167 (51) (52), 1171 (60); s. 11, pp. 1170 (57), 1173 (64); s. 12, p. 1165 (45); s. 13, p. 1159 (18); s. 14, p. 1162 (31a); s. 15, p. 1166 (47); s. 16, p. 1173 (65); s. 17, *supra* (6); s. 18, p. 1159 (21); s. 19 [Scotland]; and s. 20, *supra* (4).

(8) For instance, "Safford's Rent and Mortgage Interest Restrictions Acts, 1920 and 1923," 3rd ed., 1923, published by Sweet & Maxwell, Ltd.
(9) See ss. 2 (2) (4) and Note, 3 (Note, *post*, pp. 1161, 1162), and Sched. I., *re* sanitary certificates; 5 (1) (e), *re* possession by local authorities; 12 (1) (i), *re* definition of "statutory undertaking," etc.; 12 (9), *re* rent of housing scheme houses; and 16 (1), *re* rating of owners; and s. 3 of Act of 1923 (*post*, p. 1161 (28)), *re* suspension of liability to pay rent.
(10) *Ante*, p. 1148.
(11) For "standard rent," and "standard rate of interest," see s. 12, *post*, p. 1168.
(12) As to "apportionment" of rent, see s. 12 (3), *post*, p. 1169.

(a) Where the landlord has since the 4th day of August, 1914, incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended: Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly:

Sect. 2.
Permitted
increases in
rent—*cont.*

(b) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the 3rd day of August, 1914, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter:

(c) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent: Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent.:¹²

(d) In further addition to any such amounts as aforesaid—(i) where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent; or (ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability:

(e) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the 1st day of March, 1920, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (d) of the foregoing subsection, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (c) of that subsection, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair. The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.¹³

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

(4) On any application to a sanitary authority for a certificate or report under

(12) See s. 13 (1) (a), *post*, p. 1171.

(13) See Rent Restrictions (Notices of Increase) Act, 1923, s. 3, quoted in Note to s. 3, *post*, p. 1161 (28).

Sect. 2.

this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

(6) Any question arising under subsection (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.¹³

Note.**Suspension of increase for disrepair.**

By sect. 5 of the Act of 1923,¹⁴ "(1) Where the tenant of a dwelling-house to which the principal Act applies has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any increase of rent permitted under " subsect. (1) (c) or (d) of the present section " in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes such increase), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved: Provided that this section shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement. (2) When, after the issue of any such certificate, the landlord has executed to the satisfaction of the sanitary authority the repairs which require to be executed in order to put the dwelling-house into a reasonable state of repair, the authority shall, on the application of the landlord and upon payment of a fee of one shilling, issue a report to that effect."

Permitted increases of rent of sub-tenancies.

By sect. 7 of the Act of 1923,¹⁵ "(1) Where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, then, in addition to any increases permitted by " subsect. (1) (a) to (e) of the present section, " an amount not exceeding ten per cent of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of that dwelling-house, and an amount equivalent to five per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy." Sect. 3 (2) of the present Act " shall not apply as respects any increase permitted under this subsection. (2) Where part of any such dwelling-house is so sub-let, the tenant shall, on being so requested in writing by the landlord, supply him, within fourteen days thereafter, with a statement in writing of any sub-letting, giving particulars of occupancy, including the rent charged, and should the tenant without reasonable excuse fail to do so or supply a statement which is false in any material particulars he shall be liable on summary conviction to a fine not exceeding two pounds. (3) In subsect. (6) of " the present section " the expression ' landlord ' shall, in relation to a sub-tenancy, be taken to include not only the person who is immediate landlord of the sub-tenant but also the landlord of that person."

Recovery of overpayments of arrears.

By sect. 8 of the Act of 1923,¹⁶ "(1) No increase of rent which becomes payable by reason of an amendment of a notice of increase made by order of the county court under this Act shall be recoverable in respect of any rental period which ended more than six months before the date of the order. (2) Any sum paid by a tenant or mortgagor which, under sect. 14 (1) of the principal Act is recoverable by the tenant or mortgagor shall be recoverable at any time within six months from the date of payment but not afterwards, or in the case of a payment made before the passing of this Act, at any time within six months from the passing of this Act but not afterwards. (3) Nothing in this section shall affect the operation of the Rent Restriction (Notices of Increase) Act, 1923."¹⁷

(13) See Act of 1923, s. 7 (3), *infra*.

(14) 13 & 14 Geo. V. c. 32, s. 5.

(15) 13 & 14 Geo. V. c. 32, s. 7.

(16) 13 & 14 Geo. V. c. 32, s. 8.

(17) Quoted in full in Note to s. 3 of the present Act.

By sect. 13 of the Act of 1923,¹⁸ “ (1) If the county court on the application of a sitting tenant¹⁹ is satisfied by the production of a certificate of the sanitary authority and such further evidence (if any) as may be adduced that the dwelling-house is not in a reasonable state of repair and that the condition of the dwelling-house is not due to the tenant’s neglect or default or breach of express agreement, the court may order that the rent shall be reduced until the court is satisfied on the report of the sanitary authority or otherwise that the necessary repairs (other than any repairs for which the tenant is liable) have been executed, and subject to the terms of the order the rent shall be payable at such reduced rate as may be specified therein until the court is so satisfied. (2) The powers of the county court under this section may be exercised by the court in any proceedings against a sitting tenant to which ” sect. 12 of the Act of 1923 “ applies.”²⁰

Sect. 2, n.
Reduction of rent pending repairs.

By sect. 18 of the Act of 1923,²¹ “ (1) For the purposes of the principal Act and this Act, a certificate of a sanitary authority as to the condition of a dwelling-house shall specify what works (if any) require to be executed in order to put the dwelling-house into a reasonable state of repair, and on any application to a sanitary authority for a certificate or report for the purposes aforesaid a fee of one shilling shall be payable, but if the authority, as a result of such application, issues a certificate to a tenant, the tenant shall be entitled to deduct the fee from any subsequent payment of rent. (2) On any application to a county agricultural committee for a certificate for the purpose of sect. 5 (1) (ii) of the principal Act, a fee shall be payable by the applicant to the county agricultural committee of such amount as the Minister of Agriculture and Fisheries shall by regulation determine. (3) An instrument purporting to be a certificate or report of a sanitary authority or of a county agricultural committee and to be signed by an officer of the authority or committee shall, without further proof, be taken to be a certificate or report of the authority or committee unless the contrary is proved. (4) A sanitary authority may appoint a committee for the purposes of the principal Act and this Act, and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under the principal Act or this Act. (5) For the purposes of this Act, the expression “ repairs ” means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.”

Certificates of sanitary authorities and definition of repairs.

As to the meaning of “ good,” etc., repair, see the case cited below.^{21a}

As to certificates of medical officers of health for inhabited house duty purposes, see sect. 26 (2) of the Customs and Inland Revenue Act, 1890, and the Circulars of the Local Government Board thereon, dated the 19th September, 1890.²²

Inhabited house duty certificates.

Sect. 3.—(1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which, but for this Act, the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced.

Limitation as to permitted increases in rent.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.²³

(3) A notice served before the passing of this Act of an intention to make any

(18) 13 & 14 Geo. V. c. 32, s. 13. This section is in Part II., so see footnote (6), *ante*, p. 1156.

(19) See s. 12 (1) of Act of 1923, quoted in Note to s. 5, *post*, p. 1165 (45).

(20) For s. 12, see *post*, p. 1165 (45).

(21) 13 & 14 Geo. V. c. 32, s. 18.

(21a) *Calthorpe’s Case*, *ante*, p. 1100 (54).

(22) Noted *ante*, p. 541 (17). See also *ante*, p. 1109 (18).

(23) See Act of 1923, s. 7 (1), *ante*, p. 1158.

Sect. 3. increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

Note.

**Notices to
increase rent.**

By sect. 1 of the Rent Restrictions (Notices of Increase) Act, 1923,²³ “(1) Where notice of intention to increase rent has, whether before or after the passing of this Act, been served on a tenant in conformity with subsect. (2) of ” the present section “ and a notice to terminate the tenancy was necessary in order to make such increase effective, the notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect, or on the earliest day thereafter on which if it had been a notice to terminate the tenancy, it would have been effective for that purpose, and in the latter case a notice of increase served before the passing of this Act shall be deemed to have had effect as if such earliest date had been specified in the notice as the date as from which the increase was to take effect :

Provided that—(a) nothing in this Act shall entitle a landlord after the passing of this Act to recover from a tenant, in respect of any period before the 1st day of December, 1922, the increase of rent made valid by this Act, or any sums which have been recovered from the landlord before that date by means of deductions from rent or otherwise, or any rent due before that date which has not been paid by reason of such deductions having been made therefrom; but sect. 14 (1) of the principal Act shall not apply to an increase of rent made valid by this Act which was paid by, or recovered from, a tenant prior to the 1st day of December, 1922; (b) nothing in this Act shall affect the right to enforce any judgment of a court of competent jurisdiction given before the 15th day of February, 1923, or render recoverable any sum paid under such a judgment.

(2) Any increase of rent made valid by this Act is hereinafter referred to as a validated increase of rent.”

**Payment of
arrears by
instalments.**

By sect. 2 of the same Act,²⁴ “ (1) The amount due under this Act on account of any arrears of rent, that is to say,—(a) any validated increase of rent in respect of the period from the 1st day of December, 1922, to the date of the passing of this Act,²⁵ both inclusive; and (b) any sum which during the said period has been recovered by the tenant from the landlord by deductions from rent or otherwise, and which would not have been so recoverable had this Act been then in force; shall be payable by instalments with and as part of the periodical payments of rent, each instalment being fifteen per cent. of the standard rent for the week, month, or other period for which the rent is payable, fractions of a penny being disregarded; and such instalments shall continue payable until the whole of the amount of such arrears is paid off :

Provided that—(i) the tenant may at any time pay to the landlord the full amount of such arrears subject to the deduction of the aggregate amount of the instalments (if any) already paid; and (ii) if a tenant by whom any such instalments are payable gives up possession of the premises either voluntarily or on any order or judgment of a court, the balance of the sum payable by instalments shall immediately become due and recoverable.

(2) A landlord claiming that a sum on account of arrears of rent is due to him under this Act shall serve on the tenant a notice to that effect, and the notice shall specify the amount so claimed and the amount of the instalments claimed to be payable, and the first instalment shall not be payable until after the expiration of one clear week from the date of the notice. If such notice contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive.

(3) The notice shall be in the form contained in the Schedule to this Act, or in a form substantially to the same effect, and the landlord shall furnish the tenant with details in writing showing how the amount claimed is arrived at, and how the amount of the instalments has been calculated.

(4) Any question as to the amount of arrears due from a tenant, or the amount of any instalment, shall be determined on the application either of the landlord or

(23) 13 & 14 Geo. V. c. 13, s. 1. By s. 4 of this Act, it is to be “ construed as one ” with the present Act.

(24) *Ibid.* s. 2.

(25) Royal assent, June 7, 1923.

the tenant by the county court, and the decision of the court shall be final and conclusive." **Sect. 3, n.**

The form of notice contained in the Schedule to the same Act is headed "Rent Restrictions (Notices of Increase) Act, 1923."²⁶ There is then a space for the date of the notice, and below that a space for the name of the person on whom it is served and of the premises in respect of which it is served. The body of the notice is as follows:— **Form of notice of increase.**

"Take notice that I claim that the sum of _____ is due to me from you as tenant of the above premises on account of arrears of rent under the above-mentioned Act.

The amount due on account of such arrears is payable by instalments with, and as part of, your weekly [*monthly, or other periodical*] rent until the amount of such arrears is paid off. The first instalment will be payable on the _____ day of _____²⁷

The amount of the instalments claimed by me is _____ a week [*month, or other period, as the case may be*].

If you wish to dispute the amount of the sum claimed or of the instalments, you are entitled to apply to the county court of _____.

You are entitled to apply to the county court for an order suspending any sum due from you by way of rent, or on account of arrears, under the above mentioned Act, if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable, but, if the certificate is granted, you can deduct this sum from the sum due from you as aforesaid. The address of the sanitary authority is _____.

If at any time you give up possession of the above premises, either voluntarily or on an order or judgment of the court, the balance of the sum payable by instalments will immediately become due.

A statement is sent herewith showing how the amount of the above claim is arrived at, and how the amount of the instalments has been calculated."

There is then a space for the signature of the person serving the notice, and his address.

By sect. 3 of the same Act,²⁸ "(1) A tenant, who becomes by virtue of this Act liable to pay any sum by way of rent or on account of arrears, or the sanitary authority, may apply to the county court for an order suspending such liability on the ground that the house is not in all respects reasonably fit for human habitation or that it is otherwise not in a reasonable state of repair, and sect. 2 of the principal Act shall apply as if the application had been made under subsect. (2) of that section.

Power to suspend liability.

(2) Where the liability in respect of the payment of instalments is so suspended, the instalments which would have become payable during the period of suspension, shall, for the purpose of calculating the aggregate amount of instalments paid, be deemed to have been paid.

(3) Where a tenant has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any sum which the tenant is by virtue of this Act liable to pay by way of rent or on account of arrears in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes any such sum), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved: Provided that the foregoing provision shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(4) For the purposes of this Act, a certificate of a sanitary authority shall

(26) 13 & 14 Geo. V. c. 13, Sched.

(27) This form contains a footnote stating that "The date to be inserted will be the first rent day after the expiration of one clear week from the date of the notice."

(28) 13 & 14 Geo. V. c. 13, s. 3.

Sect. 3, n.

specify what works (if any) require to be executed in order to put the house into a reasonable state of repair.

(5) An instrument purporting to be a certificate of a sanitary authority and to be signed by an officer of the authority shall, without further proof, be taken to be a certificate of the authority unless the contrary is proved.

(6) A sanitary authority may appoint a committee for the purposes of this Act and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under this Act."

**Determina-
tion of leases,
&c.**

By sect. 3 of the Act of 1923,²⁹ "Where before the passing of this Act the landlord of a dwelling-house to which the principal Act applies has granted to the tenant a valid lease of the dwelling-house for a term ending at some date after the 24th day of June, 1923, or has entered into a valid agreement with the tenant for a tenancy for such a term, and the rent thereby reserved is reserved at a rate which after but not before such last mentioned date exceeds the standard rent and the increases permitted under the principal Act or this Act, the landlord may, by three months notice in writing expiring not earlier than the 21st day of December, 1923, and not later than the 31st day of March, 1924, determine the said lease or tenancy, provided that, if within one month of the receipt of such notice the lessee or tenant shall give to the landlord notice in writing that he elects to abide by the said lease or agreement and the terms thereof, then the said lease or agreement shall remain in full force and effect in every respect including the amount of the rent thereby expressed to be reserved unaffected by the principal Act or this Act."

**Notice of
increase of
rent.**

By sect. 6 (1) of the Act of 1923,³⁰ "The county court, if satisfied that any error or omission in a notice of intention to increase rent, whether served before or after the passing of this Act, is due to a bonâ fide mistake on the part of the landlord, shall have power to amend such notice, by correcting any errors and supplying any omissions therein, which, if not corrected or supplied, would render the notice invalid, on such terms and conditions as respects arrears of rent or otherwise as appear to the court to be just and reasonable, and, if the court so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice."

By sect. 7 (1) of the same Act,³¹ subsect. (2) of the present section is not to apply as respects any increase permitted under that subsect. (1).

**Permitted
increase in rate
of mortgage
interest.**

Sect. 4. The amount by which the increased rate of interest payable in respect of a mortgage to which this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum: Provided that—(a) the rate shall not be increased so as to exceed six and a half per cent. per annum; and (b) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

Note.**Mortgage
interest.**

By sect. 14 of the Act of 1923,^{31a} "(1) Where a dwelling-house in the occupation of a sitting tenant³² is subject to a mortgage to which the principal Act applied, the county court may, on the application of the landlord, make an order restraining the mortgagee from calling in his mortgage or taking steps for enforcing his security or for recovering the principal money thereby secured, if it is satisfied that such calling in, enforcement or recovery would cause exceptional hardship to the landlord. The county court may, on the application of the mortgagee or landlord rescind or vary any order so made if satisfied that by reason of any material change in circumstances, rescission or variation is necessary or proper. (2) The restrictions imposed on a mortgagee by an order under this section may be imposed subject to such conditions as regards increase of interest or otherwise and for such time as appears to the court to be proper, but so nevertheless that the restrictions shall cease to be operative if at any time after the making of the order—(a) interest is more than twenty-one days in arrear; or (b) any covenant by the mortgagor (other than the covenant for the repayment of the principal money secured) is broken or not performed; or (c) the mortgagor fails to keep the property in a proper state of repair or to pay the interest and instal-

(29) 13 & 14 Geo. V., c. 32, s. 3.

(30) 13 & 14 Geo. V. c. 32, s. 6 (1).

(31) See footnote (15), *ante*, p. 1158.

(31a) 13 & 14 Geo. V. c. 32, s. 14. This

section is in Part II., so see footnote (6), *ante*, p. 1156.

(32) See s. 12 (1) of Act of 1923, *post*, p. 1165 (45).

ments of principal recoverable under any prior encumbrance : or (d) the sitting tenant ceases to be tenant of the dwelling-house. (3) This section shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage." Sect. 4, n.

FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS AND MORTGAGEES.

Sect. 5.—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless— Restriction on right to possession.

- (a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed ; or
- (b) the tenant or any person residing [or lodging ³³] with him [or being his sub-tenant ³³] has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, [and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant ³³]; or
- (c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession ; or
- (d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, [or for any son or daughter of his over eighteen years of age,³³] or for any person bonâ fide residing [or to reside ³⁴] with him, or for some person [engaged³³] in his whole time employment or in the whole time employment of some tenant from him [or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into,³³] and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation [is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies ³⁵]; or
- (e) the [dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, or statutory undertaking, or for any purpose which, in the opinion of the court, is in the public interest, and the court in either case ³⁶] is satisfied as aforesaid as respects alternative accommodation ; or
- (f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances ; or
- (g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war;³⁷ [or
- (h) the tenant without the consent of the landlord has at any time after the

(33) Added by Act of 1923 (13 & 14 Geo. V. c. 32), s. 4.

(34) Repealed by *ibid.*

(35) Substituted for "reasonably equivalent as regards rent and suitability in all respects, is available," by *ibid.* See also s. 13 (1) (b) of the present Act, *post*, p. 1171.

(36) Substituted for "landlord is a local

authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court," by *ibid.*

(37) See s. 13 (1) (e) of the present Act, *post*, p. 1171.

Sect. 5.

Restriction on
right to
possession—
continued.

- 31st day of July, 1923, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or
- (i) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused; ³⁸

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this subsection—

- (i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; ³⁹ or
- (ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, [or with whom conditional on housing accommodation being provided, a contract for employment on such work has been entered into; ⁴⁰] or
- (iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or
- (iv) where the landlord [or the husband or wife of the landlord became the landlord before the 30th day of June, 1922, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age; or
- (v) where the landlord or the husband or wife of the landlord did not become the landlord before the 30th day of June, 1922, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment ⁴¹] for possession than by granting it.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in sect. 143 of the County Courts Act, 1888, ⁴² or in sect. 1 of the Small Tenements Recovery Act, 1838, ⁴³ every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after

(38) Added by Act of 1923 (13 & 14 Geo. V. c. 32), s. 4.

(39) See s. 13 (1) (d) of the present Act, *post*, p. 1171.

(40) Added by Act of 1923 (13 & 14 Geo. V. c. 32), s. 4.

(41) Substituted by *ibid.*, for "became the landlord before the 30th day of September, 1917, or, in the case of a dwelling-house to which sect. 4 of the Increase of Rent and Mortgage Interest (Restrictions) Act,

1919, applied, became the landlord before the 5th day of March, 1919, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the 20th day of May, 1920, and in the opinion of the court greater hardship would be caused by refusing an order."

(42) 51 & 52 Vict. c. 43, s. 143.

(43) 1 & 2 Vict. c. 74, s. 1.

the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenants.⁴³

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

[(7) The provisions of the last preceding subsection shall apply in any case where the landlord has, after the 31st day of July, 1923, obtained an order or judgment for possession or ejectment on any of the grounds specified in subsect. (1) (d) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and, if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction.⁴⁴]

Note.

By sect. 12 of the Act of 1923,⁴⁵ “(1) If proceedings are taken against the person who on the 24th day of June, 1925, is tenant of a dwelling-house to which the principal Act then applies (hereinafter referred to as ‘the sitting tenant’) for the recovery of possession of the dwelling-house or for the ejectment of the tenant therefrom at any time after that day, should it appear to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the sitting tenant by the making or giving of an order or judgment for possession or ejectment, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment. (2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy of the sitting tenant shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise and may set aside and annul any such notice accordingly, and shall have power to determine what increase of rent (if any) is fair and reasonable, regard being had to the character and condition of the dwelling-house and the rents of similar dwelling-houses in the locality. (3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it. (4) In any such proceedings an order or judgment for possession or ejectment against the sitting tenant of the dwelling-house shall not, unless the court otherwise directs, be operative against a sitting tenant of a part of the dwelling-house which, on the 24th day of June, 1925, is lawfully sub-let to him and is a separate dwelling-

Sect. 5.

Restriction on right to possession—*continued.*

Restriction on right to possession.

(43) Further as to sub-tenants, see s. 15 (3), *post*, p. 1172.

(44) Added by Act of 1923 (13 & 14 Geo. V. c. 32), s. 4.

(45) 13 & 14 Geo. V. c. 32, s. 12. This

section is in Part II., so see footnote (6), *ante*, p. 1156. Its marginal note is “Restriction on right to possession in certain cases after the expiry of the principal Act.”

Sect. 5, n.

house to which the principal Act applies, and the court shall, in relation to that part of the dwelling-house and the sitting tenant thereof, have all the like powers and jurisdiction as it has in relation to the whole dwelling-house and the sitting tenant thereof. (5) In order to assist the court in the determination of questions arising under this Part of this Act in relation to the rent, character or condition of dwelling-houses, the Minister of Health may establish reference committees to whom such questions may be referred by the court for consideration and report. (6) The foregoing provisions of this section shall not apply to proceedings against a sitting tenant under the Small Tenements Recovery Act, 1838,⁴⁶ and any such proceedings shall, on the application of the sitting tenant, be discontinued, subject to any provision that may be made by rules under this Part of this Act for transfer to the county court."

Reference committees.

By sect. 15 of the Act of 1923,⁴⁷ "(1) The constitution and procedure of reference committees established under this Part of this Act shall be such as may be prescribed by regulations made by the Minister of Health. (2) In addition to any questions that may be referred to a reference committee by the county court under this Part of this Act, provision may be made by the regulations for the reference to and determination by a reference committee of any questions in relation to the rent payable or to be paid by a sitting tenant which may be submitted to them by the tenant and landlord. (3) Before any regulation under this section is made, it shall be laid in draft before both Houses of Parliament, and such regulation shall not be made unless both Houses by resolution approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Minister of Health may make the regulation in the form in which it has been approved, and the regulation on being so made shall be of full force and effect."

Possession by local authorities.

These Acts are not to prevent local authorities obtaining possession of houses required by them for the purposes of the Housing Acts.⁴⁸

Restriction on levy of distress for rent.

Sect. 6. No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession: Provided that this section shall not apply to distress levied under sect. 160 of the County Courts Act, 1888.⁴⁹

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914, or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

Restriction on calling in of mortgages.

Sect. 7. It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(a) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear; and

(b) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

(c) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured: Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was on the 25th day of March, 1920, a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce

(46) 1 & 2 Vict. c. 74.

(47) 13 & 14 Geo. V. c. 32, s. 15.

(48) See H. T. P. Act, 1919, s. 35, *ante*,

p. 1148.

(49) 51 & 52 Vict. c. 43, s. 160.

the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security. **Sect. 7.**

Sect. 8.—(1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the 25th day of March, 1920, the amount or value thereof shall be recoverable by the person by whom it was made or given: Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

Restriction on premiums.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

Note.

By sect. 9 of the Act of 1923,⁵⁰ “ (1) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of a dwelling-house to which the principal Act applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of ” the present section, “ including penal provisions, shall apply accordingly. (2) Where a tenant who by virtue of the principal Act retains possession of a dwelling-house to which that Act applies requires that furniture or other articles shall be purchased as a condition of giving up possession, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as a sum asked to be paid as a condition of giving up possession, and the provisions of sect. 15 (2) of the principal Act (including penal provisions) shall apply accordingly.”

Charges for furniture, etc.

See also sect. 10 (1) of the Act of 1923, quoted in the Note to sect. 12 of the present Act.^{50a}

Sect. 9.—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the [tenant⁵¹] that the rent charged is yielding or will yield to the [landlord⁵²] a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the [tenant⁵¹].

Limitation on rent of houses let furnished.

(2) For the purpose of this section, “ normal profit ” means the profit which might reasonably have been expected from a similar letting in the year ending on the 3rd day of August, 1914.⁵³

(50) 13 & 14 Geo. V. c. 32, s. 9. Marginal note, “ Excessive charges for furniture, etc., taken over in connection with tenancies.”

(50a) *Post*, p. 1171.

(51) Substituted for “ lessee ” by Act of 1923 (13 & 14 Geo. V. c. 32), s. 10 (2).

(52) Substituted for “ lessor ” by *ibid.*

(53) See s. 13 (1) (e) of the present Act, *post*, p. 1171.

Sect. 10.

Penalty for excessive charges for furnished lettings.

Sect. 10. Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the [landlord ⁵²] a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the [landlord ⁵²] shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the [tenant ⁵¹], but any such order shall be in lieu of any other method of recovery prescribed by this Act.⁵⁴

Statement to be supplied as to standard rent.

Sect. 11. A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

Note.

Statement of rates.

The Statement of Rates Act, 1919,⁵⁵ "an Act to provide for the information to occupiers of the amount of the rates payable for the houses which they occupy," enacts as follows:—

"1 (1). From and after the " 1st day of January, 1920, " every document containing a demand for rent or receipt for rent, which includes any sum for rates paid or payable under any statutory enactment by the owner instead of the occupier, shall state either the annual, half yearly, quarterly, monthly, or weekly amount of such rates paid or payable in accordance with the last demands received by the owner from the rating authorities at the time of making his demand or giving his receipt in respect of the hereditament in question : Provided that, where such a statement as is required by this section has been furnished in connection with a demand for rent or receipt for rent in respect of a particular period, it shall not be necessary to furnish the statement upon any subsequent demand for rent or receipt for rent in respect of that period. (2) This Act shall not apply to weekly lettings at inclusive rentals in any market established under or controlled by statute."

"2. The expressions 'demand for rent' and 'receipt for rent' shall include a rent-book, rent-card and any document used for the notification or collection of rent due or for the acknowledgment of the receipt of the same."

"3. If any person makes a demand for rent or gives a receipt for rent in contravention of this Act, he shall, in respect of each offence, be liable on summary conviction to a fine of not exceeding forty shillings."

APPLICATION AND INTERPRETATION OF ACT.

Application and interpretation.

Sect. 12.—(1) For the purposes of this Act, except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the 3rd day of August, 1914, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said 3rd day of August, the rent at which it was first let : Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

(b) The expression "standard rate of interest" means, in the case of a mortgage in force on the 3rd day of August, 1914, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

(c) The expression "net rent" means, where the landlord at the time by reference to which the standard rent is calculated paid the rates charge-

(51) (52) See *ante*, p. 1167 (51) (52).

(54) See s. 13 (1) (e) of the present Act, *post*, p. 1171.

(55) 9 & 10 Geo. V. c. 31, ss. 1—3. Royal assent 22nd July, 1919. The Act came into operation on the 1st January, 1920, *ibid.*, s. 4.

Sect. 12.Application and
interpretation
—continued.

able on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

- (d) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;
 - (e) The expression "rateable value" means the rateable value on the 3rd day of August, 1914, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;
 - (f) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;⁵⁵
 - (g) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;⁵⁵
 - (h) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897;
 - (i) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.
- (2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—(a) in the metropolitan police district, including therein the City of London, one hundred and five pounds; . . . [Scotland]; and (c) elsewhere, seventy-eight pounds; and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that—
- (i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bonâ fide let at a rent which includes payments in respect of board, attendance, or use of furniture; and
 - (ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes; and
 - (iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.
- (3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.
- (4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—
- (a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage;
 - or (b) to an equitable charge by deposit of title deeds or otherwise; or (c) to any mortgage which is created after the passing of this Act.
- (5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the

(55) Further, as to meaning of "landlord," see Act of 1923, s. 7 (3), quoted in Note to s. 2, ante, p. 1158 (15).

Sect. 12.

Application and
interpretation
—continued.

mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned: Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the 2nd day of April, 1919, or to any dwelling-house which has been since that date or was at that date being *bonâ fide* reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the 3rd day of August, 1914, and let at that date, shall not exceed—(a) if the house forms part of a housing scheme to which sect. 7 of the Housing, Town Planning, etc., Act, 1919,⁵⁶ applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and (b) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

Note.

Standard
rent.

By sect. 11 (1) of the Act of 1923,⁵⁷ “ (1) The county court shall have power on the application of a landlord or a tenant to determine summarily any questions as to the amount of the rent, standard rent or net rent of any dwelling-house to which the principal Act applies, or as to the increase of rent permitted under that Act or this Part of this Act.”

Exclusion of
certain
dwelling-
houses.

By sect. 2 of the Act of 1923,⁵⁸ “ (1) Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act,⁵⁹ or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house: Provided that, where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and, if the landlord is in, or comes into possession of, any part not so

(56) Repealed and replaced by H., etc., Act, 1923, ss. 1–6, *post*, p. 1175.

(57) 13 & 14 Geo. V. c. 32, s. 11 (1). For subsect. (2), as to making of Rules by Lord Chancellor, see Note to s. 17 of the present Act.

(58) 13 & 14 Geo. V. c. 32, s. 2. Marginal note: “Exclusion of dwelling-houses from application of principal Act in certain cases.”

(59) Royal assent, July 31, 1923.

sub-let, the principal Act shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act: Provided also that, where a landlord comes into possession under an order or judgment made or given after the passing of this Act, on the ground of non-payment of rent, the principal Act shall, notwithstanding anything in the foregoing provisions of this subsection, continue to apply to the dwelling-house.

(2) Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending at some date after the 24th day of June, 1926, being a term of not less than two years, or enters into a valid agreement with the tenant for a tenancy for such a term, the principal Act shall, as from the commencement of the term, cease to apply to the dwelling-house, and nothing in the principal Act shall be taken as preventing or invalidating the payment of any agreed sum as part of the consideration for such lease or agreement: Provided that, where part of the dwelling-house is lawfully sub-let at the commencement of the term, and is a dwelling-house to which the principal Act applies, that part shall, notwithstanding anything in the foregoing provisions of this subsection, continue to be a dwelling-house to which the principal Act applies.

(3) For the purposes of this section, the expression 'possession' shall be construed as meaning 'actual possession,' and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent."

By sect. 10 (1) of the Act of 1923,⁶⁰ "For the purposes of " subsect. (2) (i) of the present section, "a dwelling-house shall not be deemed to be bonâ fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent."

Sect. 12, n.
Exclusion of certain dwelling-houses—cont.

Attendance and furniture.

Sect. 13.—(1) This Act shall apply to any premises used for business trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to "dwelling-house" "house" and "dwelling" included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications:—

Application to business premises.

(a) The following paragraph shall be substituted for sect. 2 (1) (c): (c) In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent:

(b) The following paragraph shall be substituted for sect. 5 (1) (d): (d) the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available:

(c) The following paragraph shall be added after paragraph (g) of the same subsection: (h) The premises are bonâ fide required for the purpose of a scheme of reconstruction or improvement which appears to the court to be desirable in the public interest:

(d) Paragraph (i) of the same sub-section shall not apply:

(e) Sects. 9 and 10 shall not apply.

(2) The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.

(3) This section shall continue in force until the 24th day of June, 1921.⁶¹

GENERAL.

Sect. 14.—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or

Recovery of sums made irrecoverable, &c.

(60) 13 & 14 Geo. V. c. 32, s. 10 (1). Marginal note: "Amendment of provisions of the principal Act as to houses let with

furniture, etc." For subsect. (2), see amendments to ss. 9 and 10 of the present Act.

(61) This section has not been continued.

Sect. 14.

repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.⁶¹

(2) If—(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or (b) where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days, that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

Conditions of
statutory
tenancy.

Sect. 15.—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice: Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act.⁶²

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.^{62a}

Minor amend-
ments of law.

Sect. 16.—(1) Sect. 3 of the Poor Rate Assessment and Collection Act, 1869,⁶³ shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and sect. 4 of the same Act shall have effect accordingly.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

Rules as to
procedure.

Sect. 17.—(1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a person takes pro-

(61) See proviso to s. 1 (1) of Rent Restrictions (Notices of Increase) Act, 1923, quoted in Note to s. 3, *ante*, p. 1160 (23); and other Act of 1923, s. 8 (2), quoted in Note to s. 2, *ante*, p. 1158 (16).

(62) This subsection is applied by s. 9 (2)

of Act of 1923, quoted in Note to s. 8, *ante*, p. 1167 (50).

(62a) Further as to sub-tenants, see s. 5 (5), *ante*, p. 1165, and s. 2 (1) (2) of Act of 1923, *ante*, pp. 1170, 1171.

(63) 32 & 33 Vict. c. 41, ss. 3, 4.

ceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs. **Sect. 17.**

Note.

By sect. 11 (2) of the Act of 1923,⁶⁴ “ The Lord Chancellor may, by rules and directions made and given under ” the present section, “ provide for any questions arising under or in connection with the principal Act or this Part of this Act being referred by consent of the parties interested for final determination by the judge or registrar of a county court sitting as an arbitrator or by an arbitrator appointed by such judge.”

By sect. 16 of the Act of 1923,⁶⁵ “ The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to the provisions of ” sects. 12 to 17 of that “ Act relative to legal proceedings.”

Rules by Lord Chancellor.

Sect. 18. [Application to Scotland and Ireland.]

Sect. 19.—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided, this Act shall continue in force until the [24th day of June, 1923] : Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule : Provided that without prejudice to the operation of sect. 38 of the Interpretation Act, 1889,⁶⁶ nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

Short title, duration and repeal.

Note.

The present Act was continued, first until the 31st July, 1923,⁶⁷ and then until the 24th June, 1925.⁶⁸

As to its duration at the date when the last part of this work goes to press, see Addenda et Corrigenda.

The following enactments were repealed by the present section and Sched. II. :—

1915—5 & 6 Geo. 5. c. 97 (Increase of Rent and Mortgage Interest (War Restrictions)).

1917—7 & 8 Geo. 5. c. 25 (Courts (Emergency Powers)), ss. 4, 5 and 7.

1919—9 & 10 Geo. 5. c. 7 (Increase of Rent and Mortgage Interest (Restrictions)).

1919—9 & 10 Geo. 5. c. 90 (Increase of Rent, &c. (Amendment)).

Duration.

Repeals.

FIRST SCHEDULE. Section 3 (2).

FORM OF NOTICE BY LANDLORD.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

To Date

Address of premises to which }
this notice refers - - }

Take notice that I intend to increase the rent of l. s. d.
per at present payable by you as tenant of the above-named premises by
the amount of l. s. d. per

(64) 13 & 14 Geo. V. c. 32, s. 11 (2). (67) By 13 & 14 Geo. V. c. 7, s. 1.

(65) 13 & 14 Geo. V. c. 32, s. 16. (68) By 13 & 14 Geo. V. c. 32, s. 1, “ sub-

(66) *Post*, Vol. II., p. 1971. ject to the provisions of ” that Act.

THE HOUSING, ETC., ACT, 1923.

13 & 14 GEO. 5. c. 24.

An Act to amend the enactments relating to the Housing of the Working Classes (including the amendment and revocation of building byelaws), Town Planning and the Acquisition of Small Dwellings.

[31st July, 1923.]

PART I.

AMENDMENTS OF HOUSING ACTS.

Note.

In a long Appendix to the Circular of the Minister of Health on the present Act,¹ there is a summary of "the detailed provisions in the Act for the assistance of new construction, and the proposals of the Minister for the administration of the scheme."

Circular
on Act.

TEMPORARY PROVISIONS FOR ENCOURAGING THE PROVISION OF HOUSING ACCOMMODATION.

Sect. 1.—(1) The Minister of Health (hereinafter referred to as the Minister) shall, subject to such conditions as to records, certificates, audit or otherwise, as, with the approval of the Treasury, he may determine, make or undertake to make contributions out of moneys provided by Parliament:—(a) towards any expenses incurred by a local authority for the purposes of Part III. of the Housing of the Working Classes Act, 1890 (hereinafter referred to as the principal Act), in promoting in accordance with sect. 2 of this Act the construction of houses of such type and size as is specified in this section and completed before the 1st day of October, 1925; (b) where the local authority satisfy the Minister that the needs of their area can more appropriately be met by the provision of such houses wholly or partly by the authority themselves, towards any expenses incurred by the authority in making such provision.

Government
contributions to
expenses of local
authorities in
assisting con-
struction of
houses.

A contribution under this section shall be the sum of six pounds for each house in respect of which the contribution is made, payable annually for a period of twenty years, except that, where the amount of the expenses incurred by a local authority under paragraph (a) in respect of any house is less than the value of six pounds per annum for twenty years, such reduction shall be made in the amount of the annual sum payable, or in the number of years for which it is to be payable, or in both, as may be necessary in order to reduce the value of the contribution in respect of that house to the amount of the expenses so incurred.

(2) The houses in respect of which contributions may be given under this section shall be either—(a) a two-storied house with a minimum of 620 and a maximum of 950 superficial feet; or (b) a structurally separate and self-contained flat or a one-storied house with a minimum of 550 and a maximum of 880 superficial feet; such measurements being calculated in accordance with rules made by the Minister:

Provided that, if the local authority in any particular case satisfy the Minister that, having regard to special circumstances existing in their area, there is a need for houses of smaller dimensions, the minimum measurement may be reduced, as respects such limited number of houses for that area and subject to such conditions as the Minister may determine, in the case of a two-storied house to 570, and in the case of a flat or a one-storied house to 500 superficial feet.

Except where otherwise approved by the Minister on the recommendation of the local authority, every house or flat to which this section applies shall be provided with a fixed bath.

(3) The Minister may, with the approval of the Treasury, make or undertake to make contributions out of moneys provided by Parliament towards the expenses incurred by a local authority in carrying out a re-housing scheme in connection with a scheme made under Part I. or Part II. of the principal Act (including the acquisition, clearance, and development of land included in the last-mentioned scheme, and whether the re-housing will be effected on the area included in that scheme or elsewhere), of such amounts, for such periods, and subject to such conditions as, with the approval of the Treasury and after consultation with the local authority, the Minister may determine, so, however, that the annual contributions in respect of any such re-housing scheme shall not exceed one-half of the estimated average annual loss likely to be incurred by the local authority in carrying out the scheme.

(1) Dated Aug. 14, 1923, and set out in 21 L. G. R. (Orders) 145-166.

Sect. 1.

(4) Where within fifteen months before the passing of this Act a local authority have submitted to the Minister proposals for assisting persons or bodies of persons undertaking to construct houses, or for the provision of houses by the local authority themselves, or where after the 25th day of April, 1923, and before the passing of this Act, a society, body of trustees or company to which sect. 3 of this Act applies have submitted proposals for the provision of houses, and such proposals have been approved by the Minister otherwise than for the purposes of sect. 7 or sect. 19 of the Housing, Town Planning, etc., Act, 1919,¹ contributions may be made of the like amount as if the assistance had been given or the houses provided after the passing of this Act, and notwithstanding that the houses do not comply in every respect with the conditions imposed by or under this section.

(5) References in this section to local authorities shall in any case—(a) where the powers of a local authority have been transferred to a county council; or (b) where a county council, or any such board or body as is mentioned in sect. 8 (3) of the Housing, Town Planning, etc., Act, 1919,² exercise the powers conferred by that section of providing houses for persons in their employment or paid by them or by a statutory committee, include such county council, board, or body.

(6) The expression “local authority” shall, for the purposes of subsect. (1) (b) of this section, include a metropolitan borough council, and the London County Council may, in the case of any house provided by a metropolitan borough council, supplement the contribution made by the Minister in respect of such house under this section to an extent not exceeding the sum of three pounds payable annually for a period not exceeding twenty years.

Sect. 2.—(1) Local authorities for the purposes of Part III. of the principal Act,³ may, in accordance with proposals submitted by them to the Minister and approved by him, promote the building of houses, whether within or without their areas, by giving or undertaking to give assistance in respect thereof in manner hereinafter provided.

(2) Before approving proposals under this section the Minister shall be satisfied—(a) that the houses in respect of which assistance is proposed to be given are of the type and size specified in sect. 1 of this Act; (b) that the need for such houses cannot be met without assistance under this Act.

(3) Assistance under this section may be given in any of the following ways; that is to say, the local authority may—(a) make or undertake to make grants by way of lump sum payments after the completion of the houses; (b) undertake to pay to the person by whom the rates on any house are payable such annual sum as may be specified in the proposals for a period not exceeding twenty years; (c) undertake to provide, during such period as may be specified in the proposals, any part of the periodical sums payable to a building society incorporated under the Building Societies Acts, 1874 to 1894, or other body or person, by way of interest on or repayment of advances made for the purpose of building a house or purchasing a house the construction of which was begun after the 25th day of April, 1923.

(4) Assistance given by a local authority under this section in respect of a house may be made subject to such conditions as the local authority may with the approval of the Minister impose, including a condition that during such period as may be specified by the local authority the house shall not be used otherwise than as a separate dwelling-house and no addition thereto or enlargement thereof shall be made without the consent of the local authority.

(5) A local authority may, before undertaking to give assistance under this section in respect of any house, require security to be given that the house will be completed before the said first day of October, [1925,⁴] and that the other conditions subject to which the assistance is given will be observed.

(6) The raising of money for making grants under this section shall be a purpose for which a local authority may borrow under Part III. of the principal Act,⁵ and shall be a purpose for which the Public Works Loan Commissioners may lend money to a local authority.

(7) In the application of this section to the county of London the London County Council shall, to the exclusion of any other local authority, be the local authority for the purposes of Part III. of the principal Act, and for the purpose of securing the proper exercise of their powers under this section they shall have the power to

(1) *Ante*, pp. 1134, 1138.

(2) *Ante*, p. 1134 (11).

(3) See Note, *ante*, p. 1132.

(4) See s. 1 (1) (a), *ante*, p. 1175.

(5) See s. 66, *ante*, p. 1072.

require a district surveyor under the London Building Act, 1894, to perform within his district such duties as they think necessary for that purpose, and they may pay to him such remuneration as they may determine in respect of any duties performed by him in pursuance of this section.

(8) This section shall be deemed to have had effect as from the 26th day of April, 1923.

Sect. 2.

Note.

As to a purchaser's right to the subsidy under a contract between him and the vendor, see the case cited below.⁶

Vendor and purchaser.

Sect. 3.—(1) Where a society, body of trustees or company to which this section applies prove to the Minister that they are willing to undertake the construction of houses of such type and size and within such period as aforesaid without assistance from a local authority, if they receive from the Minister towards any expenses incurred by them in the construction of such houses the like contributions as the Minister is authorised by this Act to make towards expenses incurred by a local authority in providing such houses, the Minister may, subject to such conditions as aforesaid, make or undertake to make contributions out of moneys provided by Parliament towards such expenses of the like amount as he is authorised to make towards expenses incurred by a local authority in providing such houses.

Government contributions to expenses of public utility societies, &c., in building houses.

(2) This section applies to any society, body of trustees or company established for the purpose of, or amongst whose objects or powers are included those of, constructing or facilitating or encouraging the construction of, dwelling-houses for the working classes, being a society, body of trustees, or company which does not trade for profit or whose constitution prohibits the issue of any share or loan capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury.

Sect. 4. The failure to complete a house before the said first day of October, [1925,⁷] shall not render invalid any undertaking to make a contribution or give assistance in respect of the house, if the house is completed before the 1st day of June, 1926, and if the Minister is satisfied that the construction of the house or necessary work of development on or about the site preliminary thereto was begun within a reasonable time and that the failure to complete the house before the said date was due to circumstances over which the local authority, person, or body constructing the house had no control.

Saving as respects houses not completed within the specified period.

Sect. 5.—(1) A local authority for the purposes of Part III. of the principal Act, may, subject to such conditions as may be approved by the Minister, at any time before the 1st day of October, 1926 :—

Power of local authorities to make advances, &c., for the purpose of increasing housing accommodation.

- (a) advance money, subject to the provisions hereinafter contained, to persons or bodies of persons—(i) constructing or altering or undertaking to construct or alter houses, or (ii) acquiring or undertaking to acquire houses the construction of which was begun after the 25th day of April, 1923, whether such houses are within or without the area of the local authority;
- (b) undertake to guarantee the repayment to a society incorporated under the Building Societies Acts, 1874 to 1894, or the Industrial and Provident Societies Acts, 1893 to 1913, of any advances made by the society to any of its members for the purpose of enabling them to build houses or acquire houses the construction of which was commenced after the 25th day of April, 1923;
- (c) in the case of the conversion of a house into two or more separate and self-contained flats, undertake that, if the aggregate rateable value of the flats exceeds the rateable value of the house before conversion, they will, during such period not exceeding twenty years as is specified in the undertaking, refund to the person by whom the rates on any such flat are payable the whole or any part of the difference between the rates paid by him and the rates which would be payable were the rateable value of the flat reduced by such an amount that the reduced value would bear to the rateable value the same proportion as the rateable value of the house before conversion bears to the aggregate rateable value of the flats :

(6) *Colborne v. Smith* (1922, Eve, J.), 91 L. J. Ch. 367; 126 L. T. 786; 86 J. P. 101.

See also *ante*, p. 1119 (27).

(7) See s. 1 (1) (a), *ante*, p. 1175.

Sect. 5.

Power of local
authorities to
make advances,
&c.—*cont.*

Provided that the local authority before granting any such assistance shall satisfy themselves that the houses or flats, in respect of which assistance is to be given will, when the building, alteration, or conversion has been completed, be in all respects fit for human habitation, and in particular that the superficial area of any such house or flat will not be less than the minimum permissible under sect. 1 of this Act.

(2) Any such advance as aforesaid shall be subject to the following conditions:—

- (a) The advance with interest thereon shall be secured by mortgage, and the advance shall not exceed ninety per cent. of the value of the interest of the mortgagor in the property; and the mortgage deed may provide for repayment being made either by instalments of principal or by an annuity of principal and interest combined, so, however, that in the event of any of the conditions subject to which the advance is made not being complied with, the balance for the time being unpaid shall become repayable on demand from the local authority; and
- (b) the advance may be made by instalments from time to time as the building or alteration of the house progresses, so that the total of the advance does not at any time before the completion of the house exceed fifty per cent. of the value of the work done up to that time on the construction, or on works incidental to the construction, of the house, including the value of the interest of the mortgagor in the site thereof; and
- (c) the advance shall not be made except after a valuation duly made on behalf of the authority; and
- (d) where the interest upon which the advance is to be made is a leasehold interest, no advance shall be made unless such interest is a term of years absolute whereof a period of not less than ten years in excess of the period fixed for the repayment of the advance remains unexpired at the date of the advance.

(3) An advance or guarantee under this section shall not be made or given if the estimated value of the fee simple in possession free from incumbrances of the house in respect of which the advance or guarantee is to be made or given exceeds fifteen hundred pounds, but such an advance or guarantee may be made or given in addition to assistance given by the local authority under section two of this Act in respect of the same house.

(4) The raising of money for making any such advance or for fulfilling any such guarantee shall be a purpose for which a local authority may borrow under Part III. of the principal Act,¹ and a purpose for which the Public Works Loan Commissioners may lend to a local authority.

(5) In the application of this section to the county of London, the London County Council shall, to the exclusion of any other local authority, be the local authority for the purposes of Part III. of the principal Act.

Repeal of
superseded
enactments
subject to
saving for
existing
liabilities.

Sect. 6.—(1) Sects. 7 and 19 of the Housing, Town Planning, etc., Act, 1919, and any enactments amending those sections, and sect. 8 of the Housing Act, 1921, are hereby repealed; but, save as hereinafter in this section provided, this repeal shall not affect the validity of any regulations made under the said section or the power to amend such regulations, or any liability of the Minister to pay any sum which under the said sections and regulations he has undertaken to pay, or the terms and conditions on which the Public Works Loan Commissioners may lend for the purposes of a scheme towards the losses of which the Minister is liable to contribute under the said sect. 7.

(2) Notwithstanding anything in the enactments so repealed, the regulations made thereunder shall be amended so as to provide that the percentage of the annual loan charges referred to in sect. 7 (2) (b) and sect. 19 (2), payable by the Minister under those sections shall, after the 31st day of March, 1927, be increased, subject to such conditions as the Treasury may approve, from thirty to forty per cent.

(3) The repeal of sect. 8 of the Housing Act, 1921,² shall not affect the liability of the London County Council to make repayments to councils of metropolitan boroughs thereunder, but the loss to be repaid to the council of any metropolitan borough under that section shall be the estimated annual loss calculated in like manner as in the case of a borough outside London.

(1) See s. 66, *ante*, p. 1072.

(2) 11 & 12 Geo. V. c. 19, s. 8.

MISCELLANEOUS AMENDMENTS OF THE HOUSING ACTS.

Sect. 7.

Sect. 7. [*Partial repeal of 9 & 10 Geo. V. c. 35, s. 15.*³]

Sect. 8.—(1) Where a housing scheme to which this section applies has been carried into effect by a local authority outside their own area, and for the purposes of the scheme roads have been constructed and completed by that local authority, the liability to maintain the roads shall vest in the council of the borough or district in which the scheme was carried out, unless that council, or on appeal the Minister, is satisfied that the roads have not been properly constructed in accordance with the plans and specifications approved by the Minister.

Provisions as to housing schemes outside area of local authority.

(2) Where such a scheme has been carried out by a local authority outside their own area, and a habitation certificate from the council of the borough or district in which the houses are situate is in that borough or district required under any local Act or byelaw, such a certificate shall not be necessary in respect of any houses provided under the scheme which were constructed in accordance with plans and specifications approved by the Minister.

(3) The schemes to which this section applies are housing schemes made and approved under sect. 1 of the Housing, Town Planning, etc., Act, 1919,⁴ and re-housing schemes in connection with a scheme made under Part I. or Part II. of the principal Act,⁵ whether such housing or re-housing schemes have been carried out before the passing of this Act or are carried out thereafter.

(4) Where a scheme to which this section applies has been carried out, whether before or after the passing of this Act, by the London County Council within the area of a metropolitan borough, the liability to maintain the roads shall vest in the council of that metropolitan borough unless that council are, or on appeal the Minister is, satisfied that the roads have not been properly constructed in accordance with the plans and specifications approved by the Minister.

Sect. 9. Where the land included in a scheme made, whether before or after the passing of this Act, under Part I. or Part II. of the principal Act comprises premises in respect of which an old on-licence is in force, the following provisions shall have effect:—

Provisions as to licensed premises included in Part I. and Part II. schemes.

(1) The local authority by whom the scheme is made may undertake that in the event of the renewal of the licence being refused they will pay to the compensation authority towards the compensation payable on such refusal under the Licensing (Consolidation) Act, 1910,⁶ such contribution as may be specified in the undertaking and any sum payable by the local authority in pursuance of such undertaking shall be treated as part of their expenses in carrying out the scheme:

(2) Where the local authority acquire the premises in pursuance of the scheme and the local authority intimate to the licensing justices that they are willing to surrender the licence, the licensing justices may refer the matter to the compensation authority, and that authority, on being satisfied that if the licence had not been surrendered it might properly have been dealt with as a redundant licence or that when the proposed scheme had been carried out it would have become a licence which might have been so dealt with, shall contribute out of the compensation fund towards the compensation paid by the local authority in respect of the acquisition of the premises a sum not exceeding the compensation which would have been payable under the Licensing (Consolidation) Act, 1910, on the refusal of the renewal of the licence.⁷

Sect. 10. [Repairs of houses.⁸]

Sect. 11. The provisions of sect. 10 of the Housing, Town Planning, etc., Act, 1919 (which enables a local authority to enter and take possession of land which they are authorised to purchase for the purposes of Part III. of the principal Act),¹⁰ shall apply in the case of the purchase of land compulsorily or by agreement for the purposes of a scheme under Part I. or Part II. of the principal Act as they apply where the land is to be purchased for the purposes of Part III. thereof, save that the length of notice required to be given before entry shall be twenty-eight days instead of fourteen days.

Power to enter on land for purposes of scheme under Part I. or Part II.

Sect. 12.—(1) For the purpose of facilitating the erection of dwelling-houses, the Minister may prescribe a code of building byelaws relating to the level, width, and construction of new streets, but no such code shall have effect unless and until

Provisions as to byelaws relating to new streets.

(3) See s. 15, *ante*, p. 1136.

(4) *Ante*, p. 1131.

(5) See s. 3 of Act of 1903, *ante*, p. 1089.

(6) See 10 Edw. VII. & 1 Geo. V. c. 24, ss. 21, 22.

(7) As to retaining licensed premises, see

Conron's Case, *ante*, p. 1136 (22).

(8) For subsect. (1), see footnote (40), *ante*, p. 1099, and for subsect. (2), see Note to H. T. P. Act, 1919, s. 28, *ante*, p. 1144.

(10) *Ante*, p. 1134.

Sect. 12.

Provisions as to byelaws relating to new streets—*continued.*

adopted by resolution of a local authority; and where such code or any part thereof is so adopted it shall not be necessary for the local authority to comply with the requirements of sect. 184 of the Public Health Act, 1875,¹¹ or, if the byelaws are made under a local Act, the corresponding provisions of that Act, and the code or such part thereof shall have full force and effect as part of the byelaws of the local authority in substitution for such of the existing byelaws of the authority as may be specified in the resolution.

(2) Where a local authority have approved any plans and sections for a new street, subject to any conditions imposed or authorised by any byelaws in force in the area of that authority, those conditions may be enforced at any time by the authority against the owner for the time being of the land to which the conditions relate.

(3) Where as respects the area of any local authority matters relating to the level, width and construction of new streets are regulated by a local Act and not by byelaws, and the local authority pass a resolution adopting the said code or any part thereof, the code or such part as aforesaid shall have full force and effect as if it formed part of the local Act in substitution for such provisions of the local Act as may be specified in the resolution.

(4) Before a resolution is passed under this section notice of the proposed resolution shall be published in one or more newspapers in circulation in the district, and when such a resolution has been passed the local authority shall, within seven days thereafter, send a copy of the resolution to the Minister.

(5) For the purpose of facilitating the erection of dwelling-houses within the administrative county of London, the London County Council may, with the consent of the Minister, suspend, alter, or relax the provisions of any enactment or byelaw relating to the formation or laying out of new streets, or the construction of sewers or of buildings intended for human habitation.

(6) Except as otherwise expressly provided, this section shall not apply to the administrative county of London.

Sect. 13. [Amendment of s. 44 of Act of 1909.¹²]

Sect. 14.—(1) * * * 13

Byelaws respecting houses divided into separate tenements.

(2) Byelaws made by the London County Council in pursuance of the said section as so amended, may provide that the byelaws shall, either generally or as respects any particular metropolitan borough or any part thereof, have effect subject to such modifications, limitations or exceptions as may be specified in the byelaws.

(3) As soon as any byelaws made by the London County Council in pursuance of the said section as so amended come into force, all byelaws made by the council of any metropolitan borough under sect. 94 of the Public Health (London) Act, 1891,¹⁴ shall cease to have effect, but the council of a metropolitan borough shall themselves have power at any time after such byelaws have been made by the London County Council to make byelaws under the said sect. 94 with respect to any houses or parts of houses in their area let in lodgings or occupied by members of more than one family to which the byelaws made by the London County Council do not apply.

Simplification of Housing Acts.

Sect. 15. For the purpose of facilitating the consolidation and of simplifying the machinery of the Housing Acts, the provisions set out in the First Schedule to this Act—(a) for assimilating the procedure in the case of schemes under Parts I. and II. of the principal Act and the assessment of compensation thereunder; (b) for assimilating the assessment of compensation in the case of the demolition of obstructive dwelling-houses and other buildings; (c) for simplifying the accounts of the receipts and expenditure of local authorities; and (d) for making uniform the provisions as to the service of notices; shall have effect.

Note.

Procedure under Parts I. and II. of principal Act.

The following provisions as to the “assimilation of procedure under Parts I. and II.” of the principal Act are contained in Sched. I. of the present Act:¹⁵
“1. Where a resolution has been passed by a local authority under Part I. of the principal Act that an improvement scheme ought to be made, all the provisions of the Housing Acts relating to the making, confirming and carrying out of schemes under Part II. of that Act, and as to the assessment of compensation for

(11) *Ante*, p. 508.

(12) See s. 44, *ante*, p. 1114.

(13) See addition to H. T. P. Act, 1919,

s. 26 (1), *ante*, p. 1141.

(14) 54 & 55 Vict. c. 76, s. 94.

(15) 13 & 14 Geo. V. c. 24, Sched. I.

land taken under such a scheme, shall apply in lieu of the provisions governing such matters in relation to schemes under Part I.

2. The Second Schedule to the principal Act except paragraphs (10) and (12),¹⁶ thereof, shall cease to have effect, but those paragraphs shall apply in the case of schemes made under Part II. as well as in the case of schemes made under Part I. of the principal Act, and so much of paragraph (10) as relates to the date of the commencement of the title to land shall apply in the case both of land taken compulsorily and of land purchased by agreement.

3. Sect. 41 of the principal Act relating to the assessment of compensation shall, in its application to schemes both under Part I. and Part II. of the principal Act, have effect as if references to dwelling-houses included references to other buildings.¹⁷

4. As respects the County of London, both the London County Council and the metropolitan borough councils shall be local authorities for the purposes of schemes under Part I. and under Part II. of the principal Act, subject to this qualification that where the scheme relates to not more than ten houses the council of the metropolitan borough to the exclusion of the county council shall be the local authority."

The following provisions as to "compensation for demolition of obstructive buildings," are contained in the same Schedule:—

"5. The provisions of the Housing Acts relating to compensation for obstructive buildings, which are dwelling-houses, and the assessment thereof, shall apply to the case of obstructive buildings which are not dwelling-houses.

6. The compensation payable in respect of the demolition of an obstructive building, the site whereof is retained by the owner, shall be assessed under the Acquisition of Land (Assessment of Compensation) Act, 1919,¹⁸ and the provisions of that Act, other than sect. 2 thereof, shall apply accordingly, notwithstanding that no land is acquired compulsorily."

The following provisions as to "receipts and expenditure under Housing Acts" are contained in the same Schedule:—

"7. So much of the Housing Acts as requires receipts and expenditure of a local authority under Part I. or Part III. of the principal Act to be paid into and out of the Dwelling House Improvement Fund shall cease to have effect.

8. Every local authority shall keep separate accounts of their receipts and expenditure—(a) under Part I. and so much of Part II. of the principal Act as relates to reconstruction schemes; (b) under so much of Part II. of the principal Act as does not relate to such schemes; (c) under Part III. of the principal Act."

The following provisions as to "service of notices" are contained in the same Schedule:—

"9. Any notice, order, or other document required or authorised to be served under the Housing Acts may be served either—(a) by delivering it to the person on whom it is to be served; or (b) by leaving it at the usual or last-known place of abode of that person; or (c) by forwarding it by post in a pre-paid registered letter addressed to that person at his usual or last-known place of abode, or in the case of an incorporated company or registered society addressed to the secretary of the company or society at the registered or principal office of the company or society; or (d) if addressed to the 'owner' or 'occupier' of premises, by delivering it to some person on the premises, or if there is no person in the premises on whom it can be so served, then by affixing it to some conspicuous part of the premises.

10. Any notice, order, or other document which is by the Housing Acts required or authorised to be served on the owner or occupier of any premises may be addressed to the 'owner' or 'occupier' of the premises (naming them) without further name or description.

11. Nothing in this Schedule shall affect the provisions of the Housing Acts relating to the service of notices, summons, writs and other proceedings at law or otherwise required to be served on local authorities under those Acts."

As to the power of the Minister of Health to dispense with the service of notices, etc., see sect. 41 of the Act of 1909.¹⁹

Under the repealed sect. 49 of the principal Act, it was held that there was no distinction between service of a closing order and service of notice of such an order, and, as it was also held that diligent inquiries had in fact been made for the freeholder, service of a copy of the order, on the assignee of a ninety-nine years

Sect. 15, n.

Compensation
as to obstructive
buildings.Receipts and
expenditure.Notices,
orders, &c.Service of
notices.(16) *Ante*, p. 1080.(17) See s. 41, *ante*, p. 1063.(18) *Post*, Vol. II., p. 2334.(19) *Ante*, p. 1112.

Sect. 15, n.

lease at a peppercorn rent, and leaving a sealed copy of the order addressed to "the owner" with a woman at the premises, which were unlet and in the occupation of a caretaker, was sufficient.²⁰

Service of a notice on the agent of a non-resident owner was held good, under the same repealed section, though the address of the latter was known by the local authority.²¹

In the case cited below,²² it was held that a notice was bad in form.

Further, as to notices, advertisements, etc., see the Note to sect. 41 of the Act of 1909.²³

Minor amendments.

Sect. 16. The amendments specified in the second column of the Second Schedule to this Act (relating to minor amendments of Housing Acts) shall be made in the provisions of the Housing Acts specified in the first column of that schedule.

Note.**Minor amendments.**

The amendments enacted by the present section and Sched. II. (so far as they relate to England), have all been incorporated in the enactments amended, namely, sects. 2, 5 (2), 26, 29, 31 (1) (2), 34 (2), 36 (4), 37 (5), 38 (2) (10), 39 (1) (2), 44, 45, and 55 (1) (2) of the principal Act; sect. 4 (2) and the Schedule (9) and (12) (e) of the Act of 1903; sects. 10 (1) (a) (b) (c), 12, 53 (11) (a) (b), 59 (1), and 69 (2) of the Housing, Town Planning, etc., Act, 1909; and sects. 8 (3), 26 (2) (4), 32, and 35 of the Housing, Town Planning, etc., Act, 1919.

Construction of Part I.

Sect. 17. This Part of this Act shall be construed as one with the principal Act, and any provisions of this Part of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained, and references in this Part of this Act to the principal Act, or to any provision of the principal Act, shall be construed as references to that Act or provision as amended by any subsequent enactment including this Part of this Act.

PART II.**TOWN PLANNING, ETC.**

Sect. 18. [Determination of questions as to compensation under town planning schemes.²⁴]

Sect. 19. [Extension of time for preparation of town planning schemes.²⁵]

Sect. 20. [Notice to withdraw or modify provisions of scheme.²⁶]

Sect. 21. [Power to make town planning schemes in special cases.²⁷]

PART III.**AMENDMENTS OF THE SMALL DWELLINGS ACQUISITION ACTS.**

Sect. 22. [Amendments of 62 & 63 Vict. c. 44.²⁸]

PART IV.**GENERAL.****Repeals and extent.**

Sect. 23. [Application to Scotland.]

Sect. 24.—(1) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule subject, however, as respects the enactments mentioned in sect. 6 of this Act, to the provisions therein contained.

(2) This Act shall not extend to Northern Ireland.

Note.**Repeals.**

The present section and Sched. III. repealed the following English enactments, wholly except where otherwise indicated:—

1890—Housing of the Working Classes—ss. 7 (c) (d), 20, 21, 24, 41 (5) (7) (8) (9) (10) (11), 49, 65 (i), and 80 (1), and Sched. II., except (10) and (12).

(20) *Arlidge v. Hampstead B.C.* (C. A.), L. R. 1916, 1 Ch. 59; 85 L. J. Ch. 91; 113 L. T. 1187; 80 J. P. 127; 14 L. G. R. 50.

(21) *Ex parte Pilgrove*, *Times*, May 27, 1892, p. 13, col. vi., *hot*.

(22) *Rayner's Case*, *ante*, p. 1113 (18).

(23) *Ante*, p. 1113.

(24) See amendment to H. T. P. Act, 1909, s. 58 (4), *ante*, p. 1119.

(25) See amendment to H. T. P. Act, 1919, s. 46, quoted in Note to H. T. P. Act, 1909, s. 61, *ante*, p. 1121.

(26) See Note to H. T. P. Act, 1909, s. 58, *ante*, p. 1119.

(27) See Note to H. T. P. Act, 1909, s. 54, *ante*, p. 1115.

(28) See Note to S. D. A. Act, 1899, s. 1, *ante*, p. 1082.

- 1899—Small Dwellings Acquisition—s. 1 (in part).
1903—Housing of the Working Classes—s. 13 (1).
1909—Housing, Town Planning, etc.—ss. 15 (3) (4) (5) (6) (8), and 30.
1919—Housing, Town Planning, etc.—ss. 7, 15, (1) (d) proviso, 15 (2) in part, 16, and 19.
1919—Housing (Additional Powers)—ss. 1, 2, 3, and 4.
1921—Housing—ss. 1 and 8.

Sect. 24, n.

- Sect. 25.**—(1) This Act may be cited as the Housing, etc., Act, 1923.
(2) The Housing Acts, 1890 to 1921, and Part I. of this Act, may be cited together as the Housing Acts, 1890 to 1923, and are in this Act referred to as the Housing Acts.²⁷
(3) * * * [Scotland].
(4) The Town Planning Acts, 1909 and 1919, and Part II. of this Act may be cited together as the Town Planning Acts, 1909 to 1923.²⁷
(5) * * * [Scotland].
(6) The Small Dwellings Acquisition Acts, 1899 and 1919, and Part III. of this Act, may be cited together as the Small Dwellings Acquisition Acts, 1899 to 1923.²⁷
(7) * * * [Scotland].

Short title.

FIRST,²⁸ SECOND,²⁹ AND THIRD SCHEDULES.³⁰
* * * * * * *

MODEL TOWN PLANNING CLAUSES, 1924.

Note.

The following Model Clauses for use in the preparation of town planning schemes under sect. 54 of the Housing, Town Planning, Etc., Act, 1909,¹ were published by the Minister of Health, together with a Memorandum thereon, in February, 1923. They were amended in January, 1924.³

Model clauses.

PART I.

GENERAL.

Clause 1.—(1) In this Scheme, unless the context otherwise requires, the following words and expressions have the respective meanings hereby assigned to them :—

Interpretation.

- “ The Council ” means the* ;
“ The Borough ”† means the* ;
“ The Minister ” means the Minister of Health ;
“ The Act of 1919 ” means the Housing, Town Planning, Etc., Act, 1919 [and the Act of 1923 means the Housing, Etc., Act, 1923⁴] ;
“ The Act of 1909 ” means the Housing, Town Planning, Etc., Act, 1909, as amended by the [Acts of 1919 and 1923⁴] .
“ The Map ” means the map which has been prepared in duplicate, each of such duplicates being sealed with the official seal of the Minister and with the official seal of the Council, and marked “ Map referred to in the Town Planning Scheme,” of which duplicates one is deposited in the office of the Minister and the other in the office of the Clerk to the Council ;
“ The Area ” means the portions of the borough described in Clause 2 ;
“ The Byelaws ” mean the provisions of any local Acts, regulations or byelaws relating to new streets and buildings for the time being in force in the borough ;
“ Owner ” has the same meaning as in the Public Health Act, 1875.

* Insert appropriate description.
† or District.

(2) The Interpretation Act, 1889,⁵ applies to the interpretation of this Scheme as it applies to the interpretation of an Act of Parliament.

Clause 2. The area to which this Scheme applies shall consist of those parts of the borough which lie within the inner edge of the boundary line coloured dark

Area of scheme.

(27) As to citation of these Acts, see Note to s. 1 of principal Act, *ante*, p. 1043.
(28) See Note to s. 15, *ante*, p. 1180.
(29) See Note to s. 16, *ante*, p. 1182.
(30) See Note to s. 24, *ante*, p. 1182.
(1) *Ante*, p. 1115.
(3) See Clauses 4-6, 10, 12, 18, 27-29, 33, 35, 43, 44, 46, 48, 53, 55-57, and 60.
(4) Amendments in Supplement No. 1, 1924.
(5) *Post*, Vol. II., p. 1961.

Clause 2.

blue on the map, excluding the parts edged black and hatched in black lines on the map, and any reference in this Scheme to land is limited to land in the area.

Responsible
authority.

Clause 3. The Council shall be the authority responsible for enforcing the observance of this Scheme and for the execution of any works which under this Scheme or Part II of the Act of 1909 are to be executed by a local authority.

PART II.

STREETS.

Interpretation.

Clause 4. In this Part of the Scheme, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them:—

“Street” includes a part of a street;

[“Width” applied to a new street means the space intended to be used as a public way, measured at right angles to the direction of the street.³]

“The Act” means the *Private Street Works Act, 1892* [*Public Health Act, 1875*]⁴;

“Private street” means a street within the meaning of the Act [*not being a highway repairable by the inhabitants at large*]⁴;

“Incidental works” means any slopes, approaches, embankments, cuttings, retaining walls, bridges, arches, girders, culverts, drains, or other works necessary and incidental to the construction of a street, and includes any works required for fencing the street;

“Street works” includes *all private street works as defined in sect. 6 of the Act, including works which the Council are empowered to do by sect. 9 of the Act, [the works referred to in sect. 150 of the Act,]* and the execution of any incidental works and of any works required for planting a street with grass, trees, or shrubs, and erecting guards therefor, or treating it in other suitable manner⁴;

“The making” of a street means the execution of all necessary street works from the commencement to the final completion of the street;

[A “standard street” means a street with the minimum dimensions of, and fulfilling the conditions attached to, the street of Type “A” described in the First Schedule to this Scheme, and constructed in accordance with the specification which would ordinarily be required by the Council at the time as a condition of declaring the street to be a highway repairable by the inhabitants at large.⁵]

[An apportionment of the cost of street works against any land or premises means an apportionment of the cost according to the frontage of the land or premises under sect. 150 of the Act, and recovery of the cost means recovery in a summary manner or by means of a private improvement rate under sect. 213 of the Act.⁴]

Note.

Revision of
standard.

With reference to the above definition of “standard street” the 1924 Supplement added the following “new Clause for use where standard specifications of street works and materials are prescribed in a scheme”:—“Where it appears to the

(3) Added in January, 1924, by “Supplement No. 1” to the present Model Clauses under the following Note: “There will usually be advantage if all the regulations relating to streets in an area for which there is a Town Planning Scheme are included in that Scheme. If the street regulations are partly in the Scheme and partly in byelaws, there is more trouble in ascertaining them and also manifest risk of confusion. The Minister suggests, therefore, that this course should be followed; and when this is done, the following amendments of, and additions to, the Model Clauses already issued should be adopted.”

(4) The following Note precedes Model Clause 4:—“If the procedure of the *Private Street Works Act, 1892*, is adopted, the words printed in italics and enclosed in square brackets should be deleted from the text. If the procedure of the *Public Health Act, 1875*, is adopted, the words printed in italics and not so enclosed should be deleted and the words in the square brackets retained.” For Act of 1875, s. 150, see *ante*, p. 311; and for Act of 1892, s. 6, see *ante*, p. 339.

(5) See footnote (3), *supra*. The footnote, in the Supplement, to this definition is: “Where the local authority prefers to prescribe specifications in the Scheme, the words ‘attached thereto in the Schedule or such other specification as may from time to time be substituted by an Order approved by the Minister in pursuance of Clause...’ should be inserted after the words ‘constructed in accordance with the specification.’ A Clause should also be included in the Scheme taking power to vary the specification by Order, on the model of Clause 29 (Supplementary Zoning). If, however, a Scheme includes more than one Clause taking power to add or substitute new provisions by Order, it would be better as a matter of arrangement that, so far as they deal with procedure, a single Clause should be inserted in the Part of the Scheme relating to procedure (Part VI of the Model Clauses) corresponding to Clause 56 (Appeals). The necessary models for these purposes are included”—see Clause 56A and alterations to Clause 29. The Table in Sched. I. has had to be omitted, see *post*, p. 1199 F.

Council at any time that the standard specification of works and materials attached to the First Schedule to this Scheme ought to be varied, they may make an Order with the approval of the Minister, varying the specification in accordance with the provisions of Clause ; and the specification included in the Order shall thereupon be deemed to be substituted for the specification in the Schedule." Clause 4, n.

Clause 5. Subject to the provisions of this Scheme, *the Act* [*the provisions of the Act relating to private streets*] shall apply to and have effect in the area with the modifications set out below ⁴ :—

Application of
*Private Street
Works Act,
1892* [*Public
Health Act,
1875*].

(1) The Act shall apply to all street works as defined in this Part of the Scheme.

(2) In the case of any private street declared to be a street under Clause 6 :—

(a) Where street works are executed by the Council upon or in connection with the street, the cost of any works executed by the Council and required for fencing the street or for constructing a bridge over or under any railway, river, or canal, and any expense in excess of the cost of constructing upon the site of the street a byelaw street shall be borne by the Council and shall not be apportioned against any premises;

(b) In making an apportionment against any premises of the cost of street works executed upon or in connection with the street, account shall be taken of any apportionment previously made against the premises and of the amount and value of any works, other than temporary works, previously done by any owner of the premises upon or in connection with the street;

(c) *The grounds of objection set out in sect. 7 of the Act shall be deemed to include an objection upon the ground that expenses which under this clause are to be borne by the Council have been apportioned against the premises of the objector;*⁴

[*Any dispute arising out of the provisions of paragraphs (a) and (b) of this sub-clause shall be determined by arbitration in the manner provided by the Act.*⁴]

(d) Any sum apportionable by the Council under the Act as modified by this Scheme in respect of the cost of the execution of street works may be varied by agreement between the Council and the person chargeable, and for giving effect to any such agreement the Council may, if they think fit, themselves defray the whole or a part of the sum so apportionable;

(e) *The provisions of sect. 20 of the Act which require the Council, on the application of the persons therein mentioned, to declare a street to be a highway repairable by the inhabitants at large shall apply to the street as soon as it has been made by the Council or in accordance with the specification of the Council under Clause 10;*⁴

[*If any new street has been made by the Council or in accordance with the specification of the Council under Clause 10, then, on the application in writing of the majority in number of the owners of the houses and land in the street, the Council shall exercise the power conferred on them by sect. 152 of the Act of declaring the street to be a highway repairable by the inhabitants at large.*⁴]

(f) Where street works are executed by the Council upon or in connection with the street, no expenses incurred in executing the street works and apportioned against land which is rated as agricultural land only shall be recoverable until the land becomes rated otherwise than as agricultural land;

If a part only of such land becomes rated otherwise than as agricultural land, then only the portion of the expenses attributable to that part shall become recoverable;

Interest shall not be payable to the Council on any moneys in respect of the time during which under this sub-clause they are irrecoverable;

(g) The Council may, if they think fit, postpone the date on which any expenses which they are entitled to recover from any person under the Act as modified by this Scheme become recoverable.

(3) In the case of any other private street [for which the Council make under Clause 10 a specification involving any greater cost than the cost of constructing on the site thereof a byelaw street, otherwise than by agreement with the owner,⁵] the modifications set out in this clause, other than modifications 2 (f) and 2 (g), shall have effect.

Clause 6.—(1) The purposes of this Scheme shall include the execution of street works upon the [land⁵] coloured pink on the map [which land is in this Scheme Sites of new streets and widenings.

(4) See footnote (4), *ante*, p. 1184.

Supplement No. 1, 1924.

(5) One of the minor amendments made by

Clause 6.

referred to as land reserved for streets ⁵] and the execution of incidental works upon adjoining land.

(2)—(a) The Council may declare any land coloured pink on the map to be a street, after giving not less than three months' notice of their intention so to do to the persons interested in the land.

The land so declared shall thereupon, in the case of land numbered on the map, be deemed to be a highway repairable by the inhabitants at large and, in the case of any other land, be deemed to be a private street and to have been dedicated to the public, and the Council may enter upon such highway or private street and execute any street works accordingly.

(b) The Council may, after giving not less than three months' notice to the persons interested in any land which adjoins any of the land [reserved for streets ⁵] and is required for the purpose of executing any incidental works, enter upon such land and execute such works.

(c) So far as may be necessary for the purpose of executing street works the Council may demolish or alter any buildings or other works on the aforesaid lands.

(d) Nothing in this sub-clause shall be deemed to empower the Council to enter otherwise than by agreement upon any land which under sect. 45 of the Act of 1909 as applied by sect. 60 of that Act they are prevented from acquiring compulsorily or to enter whether by agreement or otherwise upon any land the acquisition of which is prohibited under those sections.⁴

(3) Where any land coloured pink on the map becomes, by declaration under this clause, a private street, the Council may declare any adjoining land belonging to them and required for the purpose of executing incidental works to be, and the same shall thereupon be deemed to be, a part of the private street.

(4)—(a) The Council shall have the same responsibility for maintaining any works executed by them upon or in connection with any private street declared to be a street under this Clause or [for which ⁵] under Clause 10 [they make ⁵] a specification involving any greater cost than the cost of constructing on the site thereof a byelaw street [otherwise than by agreement with the owner ⁵] as they would have if the street were a highway repairable by the inhabitants at large.

(b) The Council may at any time, after giving reasonable notice to the owner, enter upon land forming the site of any incidental works for the purpose of maintaining such works.

[(5) If it appears to the Council at any time that a new street or the widening of an existing highway is needed on any land not reserved for streets on the Map, they may make an order with the approval of the Minister, in accordance with the provisions of Clause [56A] declaring that the land shall be reserved for streets, and the land shall thereafter be subject to such of the provisions of this Part of the Scheme as are applicable to land reserved for streets by the Scheme.^{5a}]

Widenings
chargeable upon
frontagers.

Clause 7. If any of the land coloured pink on the map which abuts on, and is intended to form the site of a widening of, an existing highway is declared under Clause 6 to be a private street, then—

(1) The part of the existing highway upon which the land abuts shall, as to its whole width, be deemed to be a part of the private street;

(2)—(a) Where the existing highway is a highway repairable by the inhabitants at large, no part of the cost of any street works executed by the Council shall be apportioned against any land which was rated otherwise than as agricultural land on . . .⁶ and is so rated at the date of the apportionment of such cost, and the part of such cost which by reason of this sub-clause cannot be apportioned against such land shall be borne and paid by the Council;

(4) *Ante*, pp. 1114, 1120.

(5) Minor amendments made by Supplement No. 1, 1924.

(5a) According to 1924 Supplement No. 1, "A Town Planning Scheme should usually not contain more, so far as roads are concerned, than the principal communications. The less important connections and estate streets are better left to be determined when the time for development is at hand. The Model Clauses already contain a provision (Clause 10 (6)) to enable the local authority to declare a new street to be a through traffic street when plans are submitted by the owner. In some cases, however, building development may be proposed which would block the way for a new street which is

needed for through communication or other special reason; and the Council may not have any powers to prevent this result despite the harm which it may do to local development. The following additions and amendments to the Model Clauses have been drafted to enable local authorities to overcome difficulties of this kind. Under these provisions the Council could take the initiative, subject to the approval of the Minister, in reserving additional land for streets where this is required for good local development." The above is one. For the others, see Clause 57.

(6) "The date of the Council's resolution to prepare the scheme or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909," *ante*, p. 1118.

(b) The grounds of objection set out in sect. 7 of the Act shall be deemed to include an objection on the ground that a part of such cost has been apportioned against land contrary to the provisions of this sub-clause. **Clause 7.**

[Any dispute arising out of the provisions of this sub-clause shall be determined by arbitration in the manner provided by the Act.]⁷

Clause 8. Where a sewer is constructed by the Council under any land coloured pink on the map before the land becomes, or is declared under this Part of the Scheme to be, a private street, the Council may, after the land has become or been declared to be a private street, include the cost of the sewer in the expenses of any street works executed by them upon the street in the same manner and subject to the same conditions as if they had constructed the sewer under the street under the provisions of [sect. 150 of] the Act as modified by this Scheme.⁷ **Construction of sewers.**

Clause 9. No building shall be erected or other work done upon any land coloured pink on the map which, for the purpose of enabling street works to be executed, would require to be removed, pulled down or altered, except with the consent of the Council and upon such terms and conditions with regard to such removal, pulling down or alteration, or otherwise as the Council may require. **Restrictions upon street sites.**

Clause 10.—[(1) Any person desiring to construct a new street shall, before laying out the street, apply to the Council for approval and shall submit with his application—(a) a plan showing the site of the proposed street (including turning and crossing places, if any) and its position in relation to neighbouring streets; (b) sections showing the levels of the present surface of the ground above some known datum, the level and rate or rates of inclination of the proposed street, the level and inclination of all the existing or intended streets with which the street is to be connected, and the level of the lowest floor of the intended buildings; and (c) a specification of the street works proposed to be executed and the materials to be used. Provided that the submission of a specification of proposed works of sewerage may be postponed if the Council agree that it is not practicable to make the specification at the time. **Construction of streets dedicated by owners.**

(2) Every proposed new street approved by the Council under this Clause shall be one of the following types of streets, namely:—(a) if in the opinion of the Council the street is likely to be used for through traffic, one of the types of streets described in Part I of the First Schedule to this Scheme, with such departures as the Council think fit from the provisions of the said Schedule as regards levels and construction of surface⁸; (b) if in the opinion of the Council the street is not likely to be used for through traffic, one of the types described in Part II of the said Schedule or such other type as the Minister may from time to time authorise the Council to approve. Subject to the foregoing provisions, the Council shall have power to approve the proposed street, with or without modifications, or to disapprove it.

(3) The Council shall not under this Clause require a street to be constructed at a higher cost than that of constructing a standard street on the site of the proposed street, except by agreement with the owner, unless they undertake themselves to bear the excess cost.

(4) Any person constructing a street shall construct it in accordance with the plans, sections and specification approved by the Council under this Clause; and all the conditions applicable thereto contained in the First Schedule to this Scheme or in the approval of the Council shall be binding on him and, in so far as they relate to the user of any adjoining land, on all persons deriving title under him to that land.

(5) No works shall be executed upon or in connection with the street, before it is declared to be a highway repairable by the inhabitants at large, other than in accordance with the approved specification, except (a) works otherwise agreed between the Council and the person concerned, (b) temporary works or works of maintenance, or (c) works of sewerage not specified at the time of the approval of the street, but subsequently approved by the Council.

(6) The Council may permit any street temporarily to be constructed of less width, or with narrower carriage-way and footways, than authorised by them in approving the street, if they are satisfied that this may properly be allowed in the particular case.

(7) Where the Council grant a permission under the preceding sub-clause, the provisions of the Act, as modified by this Scheme, with regard to declaring streets

(7) See footnote (4), *ante*, p. 1184.

(8) "Add 'specification of works and materials,' where specifications are prescribed."

Clause 10.

to be highways repairable by the inhabitants at large shall apply to the part of the street which is allowed to be constructed in advance of the remainder; but the Council may subsequently proceed under the Act, as modified by this Scheme, as regards the remainder of the street as though it were a new street.

(8) The Council may, if they think fit, contribute towards the cost of constructing a street approved under this Clause.

(9) Where any new street approved under this Clause is likely, in the opinion of the Council, to be required for through traffic, the Council may at any time declare that the site of the street, if not already reserved for streets, shall be so reserved. Where the Council take this course they shall forthwith notify the persons interested in the land of the declaration, and the land shall thereafter be subject to such of the provisions of this Part of the Scheme as are applicable to land reserved for streets by the Scheme.

(10)—(a) Any person who desires to construct a new street and feels aggrieved by any neglect or refusal of the Council to give any approval under this Clause or by any modifications made by them, and (b) any person notified under sub-clause (9) of this Clause who feels aggrieved by any declaration of the Council thereunder, may apply to the Minister for leave to appeal to him. In determining appeals under this Clause the Minister shall have the same power of approval, with or without modification, and of disapproval, and of granting permission, as the Council under this Clause.⁹

Notice of
commencement
and completion
of streets.

[**Clause 10** (A).—(1) Any person who proposes to lay out or to construct a street shall, before commencing to do so, give notice to the Council of the date on which he proposes to commence the work. If this notice is not given and the duly authorised officer of the Council, on inspecting any work in connection with the street, finds that the work is so far advanced that he cannot ascertain whether anything has been done or omitted contrary to the provisions of this Scheme or to the conditions upon which approval of the street has been granted, the officer may give notice, within a reasonable time after inspection, to such person requiring him, within a reasonable time to be specified in the notice, to remove, lay open, or pull down so much of the work as prevents the officer from ascertaining whether anything has been done or omitted as aforesaid. If the said person fails or refuses to comply with the requisition, the Council may themselves remove, lay open, or pull down so much of the work as aforesaid and may recover from him the expenses incurred by them.

(2) Every person who has laid out or constructed a street shall give notice thereof to the Council within a reasonable time after the completion of the lay out or construction.¹⁰

Submission of
schemes of
development
of estates.

Clause 11.—(1) Whenever a plan for a new street is submitted to the Council for approval, they shall by written notice request the owner of any land within that part of the area, the development of which will, in their opinion, be affected by the construction of the street to furnish them with plans and particulars showing generally a scheme for the development or laying out of the land.

(2) Before approving the plan for the new street the Council shall take into consideration any plans and particulars which are furnished to them by any such owner within a reasonable time to be specified in the notice, being not less than one month from the date of the notice.

Clause 12. [*Relaxation of byelaws.*¹¹]

Grass margins,
&c.

Clause 13.—(1) The Council may lay out as a garden any part of a street repairable by the inhabitants at large or may plant any part of such street with grass, trees or shrubs and erect guards therefor and may maintain, alter or renew the part of the street so laid out or planted.

(2) The Council may from time to time rearrange the carriage-way, footway and other parts of the street.

(3) Where the Council execute street works upon any street declared under Clause 6 of this Part of the Scheme, the Council shall plant with grass, trees or shrubs, or treat in other suitable manner any part of the street not constructed as carriage-way or footway, shall provide convenient access from the carriage-ways and footways to any premises abutting on the street, and shall execute any works necessary for fencing off the street from the adjoining lands or for replacing any fences removed.

(9) See footnote (3), *ante*, p. 1184.

(10) "This Clause is new—it is numbered 10 (A) for reference, but in the Scheme all the Clauses should, of course, be numbered

consecutively." As to reason for its addition, see footnote (3), *ante*, p. 1184.

(11) To be "omitted"—see footnote (3), *ante*, p. 1184.

Clause 14. No person shall wilfully damage any tree, shrub, plant, or grass in any street or any fence or guard erected thereon, and no person shall wilfully ride or drive any horse, cattle or vehicle over or across any grass margin.

Clause 14.
Wilful damage.

Clause 15. For the purpose of adjusting the boundary of any street, the Council may make an exchange of land forming part of the street for other land, with or without paying or receiving any money for equality of exchange.

Adjustment of
boundaries
of streets.

Clause 16.—(1) Each of the public highways coloured on the map and specified in the first column of the Second Schedule to this Scheme is hereby declared to be diverted or stopped up, and all public rights therein are declared to cease, as from the date on which the proposed new street to be constructed on the lands the number of which is set opposite to that highway in the second column of the said Schedule, is constructed to the satisfaction of the Council.

Diversion or
stopping up of
highways.

(2) The Council may within six months after the date on which a highway or any portion thereof is diverted or stopped up remove therefrom, without payment, any road material of which the highway is constructed or which is lying thereon.

(3) The diversion or stopping up of a highway under this Clause shall not affect the rights of the Council or of any statutory undertakers or other persons in any sewers, gas or water mains, electric cables or wires, or other works lying on or under the highway, and the Council and such statutory undertakers and other persons shall have the same powers of inspection, maintenance and repair of such works and of entry upon the land for that purpose as if the highway had not been diverted or stopped up: Provided that the Council may, if they think fit, divert or transfer any such works and execute any works necessary and incidental to such diversion or transfer, and may enter into agreements for the purpose, but no such diversion or transfer shall take place until notice has been given to any statutory undertakers affected.

PART III.

BUILDINGS AND BUILDING LINES.

Clause 17. In this Part of the Scheme, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them:—

Interpretation.

“ Dwelling-house ” means a house designed for use as a dwelling for a single family, together with such out-buildings as are ordinarily required to be used therewith;

“ Residential building ” means any building, other than a dwelling-house, designed for use for human habitation, together with such out-buildings as are ordinarily required to be used therewith, and includes a hotel and a residential club;

“ Shop ” means a building designed for the purpose of carrying on retail trade;

“ Industrial building ” means a building designed for use as a factory or a workshop within the meaning of the Factory and Workshops Acts, 1901 and 1907, and includes a warehouse, and a “ building for noxious industry ” means an industrial building designed for the purpose of carrying on any industry mentioned in the Third Schedule to this Scheme;

“ Business premises ” means a building designed for use as an office or for other business purposes, not being a shop or industrial building;

“ Place of assembly ” means a building designed for use as a town hall, theatre, concert room, lecture hall, place of public worship, or other place of public assembly whether used for purposes of gain or not, and includes a non-residential club;

“ School ” means a building designed for use as a college or school;

“ Institution ” means a building designed for use as a hospital, workhouse, asylum, or other public or charitable institution, other than a place of assembly or a school;

“ Public building ” means a place of assembly, institution or school;

“ Special building ” means a building designed for any use other than one of the uses for which the buildings hereinbefore defined are designed;

“ Zone ” means a portion of the area shown on the map by distinctive colouring, hatching or edging for the purpose of indicating the density or character of buildings prescribed therefor, and the terms “ density zone ” and “ character zone ” mean zones indicating restrictions as to density and character of buildings respectively;

A “ land unit ” means a portion of land to be determined by the Council in accordance with the provisions of this Part of the Scheme for the purpose

Clause 17.

of limiting the number of building units (as calculated in accordance with Clause 18 (3)), which may be erected thereon.

The erection of a building includes :—(i) The re-erection, wholly or partially, of any building of which an outer wall is pulled down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down as to leave only the framework of the lowest storey; (ii) The conversion of a building of any of the types hereinbefore defined into a building of any other of such types.

The site of a building includes all the land within its curtilage.

Combined buildings and building units.

Clause 18.—(1) Where a proposed building is designed for use both as a shop and as a dwelling for a single family, it shall be treated for the purposes of this Part of the Scheme, as if it were a shop.

(2) Subject as aforesaid, where a proposed building is designed for more than one use, the Council may decide which is the primary use for which the building is designed, and for the purposes of this Part of the Scheme the building shall be deemed to be designed exclusively for that use.

(3) For the purposes of this Part of the Scheme a dwelling-house shall be reckoned as one building unit, and a building other than a dwelling-house as such number of building units as the Council may decide.

(4) The owner of any building or of the site of any proposed building who feels aggrieved by a decision of the Council under this Clause in respect of the building or proposed building may [apply to the Minister for leave to appeal to him.¹²]

PRIMARY ZONING.

A. Density of Buildings.

Erection of of dwelling-houses and residential buildings.

Clause 19. No dwelling-house or residential building shall be erected upon land not included in a land unit.

Declaration of land units.

Clause 20.—(1) Subject to the following provisions the Council shall, upon application being made to them by any owner of land or jointly by two or more owners of adjoining land, declare that the land in respect of which the application is made or such part thereof as they think fit shall form one or more land units. For this purpose the submission by an owner of a building plan shall be deemed to be an application for the declaration of a land unit in respect of the land included in the plan.

(2) The Council may include in a land unit land belonging to the applicant other than that to which the application relates, but shall not, except with the consent of the applicant, so include the site of a building commenced before . . .¹ The Council may also include in the unit any land given by or acquired from the applicant for the purpose of a public open space after . . .¹

(3) The Council may require the applicant to submit a plan showing the whole of his land which is not already included in a land unit or such part thereof as they think fit.

(4) Every land unit shall be contained wholly within one density zone.

(5) No land unit shall exceed seven acres in extent.

(6) The half of the width of any road dedicated to the public upon which any land proposed to be included in a land unit abuts shall be included in the land unit.

Calculation of number of building units which may be erected.

Clause 21.—(1) In the case of a land unit in respect of which a plot plan is not submitted to and approved by the Council under the next succeeding Clause, the number of building units on the land unit shall not at any time exceed the number which will give the average per acre specified in the Table below. For this purpose all buildings included in the land unit by consent of the owner under Clause 20 (2), shall be taken into account.

TABLE.²

Zone A, coloured	on the map; 12. ³	Zone B, coloured	on the map, 8. ³
Zone C, coloured	on the map, 6. ³		

(2) Where it appears to the Council upon representation being made by any owner of land that it would be unreasonable to require compliance with the provisions of this Clause owing to difficulty in developing the land in accordance with those provisions on account of :—(i) the lay out of any street on or adjoining

(12) See footnote (3), *post*, p. 1199 D.

(1) See footnote (6), *ante*, p. 1186.

(2) "The figures given in this Table are

intended to be illustrative only."

(3) "Average number of building units per acre over a land unit not to exceed."

the land constructed before . . .,⁴ (ii) the small amount of land in the possession of the owner on . . .,⁴ the Council may authorise a reasonable increase in the number of building units permitted to be erected on the land affected. **Clause 21.**

Clause 22.—(1) Any owner of land within a land unit may, for the purpose of having the number of building units permitted to be erected on that land determined prior to sale or for any other reason, submit for the approval of the Council a plot plan showing the plots within the unit upon which it is proposed to build and the number of building units proposed to be erected on each plot. **Plot plans.**

(2) The Council shall not approve a plot plan submitted to them under this Clause unless the following conditions are complied with—(a) The site of every building existing or commenced upon the land unit at the date of submission of the plot plan must be included in one or more of the plots; (b) The average number of building units shown on the plot plan as proposed to be erected per acre over the land unit must not exceed the average per acre specified in the appropriate part of the Table in the last preceding Clause.

Clause 23. Where a plot plan for a land unit has been submitted to and approved by the Council under the last preceding Clause— **Erection of buildings upon land for which a plot plan has been approved.**

(1) No building shall be erected on any land within the land unit not included in a plot.

(2) There shall not be erected upon any plot a greater number of building units than would give (together with the equivalent in building units of any buildings existing or commenced upon the plot at the date of submission of the plot plan) the number marked on the plot on the plot plan.

Clause 24.—(1) The Council may from time to time vary any land unit, but before doing so they shall notify the owner of the land comprised within the unit : **Variation of land units and plot plans.**

(2) The owner of any land comprised within a plot plan may at any time, with the consent of the Council, vary the plot plan in so far as it affects his land :

Provided that no variation of a land unit or plot plan shall be made which would be inconsistent with the provisions of this Part of the Scheme in regard to the density of buildings.

Clause 25. In the event of the land comprised in a land unit in respect of which a plot plan has not been approved by the Council being or becoming vested in more than one owner and of the owners failing to agree as to the number of building units to be erected on their respective portions of the land, the Council shall, upon the application of the owner of any portion of the land, determine as between the applicant and the remaining owners what proportion of the maximum permissible number of building units may be erected on the portion belonging to the applicant and on the remainder of the land unit respectively. **Land units vested in more than one owner.**

Clause 26. The Council shall keep, so as to be available for inspection by any person interested :— **Registration.**

(1) a register identifying each land unit by reference to a map and showing the date on which the unit was fixed or varied and the particulars and the date of any apportionment made by the Council under the preceding clause as between owners of land included in the unit; and

(2) a copy of each plot plan approved by the Council.

Clause 27. The owner of any land within a land unit who feels aggrieved by— **Appeals.**

(1) a decision of the Council declaring or varying a land unit; or (2) any neglect or refusal of the Council to approve, or consent to the variation of, a plot plan for the land unit [and the owner of any land who feels aggrieved by any neglect or refusal of the Council to authorise an increase in the number of building units permitted to be erected on his land in pursuance of Clause 21 (2) ⁵] may [apply to the Minister for leave to appeal to him.⁶]

B. Character of Buildings.

Clause 28.—(I) (a) The predominant use for which each of the several zones referred to in the first column of the following Table is intended to be reserved is the use indicated in that column, and the classes of buildings which may be erected either with or without the consent of the Council, as the case may be, or may not be erected in each zone, shall be as set out in the second, third and fourth columns of the Table, but nothing in this Clause shall prevent the erection of buildings required for agricultural or horticultural purposes upon land which is for the time being used for those purposes. **Character zones.**

(4) See footnote (6), *ante*, p. 1186.

(5) Minor amendment by Supplement

No. 1, 1924.

(6) See footnote (3), *post*, p. 1199 D.

Clause 28.

Character zones
—continued.

TABLE OF CHARACTER ZONES.¹

Zone.	Buildings which may be erected without Council's consent.	Buildings which may only be erected with Council's consent.	Buildings not to be erected.
I. Residential. Hatched on the map.	Dwelling-houses, residen- tial buildings.	Buildings other than dwelling-houses, resi- dential buildings and buildings for noxious industry.	Buildings for noxious industry.
II. Special Business. Hatched on the map.	Shops and business pre- mises.	Buildings other than shops, business pre- mises and industrial buildings.	Industrial buildings.
III. Special Industrial. Hatched on the map.	Industrial buildings other than buildings for noxious industry.	Buildings for noxious in- dustry and buildings other than industrial buildings.	—
IV. General Industrial and Business. Hatched on the map.	Buildings other than buildings for noxious industry.	Buildings for noxious in- dustry.	—
V. Undetermined. Hatched on the map.	Buildings other than in- dustrial buildings, shops, business pre- mises and special build- ings.	Industrial buildings, shops, business pre- mises and special build- ings.	—

(b) In giving their consent to the erection of a building the Council may impose such conditions as they think fit.

(c) In the case of any building proposed to be erected in Zone I. which may be erected only with the consent of the Council, the Council, in giving or withholding their consent or imposing any conditions, shall have regard to the likelihood of the use for which the building is designed injuring the amenity of the zone, including, in the case of an industrial building, the likelihood of any injury due to the emission of smoke or fumes, or to dust, noise or smell, or other cause.

(2) In any zone in which the erection of buildings designed for a particular purpose is not permitted, the user of a building for that purpose shall be a contravention of this Scheme, and in any zone in which the erection of buildings designed for a particular purpose is permissible only with the consent of the Council, the user of a building for that purpose without the consent of the Council shall be a contravention of this Scheme: Provided that nothing in this sub-clause shall prevent a building whose erection was commenced before . . .² being used for any purpose for which it was designed to be used or was used on that date.

(3)—(a) The Council shall, as soon as may be, give notice by advertisement in some local newspaper circulating in the area of any application made for their consent under this Clause—

(i) to the erection in Zone I of an industrial building, a shop, business premises, or a special building, or to the user for the purpose of any such building of any building in that zone; or

(1) "The types of zone illustrated in the Table are intended only as examples. See explanatory memorandum, paragraphs 25 and

26," quoted in Note to present Clause.
(2) See footnote (6), ante, p. 1186.

- (ii) to the erection in Zone III of any building other than an industrial building, or to the user of any building in that zone for any purpose other than the purpose of an industrial building.

Clause 28.

Character zones
—continued.

The notice shall be at the cost of the applicant and shall state that any objections addressed to the Council in writing within 14 days after the date of the advertisement will be considered.

(b) The Council shall take into consideration any objections received within the said period of 14 days, and shall thereupon decide to give or withhold their consent or to give their consent upon such conditions as they think fit, and shall forthwith serve a notice of their decision upon the applicant and upon any person objecting to the application under paragraph (a) of this sub-clause.

(c) A decision of the Council under this Clause shall not take effect until the expiration of 21 days from the date on which the applicant and the objectors, if any, are notified of the decision, or, if an appeal has been made to the Minister under the provisions of this Clause, until such appeal is disposed of.

(4)—(a) Any person who has applied for any consent of the Council under this Clause and feels aggrieved by any neglect or refusal of the Council to give consent or by any conditions imposed by the Council may [apply to the Minister for leave to appeal to him³].

(b) Any person who feels aggrieved by any decision of the Council to give consent to the erection of, or user of a building as, an industrial building, a shop, business premises or a special building in Zone I or to the erection of any building other than an industrial building in Zone III or to the user of any building in that zone for any purpose other than the purpose of an industrial building may [apply to the Minister for leave to appeal to him,³] and shall forthwith notify the Council of the [application³].

Note.

Par. 25 of the Memorandum is headed "Method of Imposing Restrictions," and is as follows:—"The actual restrictions in each zone are to be indicated by means of a Table, but the Table inserted in the Model Clause is intended only as an example of the form in which the zoning provisions should be set out, and not as necessarily indicating the types of zone always to be adopted, or as suggesting that every area should include all the indicated zones. The definitions employed have been framed to cover as many classes of buildings as seem likely to require to be differentiated for the purpose of determining the uses of zones, and all undefined buildings are classed as 'special buildings,' so that, by specifying them where necessary in the Table, the local authority may be able to govern their introduction into any zone and so minimise the risk of injury through the erection of any class of buildings which may not have been foreseen. Experience will no doubt reveal other classes of buildings which ought to be defined, and the object should always be to limit the class of 'special buildings' to the narrowest possible scope. The schedule of 'buildings for noxious industry' is intended to cover industrial buildings such as works under the Alkali Works Regulation Act, 1906, which require to be specially placed, whether in an industrial area or not."

Par. 26 is headed "Types of Zone," and is as follows: "In drafting the illustrations given in the Table, regard has been had to the consideration that it will generally be unwise, except in the case of small zones devoted to specialised purposes, to exclude entirely any class of buildings (except such a class as 'noxious industries'). Thus in Zone I, which may be applicable to large areas, uses other than the predominant use may be admitted with the consent of the authority, but where these uses are at variance with the predominant use they are only to be admitted after advertisement in the manner indicated in paragraph 23.⁴ Zone IV, an example of a general industrial and business zone, is left practically unrestricted, so as to admit any buildings whose owners are prepared to dispense with protection against possible injury from incongruous forms of development. It is contemplated that small specialised zones will be adopted only in the case of peculiarly suitable areas in which development of the kind provided for can be confidently anticipated. The last illustration is of a zone intended to be applied to areas of the kind already referred to in paragraph 24,⁵ in which there is no prospect of early development and the natural trend of development cannot at the moment be foreseen."

Zoning.

(3) See footnote (3), *post*, p. 1199 D.

of appealing."

(4) Namely, "in order to give any adjoining owners or other interested persons who might object to the proposals an opportunity

(5) Namely, "areas not likely to be developed for a considerable period."

Clause 29.

Density and
character.

SUPPLEMENTARY ZONING.

Clause 29.—(1) If at any time the Council are of opinion that—(a) the buildings to be erected in any part of a character zone ought to be limited to one or more of the classes of buildings which are permitted under Clause 28 to be erected in that zone; or (b) any class or classes of buildings which, under the provisions of Clause 28 may only be erected in any zone with the consent of the Council can, consistently with the predominant use of the zone, be permitted to be erected in any part of the zone without such consent; or (c) the average number of building units permitted under Clause 21 to be erected per acre ought to be varied over the whole or any part of density zone ; the Council may make an order [with the approval of the Minister, in accordance with the provisions of Clause [56 A]¹] limiting the class or classes of buildings whose erection is permitted or giving a general consent to the erection of any class or classes of buildings in such part of the zone as aforesaid or varying the average number of building units permitted to be erected per acre in density zone , as the case may be, [and may submit the order to the Minister for approval ^{1a}]: Provided that no order shall be made which would allow the average number of building units permitted to be erected per acre in zone to be increased to more than .

[(2) The order may include any necessary modifications in the application of this scheme to the zone or part of a zone to which the order relates. (3) The order shall refer to a plan on the same scale as the map, defining the zone or part of a zone affected. (4) Before applying for approval of an order under this Clause, the Council shall give notice thereof by advertisement in a local newspaper circulating in the area, and shall include in the notice a statement that a print of the order and plan will be open for inspection at a specified place or places and that any interested person desiring to make any objections or representations with respect thereto may address them in writing to the Council within a specified period, not being less than 14 days from the date of the advertisement. Notices in the same terms shall be served on the owners of the lands to which the order relates and on any other owners in the area who may in the opinion of the Council be affected. Before approving an order under this Clause, the Minister may require similar notices to be served on any additional owners who may in his opinion be affected by the order. (5) If the Minister having regard to the nature and situation of the land affected by the order considers that the provisions of the order are reasonable, he may approve the order with or without modification, and the order so approved shall thereupon have effect as if it were incorporated in and formed part of this Scheme. (6) An order under this Clause shall be in duplicate, one part to be deposited with this Scheme at the office of the Clerk to the Council and the other at the Ministry of Health.^{1a}]

A copy of the order shall be served by the Council on any owner on whom a notice has previously been served under this Clause, and notice of the approval of the order shall also be given by advertisement in a local newspaper circulating in the area, stating that a copy of the order, as approved by the Minister, may be inspected at a specified place or places.

Height of Buildings.

Limitation of
height of
buildings.

Clause 30.—(1) No building (not being an industrial building erected in character Zones II and III)² shall be so erected or altered that:—(a) the highest point of the building, measured from the mean level of the ground immediately surrounding the building, exceeds 70 feet ^{2a} in height; (b) any part of the building projects above any line drawn from the centre of the street in front of the building at an angle of 56° (or if the street is of any one of the types described in the First Schedule to this Scheme, 45°)³ with the horizontal :

Provided that—(i) For the purpose of the foregoing provisions account shall be taken of parapets but not of chimneys, ornamental towers, turrets or any other such architectural features; (ii) In the case of a building erected at the corner of two or more intersecting streets the height of the building shall be determined by reference to the wider or widest street; (iii) In the case of a place

(1) These words to be added where Clause 56 A, post, is used—1924 Supp. No. 1.

(1a) These words to be omitted in that case, *ibid.*

(2) "Industrial zones."

(2a) "This figure should not be regarded as invariable."

(3) "Streets involving relaxation of the byelaws and intended for residential use only."

of assembly the Council may permit either or both of the limits imposed by this clause to be exceeded to such extent as they may think fit. **Clause 30.**

(2) No dwelling-house erected in the zone edged on the map shall contain more than two storeys, exclusive of any storey constructed wholly or partly in the roof and exclusive of any storey the floor of which is more than 6 feet below the mean level of the centre of the street in front of the building : Provided that, if in the case of a group of contiguous dwelling-houses not exceeding six in number, it is desired to maintain the height of all the dwelling-houses forming the group at the same level, not more than four of the dwelling-houses may, where the slope of the street in front thereof renders it necessary, contain three storeys, exclusive of any storey constructed wholly or partly in the roof.

Space about Buildings.

Clause 31. In the case of a building whose erection is commenced after . . .⁴ the proportion of land within its curtilage which may be occupied by buildings shall not exceed the proportion indicated in the Table below ;

Space within curtilage of buildings which may be covered by buildings.

In the case of a building whose erection is commenced before . . .⁴ no alteration shall be made thereto such that the area of the ground covered by the building on that date would be increased by more than 20 per cent. if the proportion of land occupied by buildings within the curtilage of the building as altered would exceed the proportion indicated in the Table :

Provided that—(a) the Council may permit the proportion to be increased in the case of a building erected before . . .⁴ or where, owing to a building abutting on two or more streets, or by reason of any other exceptional circumstances, they think fit so to do ; and (b) in the case of a dwelling-house which (i) is, in the opinion of the Council, adjacent to the junction of two or more streets, or (ii) is situated within the zone edged on the map, the proportion of land within the curtilage thereof which may be occupied by buildings, may exceed the proportion indicated in the Table, but shall not exceed ; (c) the provisions of this Clause shall not preclude the erection of a building proposed to be erected by virtue of an exemption granted under Clause 21 (2).

TABLE.⁵

Character of buildings : Neither 30ft. in height nor being, over the main part of the building, of more than one storey above ground level— $1/3$,⁶ $1/2$,⁷ $3/4$.⁸

Character of buildings : Neither exceeding 30ft. in height nor being, over the main part of the building, of more than one storey above ground level— $1/4$,⁶ $1/3$,⁷ $2/3$.⁸

For the purposes of this Clause the height of a building shall be measured from the mean level of the ground surrounding the building to the top of the parapet, or half the height of the roof, whichever is the higher.

Clause 32.—(1) Not more than eight dwelling-houses or residential buildings shall be erected in one continuous block, and no detached dwelling-house or residential building or block of dwelling-houses or residential buildings shall be erected nearer to a building or block of any of those types than six feet or nearer to any other building than three feet.

Breaks in building.

No building shall be erected nearer to the owner's boundary, or to a building or block of any of the aforesaid types, than three feet.

(2) Notwithstanding the provisions of this Clause, the Council may, if they think fit, permit—(a) more than eight dwelling-houses or residential buildings to be erected in one continuous block where the buildings are arranged to the satisfaction of the Council ; (b) the erection between two buildings of a connecting wall, arch or other architectural feature approved by the Council ; (c) the erection adjoining a building of an outbuilding not exceeding ten feet in height (measured from the mean level of the ground surrounding the outbuilding to the top of the parapet or half the height of the roof, whichever is the higher).

(3) For the purposes of this Clause the erection of a building includes, in addition to the operations referred to in Clause 17, the making of any addition to any building erected after. . .⁹

(4) See footnote (6), *ante*, p. 1186.

(5) " This Table is intended only as an example."

(6) " Dwelling-houses."

(7) " Residential buildings, institutions,

schools and shops in which dwelling accommodation is provided."

(8) " Other buildings."

(9) See footnote (6), *ante*, p. 1186.

Clause 33.

Building Lines.

Effect of building line.
Building lines shown on map.

Fixing of building line for new street not shown on map.

Fixing of building line for existing street where line not shown on map.

Power to permit buildings in advance of building line.

Application of P.H. (Buildings in Streets) Act, 1888.

Reservation and acquisition of lands.

Clause 33.—(1) Where a building line for any street or proposed street is shown on the map, or not being shown on the map, is fixed by the Council under the provisions of this Part of the Scheme, no building or structure, other than boundary walls or fences or temporary structures erected in connection with building operations, shall, save as hereinafter provided, be erected nearer to the street than the building line.

(2) The Council may fix a building line for any new street not shown on the map when the plan for that street is submitted to them for approval.

(3) In the case of an existing street for which no building line is shown on the map, the Council may fix a building line either for the street or for such part thereof as they think fit when the plan of a building which is proposed to be erected fronting on the street is submitted to them for approval:

Provided that before fixing a building line in respect of land belonging to any owner other than the person submitting the building plan, the Council shall give that owner not less than 14 days' notice of their intention to fix a building line and shall consider any objections which may be addressed by him to the Council.

(4) Notwithstanding the foregoing provisions of this Clause, the Council may, if they think fit, permit—(a) the projection in front of the building line of any bay window, porch or other projecting portion of a building; (b) in the case of industrial buildings, the erection of the buildings at such distance, not being less than 10 feet from the boundary of any street, as the Council may specify; (c) the erection of groups of shops and business premises at such distance, not being less than five feet from the boundary of any street, as the Council may specify; (d) the erection in front of the building line of any building where, by reason of the levels of the site or of any adjoining land, or by reason of any other exceptional circumstances, or for purposes of architectural effect, such permission is in the opinion of the Council advisable; (e) the erection in front of the building line of a lodge or other building to be used in connection with a dwelling-house, provided that the lodge or building shall not exceed two storeys in height and shall not be nearer than ten feet to the boundary of the street.

Before giving permission under paragraph (b), (c) or (d) of this sub-clause, the Council shall, at the expense of the applicant, give notice in writing of the proposal to the owners of the adjoining land and to all other persons who, in the opinion of the Council, may be affected by the giving or withholding of such permission, and shall consider all objections which may be addressed to them in writing by any such person within a period, not being less than 14 days, to be specified in the notice.

(5) For the purposes of this Clause the erection of a building includes, in addition to the operations referred to in Clause 17, the making of any addition to an existing building.

(6) Any owner who feels aggrieved by a decision of the Council fixing a building line in respect of his land [in pursuance of sub-clauses (2) and (3) of this Clause ¹] may [apply to the Minister for leave to appeal to him.^{1a}]

Clause 34.—(1) In any street in which a building line is in operation under this Scheme a person shall not be precluded by section 3 of the Public Health (Buildings in Streets) Act, 1888,² from erecting or bringing forward any house or building to which the building line applies beyond the front main wall of the house or building on either side thereof.

(2) Nothing in this Clause shall authorise the erection or bringing forward of any house or building beyond the building line shown on the map or fixed by the Council under the provisions of this Part of the Scheme.

PART IV.

RESERVATION OF LANDS.

Clause 35.—(1) The uses for which the lands specified in column 1 of the following Table are reserved are indicated in column 2 of the Table. The lands specified in the Table may, until acquired by the Council or in the case of lands reserved for use as private open spaces until such date as the Council in each case fix, continue to be used as they are used at the date of approval of this Scheme or

(1) Minor amendment by Supplement No. 1, 1924.

(1a) See footnote (3), *post*, p. 1199 D.
(2) *Ante*, p. 366.

may be used for purposes of agriculture and horticulture or for such other purposes as the Council may permit. Before the date of acquisition or the date fixed, as the case may be, such buildings may be erected and maintained upon any of the lands specified in the Table as are necessary for the purposes for which the lands are permitted to be used, subject to such conditions as the Council may impose as to their removal after such date as aforesaid, or otherwise. **Clause 35.**

(2) In the case of land reserved for use as a private open space, the Council shall give the owner of the land not less than six months' notice of the date which they have fixed under this Clause.

(3) Except as aforesaid no part of the lands specified in the Table shall be used for any purpose other than that indicated in the Table as the purpose for which the land is reserved, and no buildings other than those required for that purpose shall be erected thereon.

TABLE.3

Column 1.	Column 2.
Indication on map of lands reserved.	Uses for which lands are reserved.
Coloured and numbered ...	Public open spaces.
Coloured and numbered ...	Private open spaces.
Coloured and numbered ...	Playing fields.
Coloured and numbered ...	Allotments.
Coloured and numbered ...	Sites for elementary schools.

For the purposes of this Clause land reserved for use as a private open space means land reserved for use as a private ground for sports, play, rest or recreation, or as an ornamental garden or pleasure ground.

(4)—(a) The purposes of this Scheme shall include the provision by the Council of public open spaces and playing fields upon lands reserved for those purposes respectively.

(b) The Council may at any time acquire by agreement and, if they think fit, convert into a public open space or a playing field any of the lands reserved as private open spaces and numbered on the map.

(5) The Council shall have like powers in regard to any lands reserved as public or private open spaces or playing fields, when acquired by the Council, as if the same were acquired for the purposes of public walks, parks and pleasure grounds under the Public Health Acts or any enactments amending those Acts, and, in addition, the Council shall have power to let for purposes of recreation [and to lay out, equip, and maintain for the purpose of such letting,⁴] any land reserved as a playing field when acquired by them, or any land reserved as a private open space when acquired by the Council and converted into a playing field, but no such letting shall be for a term of more than seven years without the consent of the Minister.

Clause 36. If at any time any land reserved for any purpose under this Part of the Scheme is not required or likely to be required for that purpose, the Minister may, on the application of the Council, by order declare the land no longer to be so reserved, and thereafter the provisions of this Part of the Scheme shall not apply to the land, but the land shall be subject to the remaining provisions of this Scheme as if it were included in such zone or zones as may be specified in the order.

Before making an order under this Clause, the Minister may, if he thinks fit, require the Council to serve a notice of their application for the order upon such owners as may, in the Minister's opinion, be affected.

Lands no longer required for the purposes for which they are reserved.

PART V.

GENERAL CONVENIENCE AND AMENITY.

Clause 37.—(1) If at any time the Council are of opinion that, for the purpose of securing the safety of traffic, the height of close fences and walls, the growth of hedges, trees and shrubs, and the erection of other obstructions upon any land adjoining any street or the site of any proposed street ought to be regulated, the Council may prescribe a line upon the land, and shall thereupon give notice of the line prescribed to the owner and occupier of the land : **Safety of traffic.**

Provided that where a building line is shown on the map or has been fixed by the Council under this Scheme in respect of the street or proposed street, any line

(3) " This Table is intended to be only an illustration."

(4) Minor amendment by Supplement No. 1, 1924.

Clause 37.

prescribed under this Clause shall be between that building line and the boundary of the street.

(2) Where a line is prescribed by the Council under this Clause, no wall, fence, hedge, tree or shrub or other obstruction (other than temporary structures erected in connection with building operations) shall be erected or be permitted to grow between that line and the boundary of the street or proposed street so as to cause danger to traffic by obscuring the view.

(3) The Council may from time to time vary any line so prescribed, and shall give notice of the variation to the owner and occupier of the land.

(4) No proceedings in respect of any contravention of this Clause shall be taken until 14 days after notice has been given to the person in default.

Preservation
of trees.

Clause 38.—(1) If at any time the Council, having regard to the amenity of any part of the area, are of opinion that any growing tree of a height of more than feet or having a trunk of a girth of more than feet at a height of feet above the ground, or any group of such trees, ought to be preserved, the Council may register the tree or group of trees, and shall thereupon notify the owner and occupier of the land upon which the tree or group of trees is growing that the tree or group of trees has been registered, and the register of trees so made shall be open to inspection by persons interested at all reasonable times.

(2) No person shall cut down or wilfully destroy any tree registered by the Council under this Clause, except with the consent of the Council or upon an order of a court of summary jurisdiction under sub-clause (3) of this Clause or where the tree has become dangerous :

Provided that if the Council do not notify their refusal to consent to the cutting down or destruction of any registered tree within one month from the date of an application for consent their consent shall be deemed to have been given.

(3) Any owner or occupier who feels aggrieved by a refusal of the Council to consent to the cutting down or destruction of any registered tree may appeal to a court of summary jurisdiction, and the court may, if they think just, make an order authorising the cutting down or destruction of the tree, and may direct by whom and in what manner the costs of the appeal shall be paid, but such order shall not affect any rights as between the owner and occupier.

(4) The Council may delegate their powers under this Clause, with or without restriction, to any Committee of the Council.

Advertisements.

Clause 39.—(1) Subject as hereinafter provided no advertisement shall be displayed in such a position or manner as to injure the amenity of any part of the area.

(2)—(a) Any person may apply to the Council for their consent to the display of an advertisement and consent shall be deemed to have been given if the Council do not notify their refusal to consent within one month from the date of the application.

(b) Where, on any such application, the Council refuse their consent, the applicant may, within 21 days from the date of notification of refusal, appeal to a court of summary jurisdiction and the court may, if they think just, make an order permitting the display of the advertisement to which the application relates, and may direct by whom and in what manner the costs of the appeal shall be paid.

(3) The Council may, if they think fit, authorise generally the display of particular classes of advertisement with or without specifying the positions or manner in which they may be displayed.

(4) The display of an advertisement in accordance with any consent or general authority given by the Council or any order of the Court under this Clause shall not be a contravention of this Clause.

(5) The provisions of this Clause shall be in addition to and not in derogation of the provisions of the Advertisements Regulation Act, 1907.¹

(6) The Council may delegate their powers under this Clause, with or without restriction, to any Committee of the Council.

(7) For the purposes of this Clause the display of an advertisement includes the erection of a hoarding for the purposes of advertising.

Maintenance of
private gardens.

Clause 40. If any private garden or private open space (as defined in Part IV of this Scheme) is in such a condition that it injures the amenity of the neighbourhood, the Council may serve a notice on the occupier, or, if there is no occupier, on the owner of the garden or open space, requiring him within a reasonable

(1) *Post*, Vol. II., p. 2203.

time to be specified in such notice to take such action as is necessary to secure the amenity, and in default of compliance with such notice the Council may themselves do anything required to be done for that purpose and may recover the cost from the person or persons served with the notice or from any one or more of them. Clause 40.

PART VI.

MISCELLANEOUS.

Clause 41.—(1) The Council may enter into agreements for the purpose of carrying this Scheme into effect, and where any such agreement imposes on the Council a liability for expenditure, the agreement shall state whether or not the Council propose to defray such expenditure or any part thereof by means of a loan. Agreements.

Where it is stated in the agreement that the Council so propose, the agreement shall not become operative unless and until it is approved by the Minister.

(2) The several agreements, of which particulars are set out in the Fourth Schedule to this Scheme, shall be deemed to have been made by the Council under the powers conferred on them by this Clause, and notwithstanding any inconsistency between any of the provisions of any such agreement and this Scheme, the provisions of the agreement shall prevail.

Any other agreements made by the Council after . . .² and before the date of approval of this Scheme in respect of any matter regarding which agreements may be made under this Clause shall, so far as they are consistent with the provisions of this Scheme, have effect as if they had been made by the Council under the powers conferred on them by this Clause.

(3) A person having the powers of a tenant for life within the meaning of the Settled Lands Acts, 1882 to 1922, may, with the consent of the persons who are trustees of the settlement for the purposes of those Acts or on an order of the court, enter into any agreement which the Council have power under this Clause to make, but nothing in this Clause shall prejudice or affect the exercise by any such person of any powers, whether statutory or other, which he could have exercised apart from this Clause.

(4) The Council shall have power to enforce any covenant contained in agreements of the kinds referred to in this Clause against persons deriving title under the covenantor, notwithstanding that the Council are not in possession of or interested in any land for the benefit of which the covenant was entered into, in the same manner and to the same extent as if they had from the date on which the covenant was entered into been possessed of or interested in such land.

Clause 42.—(1) For the purpose of securing such adjustment of the boundaries of estates as will facilitate the proper laying out of streets and development of land within the area, the Council may agree with the persons interested in lands for the exchange between those persons of portions of the lands, either with or without payment of money by way of equality of exchange, and may, if they think fit, themselves pay in whole or in part any money required to be paid by way of equality of exchange, and may pay in whole or in part the costs of the exchange. Adjustment of boundaries of estates.

(2) In default of agreement the Council may by order provide that the lands shall be exchanged on such terms as may be specified in the order, but before making the order the Council shall send to each of the persons concerned a draft of the proposed order, and any such person shall be entitled within 14 days after the said draft is sent to him to require the matter to be submitted to the arbitration of a single arbitrator to be agreed between the Council and the persons concerned, or, in default of agreement, to be appointed by the Minister.

(3) The arbitrator so appointed shall have power to modify the boundaries of the lands proposed to be exchanged and otherwise to fix the terms upon which the exchange is to be effected, including the payment of money by the Council, but the payment of money by any person concerned other than the Council shall not be made a term of the award without his consent. The provisions of the Arbitration Act, 1889, shall apply to an arbitration held under this Clause, and the Council and the persons concerned shall be treated as parties to the arbitration.

(4) Upon the issue by the arbitrator of his award the Council may either decide not to proceed with the proposed order or may make the order in the terms of the award. If the Council decide not to proceed, they shall, notwithstanding any direction in the award to the contrary, pay the costs of the persons concerned of and in connection with the arbitration, and the arbitrator shall have power to tax or settle the amount of the costs to be so paid.

(2) See footnote (6), *ante*, p. 1186.

Clause 42.

(5) An order made by the Council under this Clause shall be liable to stamp duty as an instrument effecting an exchange, and shall have the like effect as an Order of Exchange of lands duly made by the Minister of Agriculture and Fisheries under sect. 147 of the Inclosure Act, 1845.¹

(6) Nothing in this Clause shall enable the Council to make (a) an order affecting any land to which sect. 45 of the Act of 1909² applies, or (b) an order the terms of which provide for the payment by way of equality of exchange of a sum exceeding one-eighth of the value of the less valuable piece of land.

(7) For the purpose of securing an adjustment of the boundaries of estates as aforesaid, the Council may themselves purchase, subject to the provisions of sect. 60 of the Act of 1909,³ any land, and may for that purpose sell or lease the land so purchased in whole or in part.

Modifications in detail of scheme.

Clause 43.—(1) The Council shall have power from time to time by order to make any minor modification in the site of any proposed street coloured pink on the map (and any consequential modification of a building line) or in the boundary of any zone or of any area reserved for any purpose under Part IV of this Scheme, but before making any such order they shall give not less than 14 days' notice of their intention by advertisement in a local newspaper circulating in the area and shall serve a similar notice upon any [owners of the land affected and any other persons whom the order will in their opinion specially concern.^{3a}]

(2) Any person who feels aggrieved by an order proposed to be made under this Clause may [apply to the Minister for leave to appeal to him,⁴] and if an appeal is lodged the order shall not take effect pending the decision of the Minister.

(3) A copy of any order made by the Council under this Clause shall be furnished to the Minister as soon as practicable.

Retrospective effect of scheme.

Clause 44. The provisions of this Scheme (other than the provisions of Clause 19 requiring dwelling-houses and residential buildings to be erected on land units) shall apply to all buildings whose erection is commenced after . . .⁵ [and to any other work done by any person other than the Council after that date^{3a}] as if that date had been the date of approval of this Scheme.

Effect of scheme upon orders under Act of 1919, s. 45.

Clause 45. Where in pursuance of any special or general order made by the Minister under sect. 45 of the Act of 1919,⁶ the development of any estate or any building operation has been permitted to proceed, no building, street or other work whose erection, lay out or construction is commenced before the date of approval of this Scheme in pursuance of such permission and in accordance with any requirements made as a condition of granting such permission shall be deemed to contravene the provisions of this Scheme.

Fulfilment of conditions.

Clause 46.—(1) Where permission for the erection, laying out or construction of any street or building, or in respect of any other matter is given subject to conditions imposed by the Council [or the Minister^{3a}] under any provision of this Scheme, the conditions shall have effect as if they were provisions of this Scheme :

Provided that [any such condition may be waived or modified with the consent of the owner of the land to which it relates in the manner, and in accordance with the requirements as to advertisement, notices, consideration of objections, and otherwise, applicable to the imposition of the condition under the Scheme.^{3a}]

(2) The Council shall keep, so as to be available for inspection at all reasonable times by any person interested, a register of any conditions imposed by them under any provision of this Scheme.

Disposal of lands.

Clause 47.—(1) The Council may, with the consent of the Minister, sell or lease or exchange any land acquired by them for any purpose of this Scheme which is not required for that purpose, or may appropriate any such land to some other purpose approved by the Minister.

(2) The Council may, with the consent of the Minister, lease any land which has been acquired by them for any purpose of this Scheme, but is temporarily not required for that purpose or may apply any such land to any purpose approved by the Minister.

(3) The appropriation or temporary application of land by the Council under this Clause shall be subject to any special covenants or agreements affecting the use of the land in their hands.

(1) 8 & 9 Vict. c. 118, s. 147.

(2) *Ante*, p. 1114.

(3) *Ante*, p. 1120.

(3a) Minor amendment by Supplement

No. 1, 1924.

(4) See footnote (3), *post*, p. 1199 D.

(5) See footnote (6), *ante*, p. 1186.

(6) *Ante*, p. 1119.

Clause 48.—(1) Any land belonging to the Council which is reserved for [streets or for any purpose under Clause 35,⁶] may, when required for the purpose for which it is reserved, whether or not originally acquired for that purpose, be appropriated therefor.

Clause 48.
Appropriation
of lands.

(2)—(a) Notwithstanding the provisions of this Clause, no land forming part of any common, open space, or allotment within the meaning of sect. 73 of the Act of 1909 shall be appropriated to any other purpose except where land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public, is given in exchange.⁷

(b) Any land forming part of any common, open space or allotment as aforesaid appropriated under this Clause shall, by virtue of the appropriation, be discharged from any rights, trusts and incidents to which it was previously subject, and any land given in exchange shall be held subject to the same rights, trusts and incidents as attached to the land appropriated.

Clause 49. Any members, officers or servants of the Council, on production of the written authority of the Council, shall be admitted into or upon any property within the area at any time between the hours of nine in the forenoon and six in the afternoon for the purpose of any inspection necessary for carrying this Scheme into effect or of enforcing any of its provisions.

Entry on lands
for inspection,
&c.

If admission for any of the purposes of this Clause is refused, any justice on complaint thereof on oath by any officer of the Council (made after reasonable notice in writing of intention to make the same has been given to the person having custody of the property) may by order under his hand require that person to admit any members, officers and servants of the Council into or upon the property during the hours aforesaid. If no person having such custody can be found, the justice shall, on oath made before him of that fact, by order under his hand authorise any members, officers and servants of the Council to enter into or upon the property during the hours aforesaid. Any such order made by a justice shall continue in force until the purposes for which admittance was required have been fulfilled or executed.

Clause 50.—(1) Where it appears to the Council that any building or other work is such as to contravene this Scheme, or that in the erection or carrying out of any building or other work any provision of this Scheme has not been complied with, or that any person has failed to execute any work which it is his duty to execute under this Scheme and that delay in the execution of the work would prejudice the efficient operation of this Scheme, the Council may serve a notice containing a copy of this Clause and of sect. 57 of the Act of 1909 upon the person in default,⁸ specifying the respects in which the Scheme has been contravened or the works in the execution of which delay has occurred, and stating that the Council intend to exercise their powers under sub-sect. (1) (a) or (b) of the said section, as the case may be.

Contraventions
of scheme.

(2) At the expiration of one month from the date of the notice the Council may exercise their powers under paragraph (a) or (b) aforesaid, as the case may be, but, where they have previously been notified by the person served with the notice or by the Minister that a question whether any building or work specified in the notice contravenes the Scheme has been referred to the Minister for decision under sub-sect. (3) of the said section, the Council shall suspend further action pending the decision of the Minister.

(3) When on any question referred to the Minister under sub-sect. (3) of the said section it is determined that any building or work contravenes this Scheme, or that any provision of this Scheme has not been complied with in the erection or carrying out of any building or other work, the Council, after giving such person as aforesaid notice that, at the expiration of a period specified in the notice (not being less than one month from the date of service of the notice), they intend to exercise their powers, under paragraph (a) aforesaid, may proceed to remove, pull down, or alter the building or work.

Clause 51.—(1) Any person who commits or knowingly permits any contravention or other breach of the provisions of this Scheme or who neglects or fails to comply with any of those provisions shall be guilty of an offence.

Penalties.

(2) Any person guilty of an offence under this Scheme shall be liable on conviction in any court of summary jurisdiction to a penalty not exceeding forty

(6) Minor amendment by Supplement No. 1, 1924.

(7) See *ante*, p. 1123.
(8) *Ante*, p. 1118.

Clause 51.

shillings for each offence or in the case of an offence under Clause 38 to a penalty not exceeding ten pounds for each offence, and in the case of a continuing offence he shall be liable to a further penalty not exceeding twenty shillings for each day upon which any offence is continued after notice in writing of the alleged offence has been served on him by the Council or other person instituting the proceedings.

(3) Sect. 37 of the Criminal Justice Administration Act, 1914 (which provides a right of appeal in certain events to a Court of Quarter Sessions)¹ shall apply to offences under this Scheme.

(4) Proceedings may be taken under this Clause in addition to any other proceedings or remedy.

Gifts.

Clause 52. The Council may accept a donation of land or money or other property for the furtherance of any object of this Scheme and it shall not be necessary to enrol any assurance with respect to any such property under the Mortmain and Charitable Uses Act, 1888.

Recovery of expenses.

Clause 53.—(1) All expenses (other than expenses recoverable under *the Private Street Works Act, 1892* [*Section 150 of the Public Health Act, 1875*],² as applied by this Scheme) incurred by the Council under this Scheme for the repayment of which any person is made liable under this Scheme or the Act of 1909 or by any agreement with the Council under this Scheme shall be recoverable summarily as a civil debt, and shall, until payment, be a charge on the inheritance of the land in respect of which they have been incurred.

(2) Where the value of land is increased by the making of this Scheme, the sum due to the Council in respect of that increase shall until payment, be a charge on the inheritance of the land the value of which has been increased.

(3) The Council shall have in respect of expenses which are charged on land by this Clause all the same powers and remedies under the Conveyancing and Law of Property Acts, 1881 to 1922,³ and otherwise as if they were mortgagees having powers of sale and [leasing^{3a}] and of appointing a receiver.

Application of moneys received by Council.

Clause 54. All amounts recovered by the Council under sect. 58 of the Act of 1909 in respect of the increase in value of property or received from owners as contributions towards the cost of street construction or from the sale of surplus lands or from any other source in connection with this Scheme shall be applied in repayment of moneys borrowed under the Act of 1909 for purposes of this Scheme or to such other purposes as may be approved by the Minister.

Suspension and application of Acts and byelaws.

Clause 55.—[(1) Any byelaws made by the Council with respect to new streets which are in force in the area shall cease to have effect in the area; but any application or plans or sections submitted to the Council under the byelaws in respect of which permission to proceed has not been granted or refused in pursuance of any special or general Order made by the Minister under sect. 45 of the Act of 1919 shall be deemed to have been submitted under this Scheme.

(2) The provisions of any other byelaws or of any statutory enactment or regulations which are in force shall have effect subject to this Scheme as regards matters dealt with in the Scheme, and, in so far as inconsistent with the provisions of the Scheme, shall be suspended: Provided that nothing in Part III of the Scheme shall authorise the Council to permit the erection of a building in a manner contravening the byelaws and local Acts or the provisions of any general Act.⁴]

Appeals.

Clause 56.—(1) Where [an application for leave to appeal may be made to the Minister under this Scheme:—(i) if the application is for leave to appeal against any decision, refusal, specification or declaration of the Council, or against the imposition of any conditions by the Council, it shall be made within 14 days from the date of service of notice thereof; (ii) if the application is for leave to appeal against any proposal of the Council to make an order under Clause 43, it shall be made within 14 days from the date of advertisement or service of notice of the proposal; (iii) if the application is for leave to appeal against any neglect of the Council, it shall not be made until one month after notice of intention to apply for leave to appeal has been given to the Council. Provided that the Minister may on the application of any person desiring to appeal extend the time for making application for leave to appeal prescribed by paragraphs (i) and (ii) of this sub-clause, and may so extend the time although the application is not made until after the expiration of the time so prescribed.

(1) *Ante*, p. 716 (9).

(2) See footnote (4), *ante*, p. 1184.

(3) See *post*, Vol. II., p. 2355.

(3a) Minor amendment by Supplement No. 1, 1924.

(4) See footnote (3), *ante*, p. 1184.

(2) An application for leave to appeal shall be made in writing and shall contain a concise statement of the facts and contentions on which the applicant relies. **Clause 56.**

(3) In any case in which an application for leave to appeal has been granted the Minister may accept the application as an appeal, and shall notify the Council that leave to appeal has been granted, and furnish them with a copy of the application.^{3]}

[4] The Minister may on any appeal make such order in the matter as he thinks equitable, and any order so made shall be binding and conclusive on all parties.

[5] Where the Minister does not for the purpose of determining an appeal appoint an arbitrator to act for him in pursuance of his powers under sect. 30 of the Regulation of Railways Act, 1868, as applied by sect. 62 of the Act of 1909,⁴ the costs of the appeal, including the costs of any public local inquiry held in connection therewith, shall be in the discretion of the Minister, who may direct to and by whom and in what manner those costs or any part thereof shall be paid and may tax or settle the amount of costs to be so paid or any part thereof.

[**Clause 56A.**—Where the Council are empowered to make an order with the approval of the Minister under any provisions of this Scheme—

Approval of orders by the Minister.

(1) The order shall, where necessary, refer to a plan on a scale not less than that of the Map defining the land or any neighbouring land affected.

(2) The Council shall, before submitting the order to the Minister for approval, give notice thereof by advertisement in a local newspaper circulating in the area. The Council shall include in the notice a statement that a print of the order and plan (if any) will be open for inspection at a specified place or places, and that any interested person desiring to make any representations or objections with respect thereto may address them in writing to the Council within a specified period, not being less than 14 days from the date of the advertisement.

(3) Where the order relates to specified land, notices in the same terms shall be served on the owners of the land and on any neighbouring owners in the area who may in the opinion of the Council be affected. Before approving the order under this Clause, the Minister may require similar notices to be served on any additional owners who may in his opinion be affected by the order.

(4) The order may include any necessary modifications in the application of this Scheme to the land or any neighbouring land to which the order relates.

(5) The Minister may approve the order with or without modifications, or may disapprove it, provided that he is satisfied, before approving any order made in pursuance of Clauses . . . ,⁵ that the provisions of the order are reasonable having regard to the nature and situation of the land affected by the order.

(6) An order approved under this Clause shall have effect as if it were incorporated in and formed part of this Scheme.

(7) An order approved under this Clause shall be in duplicate, one part to be deposited with this Scheme at the office of the Clerk to the Council and the other at the Ministry of Health.

(8) A copy of the order shall be served by the Council on any owner on whom a notice has previously been served under this Clause, and notice of the approval of the order shall also be given by advertisement in a local newspaper circulating in the area, stating that a copy of the order as approved by the Minister may be inspected at a specified place or places.^{6]}

Clause 57. Claims under sect. 58 of the Act of 1909 for compensation or in respect of any increase in the value of property due to the making of this Scheme, shall be made within 12 months from the date of approval of this Scheme: Provided that in the event of such a claim arising out of the exercise by the Council of any power conferred on them under Clauses 6 (2) [6 (5) ⁷], 10, 33, 37, or 38, the claim may be made at any time not later than 12 months after the date on which notice is given by the Council to the claimant of the exercise by

Claims for compensation and betterment.

(3) According to the 1924 Supplement No. 1, "It is considered desirable that the Minister should have power to refuse to entertain appeals which are obviously frivolous or clearly not justified, and that a prospective appellant should accordingly be required to obtain the Minister's leave, before making an appeal to him." But whether section 39 of the Act of 1909 gives the Minister any power to require previous "leave" is open to considerable doubt. Other alterations in this connection are to Clauses 18 (4), 27, 28 (4)

(a) (b), 33 (6), and 43 (2).

(4) *Ante*, p. 1121.

(5) "Insert Clauses dealing with matters within the scope of H. T. P. Act, 1909, s. 59 (2)"—*e.g.*, Model Clause 29.

(6) From Supplement No. 1 of 1924, which says: "This is a new Clause for use where a Scheme includes a number of Clauses taking power to substitute new provisions by order—to be inserted after Model Clause 56."

(7) See footnote (5a), *ante*, p. 1186.

Clause 57.

them of such power or of their intention to exercise such power, as the case may be, or, where an appeal lies and is made to the Minister against the exercise by the Council of such power, [or the approval of the Minister is required to the exercise of such power,⁴] the date on which notice is given to the claimant of the Minister's decision on the appeal [or the date of his approval⁴].

Charging
orders.

Clause 58.—(1) Where any owner has paid any sum required to be paid under sect. 58 of the Act, in respect of the increase in value in his land by reason of the operation of this Scheme, or where any other person has advanced money for that purpose, such owner or person may apply to the Council for a charging order, and on production of the receipt for the sum so paid, the Council shall make an order charging on the land an annuity to repay the amount.

(2) The annuity charged shall be such annual sum as will repay the said amount by equal instalments of principal and interest combined in a period of 30 years, interest being calculated at the same rate as that which, at the date when the charge is made, is the rate of interest charged on loans granted by the Public Works Loan Commissioners to local authorities for the same period, and shall commence from the date of the order, and be payable to the person named in such order, his executors, administrators or assigns.

(3) Any such annuity may be recovered by the person for the time being entitled to it by the same means and in like manner in all respects as if it were a rent charge granted by deed out of the land by the owner thereof.

(4) A charge made under this Clause shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, as amended by any subsequent enactment, and may be registered accordingly.⁵

(5) The provisions of sect. 37 of the Housing of the Working Classes Act, 1890, as amended by the Act of 1909 (other than sub-sect. (4) of that section), shall apply to charges created under this clause.⁶

(6) Charging orders and transfers of charges may be made under this Clause according to the Forms A and B in the Fifth Schedule to this Scheme or in any other convenient form.

(7) Any owner or other person interested in land on which an annuity has been charged under this Clause may at any time redeem the annuity on payment to the person entitled to the annuity of such sum as may be agreed or in default of agreement determined by the Minister.

Registration.

Clause 59. Any person may, in consideration of such annual payment not exceeding £1 as the Council may fix, require the Council to register his name, and the Council shall thereafter serve upon that person at the last address notified by him to the Council a copy of every advertisement which, under the provisions of this Scheme, the Council are required to insert in some local newspaper circulating in the area.

[Inspection of
Scheme.⁷]

Clause 60. The Council shall permit any person interested to inspect at any reasonable time the duplicate of the map deposited in the offices of the Clerk to the Council [and the agreements of which particulars are set out in the Fourth Schedule to this Scheme.⁷]

Service of
notices.

Clause 61. Notices or other documents required or authorised to be served under this Scheme shall be in writing and may be served:—

(a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent; or

(b) by leaving the same at the usual or last known place of abode or business of such person as aforesaid; or

(c) by post as a registered letter addressed to the usual or last known place of abode of such person; or

(d) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at the office of the authority or body or, in the case of the company, at the registered office, with some person employed there, or by post as a registered letter addressed to such clerk or secretary at that office:

Provided that if the owner of any land is not known to, and after reasonable inquiry cannot be ascertained by, the Council, the notice may be served by leaving it, addressed to "the owner," with some occupier of the land, or if there is no occupier, by affixing it to some conspicuous part of the land.

(4) See footnote (5a), *ante*, p. 1186.

(6) See *ante*, p. 1059.

(5) As to such charges, see *post*, Vol. II., p. 2357.

(7) Minor amendments by Supplement No. 1, 1924.

Clause 62. In all cases where the consent of the Council is required to be given under this Scheme such consent shall be in writing, and shall be either under the hand of the Clerk or of some person duly authorised to act in place of the Clerk or under the seal of the Council.

Clause 62.

Consent of council to be in writing.

Clause 63. Sect. 85 of the Housing of the Working Classes Act, 1890, as amended by the Act of 1909,¹ shall apply for any purposes of this Scheme as it applies for the purpose of the execution of the powers and duties of the Minister under the former Act.

Inquiries by Minister.

Clause 64.—(1) Nothing in this Scheme shall affect the application of sect. 7 of the Telegraph Act, 1878,² to any alteration in any telegraphic line of the Postmaster General which may be involved in the exercise of powers conferred by the Scheme.

For the protection of the Postmaster-General.

(2) Notwithstanding the stopping up or diversion of any highway or footpath under this Scheme, the Postmaster General shall continue to have the same powers and rights in regard to any telegraphic line which remains in, under, upon, over, along, or across the site of the said highway or footpath as if the same had continued to be a highway or footpath: Provided that if the Council or the person in whom the soil of the said highway or footpath is vested desires to alter such telegraphic line, the enactments of sect. 7 of the said Act shall thereupon apply in all respects as though the Council or the said person (as the case may be) were undertakers within the meaning of that Act.

(3) Expressions in this Clause have the same meaning as in the Telegraph Act, 1878.

Clause 65.—(1) This Scheme shall commence on the day on which it is approved by the Minister, and shall, subject to any variations made by any subsequent Scheme, continue in operation until revoked.

Duration of scheme and short title.

(2) This Scheme may be cited as "The Town Planning Scheme, 19—."

FIRST SCHEDULE.

Note.

The present Schedule, which is referred to in Clauses 4, 10 (2) (4), and 30 (1), is (as amended by Supplement No. 1, 1924) in two Parts, namely, I., "Streets likely to be required for through traffic," and II., "Streets not likely to be" so required. There are seven "types" of street lettered from A to G, and ten columns headed thus: Under "Dimensions," they are "Maximum length of street," "Minimum width of street," "Minimum width of carriageway," "Minimum number of footways," and "Minimum width of each footway," and, under "Conditions," they are "Levels," "Construction of surface," "Junction with other streets," "Turning spaces," and "Other"; and there is a final column headed "Specification of works and materials (for use where specifications are prescribed in the scheme)." The body of the Table is too lengthy for insertion here. Any council preparing a town planning scheme must obtain a copy from the Ministry. A Note at the foot of the Table says: "The dimensions in this Table are generally recommended, but suggested modifications will be considered, or proposals for additional or alternative types of streets. The types of through traffic streets adopted will no doubt depend to some extent on standards already in force in the particular area, but this should not preclude any desirable revision, and where the existing standard provides for a single type of through traffic street of a width appreciably in excess of thirty-six feet it is recommended that an additional type of street of reduced width should be adopted for application where the traffic is not likely to be of such a character and volume as to require a street of the greater width. The dimensions of the types of streets in Part II. (except type G) have been based on the assumption of a development of twelve to the acre in a normal residential neighbourhood. The dimensions admit of adjustments within the prescribed limits, and could be tightened or relaxed to meet variations in density or in the character of the locality."

Types of streets.

(1) See *ante*, p. 1077.

Acts, see *ante*, p. 306.

(2) 41 & 42 Vict. c. 76, s. 7. As to these

Sched. II.

SECOND SCHEDULE.

Note.

Highway
diversions.

The present Schedule (enacted by Clause 16) contains two columns headed :
" 1. Number on the map of highway to be diverted or stopped up "; and
" 2. Number on the map of new street."

THIRD SCHEDULE.

Note.

List of
industries.

The present Schedule is headed : " List of Industries." See Clause 17 and Note
to Clause 28.

FOURTH SCHEDULE.

Note.

Agreements.

The present Schedule (see Clauses 41 (2), 60) contains three columns respectively
headed : " Date of Agreement," " Parties," and " Description of lands."

FIFTH SCHEDULE.

FORM A.

Charging Order.

The . . . being the Responsible Authority under the . . . Town Planning
Scheme, 19—, made under Part II. of the Housing, Town Planning, Etc., Act,
1909, do by this Order under their common seal charge the lands and premises
mentioned in the Schedule hereto with the payment to . . . of . . . of the sum
of . . . pounds payable yearly (half-yearly) on the . . . day of . . . for the
term of . . . years, and being in consideration of a payment of . . . pounds made
by . . . under section 58 (3) of the said Act.

Schedule of Lands Charged.

Note.

Lands
charged.

This Schedule contains six columns headed respectively : " Name, etc., of lands,"
" Owner," " Occupier," " Parish," " County," and " Total acreage."
It is enacted by Clause 58 (6).

FORM B.

Form of Assignment of Charge. To be endorsed on Charging Order.
Dated the . . . day of . . .
I, the within named . . . in pursuance of the Housing, Town Planning, Etc.,
Act, 1909, and of the consideration of . . . pounds, this day paid to me, hereby
assign to . . . the within mentioned charge.
Signed



